Public Transparency Policy

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1. Purpose

Under section 57 of the Local Government Act 2020 (**LGA 2020**), Towong Shire Council (**Council**) is required to adopt and maintain a Public Transparency Policy. This Public Transparency Policy covers documentary information, process information and how information will be made available to the public.

2. Scope

This policy applies to a person who is:

- A Councillor;
- A member of a Council committee;
- A Council employee; and
- A volunteer or contractor

3. Objectives

The objective of this policy is to describe how Council will make its information and decision-making processes publicly available in order to:

- Increase community confidence through greater understanding and awareness;
- Better enable the community to participate in decision-making;
- Promote accountability in decision-making, service delivery and performance;
- Ensure compliance with the requirements of the LGA 2020.

4. Policy Details

4.1 Principles

This policy gives effect to the overarching Governance Principles and the supporting Public Transparency Principles of the LGA 2020. The principles are as follows:

- Council decision making processes must be transparent except when the Council is dealing with information that is confidential by virtue of this Act or any other Act;
- Council information must be publicly available unless—
  - the information is confidential by virtue of this Act or any other Act; or
  - public availability of the information would be contrary to the public interest;
- Council information must be understandable and accessible to members of the municipal community;
- Public awareness of the availability of Council information must be facilitated.

In applying this policy, Council will seek to:

- Recognise Council information as an asset for public access and use;
- Apply a presumption of openness except where confidential by legislation;
- Facilitate public awareness of the availability of Council information;
- Adopt a proactive approach where beneficial to community engagement;
- Ensure that Council information is current, accessible and understandable;
- Allow access to information promptly and free of charge or at low cost.

4.2 Information available to the public

Council will at minimum publish the following information for access by the public, except where the information is confidential under legislation, otherwise restricted by law, or where release would be contrary to the public interest:

- Plans, strategies, reports, policies and documents required by LGA 2020;
- Plans, strategies and policies otherwise adopted by Council;
- Local Laws;
- Council meeting agendas, minutes, and meeting recordings;
- Terms of reference or charters for Council committees;
- Application processes for approvals, permits, grants, and access to services.

Council will at minimum make the following information available to the public upon request, except where the information is confidential under legislation, otherwise restricted by law, or where release would be contrary to the public interest:

- Plans, strategies, reports and documents required by any Act or which have been adopted by Council;
- Project and service plans which have been adopted by Council;
- Guidelines, manuals, policies and procedures;
- Technical reports and/or research used to inform decision making;
- Registers required by LGA 2020 or any other legislation;
- Newsletters, handbooks and promotional materials;
- Building approval registers as required by the Building Act 1993;
- Planning permit registers and documentation as required by the Planning and Environment Act 1987.

Council may require that a formal Freedom of Information request is submitted where the information requestedis not otherwise publicly available or where access must be assessed under the Freedom of Information Act 1982 (e.g. where the request involves information that may be exempt, confidential, personal, health-related, commercially sensitive, legally privileged or otherwise restricted by law).

4.3 Information not available to the public

Some Council information may not be made publicly available. This will only occur if the information is confidential information by virtue of the LGA 2020 or any other Act; or if its release would be contrary to the public interest.

Confidential information

Council is not required to make publicly available information that is confidential information. Confidential information is defined in Section 3 of the LGA 2020 and includes information relating to:

Type	Description
Council Business	Information that would prejudice the Council's position in commercial negotiations if prematurely released
Security	Information that is likely to endanger the security of Council property or the safety of any person if released
Land Use Planning	Information that is likely to encourage speculation in land values if prematurely released
Law Enforcement	Information which would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person if released
Legal Privilege	Information to which legal professional privilege or client legal privilege applies
Personal Details	Information which would result in the unreasonable disclosure of information about any person or their personal affairs if released
Private Commercial Details	Information provided by a business, commercial or financial undertaking that relates to trade secrets or that would unreasonably expose the business, commercial or financial undertaking to disadvantage if released
Confidential Meetings	Records of Council and delegated committee meetings that are closed to the public to consider confidential information
Internal Arbitration	Confidential information relating internal arbitration about an alleged breach of the Councillor Code of Conduct
Councillor Conduct Panels	Confidential information relating to a Councillor Conduct Panel matter

Information may also be confidential information where prescribed as such by the regulations. Information that was confidential information for the purposes of Section 77 of the Local Government Act 1989 remains confidential information under the LGA 2020.

Council may decide, in the interests of transparency, to release information where the basis for confidentiality under the Act no longer applies, provided the release of the information is:

- Not contrary to any law;
- Not in breach of contractual requirements;
- Not likely to cause harm to any person; and
- It is in the public interest to do so.

Public interest test

Council is not required to make information publicly available if the release of the information would be contrary to the public interest, in accordance with Section 58(b)(ii) of the LGA 2020. When considering public interest, Council will apply the public interest balancing test reflected in the Freedom of Information Act 1982 (FOI Act). Council may refuse to release information if it is satisfied that the harm to the community likely to be created by releasing the information will exceed the public benefit in it being released.

When considering possible harm from releasing information, Council will only concern itself with harm to the community or members of the community. Potential harm to Council will only be a factor if it would also damage the community, such as where it involves a loss of public funds or prevents Council from performing its functions.

Privacy and data protection

Council is not required to make information publicly available where release would contravene the Privacy and Data Protection Act 2014, the Health Records Act 2001, the Public Records Act 1973 or any other legislation governing information collected, held, managed, used, disclosed, transferred, archived or disposed of by Council.

4.4 Means of access to information

Council website

All Council information published for access by the community will be available on Council's website, which will be maintained for use on desktop computers, mobile phones and other devices, and which will be tested to work with most commonly used browsers and operating systems.

Inspection at Council Office

All Council information published for access by the community will also be available for inspection upon request at Council's Office, 32 Towong Street, Tallangatta or at 76 Hanson Street, Corryong.

Application to access information

Council will consider all requests for access to Council information made outside the Freedom of Information process in accordance with privacy principles. Information will be provided for free or at low cost, commensurate to the effort to provide it or in accordance with any relevant legislation.

Information may be provided by email and requests for information to be provided in hard copy or mailed to the requestor will be considered.

Freedom of information (FOI)

The FOI Act provides the public with a general right to request access to documents in the possession of Council relating to their personal affairs or the activities of Council, subject to the exemptions, limitations and decision-making requirements that apply under the Act.

Council may request that a formal Freedom of Information request is submitted in order to access certain documents. In assessing a Freedom of Information request, Council will act in accordance with

the FOI Act and may consult with third parties where documents contain information that may be exempt from release.

Social media

Council will, where beneficial to community engagement, make information publicly available through its social media platforms.

Content accessibility

The Disability Discrimination Act 1992 requires Council to ensure people with a disability have the same access to information and services as others in the community. Council recognises the diverse range of needs in its community and commits to making its written information accessible to everyone.

Council's information will:

- Be written with the audience in mind;
- Use simple, clear, every day and inclusive language;
- Avoid jargon and acronyms;
- Be ordered so that it is easy to understand and follow;
- Be accurate and complete;
- Use a simple and clear font, format and layout.

4.5 Transparency of Council decisions

Council is empowered by various legislation to make decisions on a broad range of matters on behalf of the local community. Council's decisions are either r made by the Council at a formally constituted meeting, or by Council officers under delegated authority of the Council. The Mayor and Councillors do not have the legal authority to individually act or make decisions on behalf of the Council.

Decisions at Council meetings

Decisions made at Council meetings are generally informed by Council reports that are prepared by officers and included in the agendas. Council meeting agendas are made available to the community in advance of each meeting in accordance with Council's Governance Rules, excluding reports that contain confidential information.
In accordance with Section 66 of the LGA 2020, Council and delegated committee meetings will be open to the public unless it is considered necessary to close the meeting:

- To consider confidential information;
- For security reasons;
- To enable the meeting to proceed in an orderly manner;
- Council will, where practicable, live stream its Council meetings to engage a broader audience.

Meetings will be conducted in accordance with the provisions of the *LGA 2020* and Council's Governance Rules and will provide opportunity for public participation. All decisions will be recorded in minutes of the meeting.

Delegated decisions

Council may delegate specific powers, duties and functions, including decision-making powers, under various legislation to the Chief Executive Officer and nominated Council employees. Council will maintain a register of delegations in accordance with Sections 11 and 47 of the LGA 2020. Delegates make decisions as if they were the Council and delegated decision-making processes must be transparent unless the decision involves confidential information or information that is restricted from public release by law, or where release would be contrary to the public interest.

4.6 Disputes

General requests

If access to Council information in response to a general request is denied, the person making the request has the right to question the decision. A review of the decision will be undertaken in accordance with Council's complaints handling processes. If the person remains dissatisfied with Council's response, they may complain or seek further review of Council's decision by the Victorian Ombudsman.

Freedom of Information requests

Council will assess Freedom of Information requests in accordance with the Act. If a person is dissatisfied with Council's Freedom of Information decision, they may seek a review by the Victorian Information Commissioner.

4.7 Breaches

Failure to comply with Council policy, supporting procedures or guidelines, will be subject to investigation which may lead to disciplinary action.

Disclosure of confidential information by a person who is, or has been, a Councillor, a member of a delegated committee or a Council employee, is an offence under Section 125 of the LGA 2020.

Further, disclosure of confidential information by a person who is, or has been, a Councillor or a member of a delegated committee is a misuse of position which is an indictable offence under Section 123 of the LGA 2020.

5. Roles and responsibilities

Responsibility	Role / Position
Champion the commitment and principles for public transparency through leadership and decision-making	Council
Champion behaviours that foster transparency and lead the implementation of this policy	Chief Executive Officer Directors Managers and Coordinators
Adhere to public transparency principles, this policy and associated requirements as appropriate to role and function	Councillors Committee members All employees
Respond to requests for information, facilitate access where appropriate, and refer requests to the relevant manager, Freedom of Information officer, Privacy Officer or records management function where the request may involve confidential information, personal information, health information, legally privileged information, commercially sensitive information, records management obligations or another legal restriction	All employees
Freedom of Information applications	Officers authorised under the *FOI Act*
Monitor implementation and adherence to this policy	Director Corporate and Organisational Development

6. Human Rights

The policy gives regard to relevant legislation, principles of natural justice and procedural fairness, community values and Council's resource capacity. It is considered that this policy supports the rights identified in the *Charter of Human Rights and Responsibilities Act (2006)*.

7. Relevant Legislation and Policies

This policy should be read in conjunction with all other relevant Council policies and procedures, as well as relevant legislative requirements.

Related legislation includes:

- *Local Government Act 2020;*
- *Equal Opportunity Act 2010;*
- *Freedom of Information Act 1982;*
- *Privacy and Data Protection Act 2014;*
- *Health Records Act 2001;*
- *Public Records Act 1973;*
- *Charter of Human Rights and Responsibilities Act 2006;*
- *Disability Discrimination Act 1992;*
- *Equal Opportunity Act 2010;*

Other related guidelines or policies include:

- Governance rules
- Privacy Policy
- Community Engagement Policy

8. Definitions

Term	Definition
Closed meetings	Where Council resolves to close the meeting to the general public in order to consider a confidential matter as defined in Section 3 of the LGA 2020, e.g. issues of a legal, contractual or personal nature and other issues deemed not to be in the public interest.
Community	People of the municipality, including individuals or groups who live, work, play, study, visit or invest in the municipality.
Confidential information	As described at Section 3(1) of the LGA 2020 or any other Act.
Public interest	Public interest means the broader interest of the community in access to information, accountability, effective decision-making, safety, privacy, fairness and the proper functioning of Council. Council may refuse to release information where, in the circumstances, release would be contrary to the public interest.
Transparency	A lack of hidden agendas or conditions, and the availability of all information needed in order to collaborate, cooperate and make decisions effectively. "Transparency" is also a human rights issue i.e. the right to have the opportunity, without discrimination, to participate in public affairs.
General request	A request for access to Council information that is not required to be dealt with under a specific statutory access process or review pathway.

Authorised by:

Juliana Phelps
Chief Executive Officer