

POLICY NO LG04 ELECTED MEMBER SEEKING INVOLVEMENT IN OPERATIONAL EMPLOYMENT MATTERS PROTOCOL

DEPARTMENT:	Governance
RESPONSIBLE OFFICER:	General Manager
LINK TO STRATEGIC PLAN:	... be visionary and accountable leaders who advocate and represent the views of our community in a transparent way.
STATUTORY AUTHORITY:	Local Government Act 1993 Privacy Act 1988 Personal Information Protection Act 2004 (Tas)
OBJECTIVE:	To clarify to what extent Elected Members can be involved in operational issues of Council as an employer.
POLICY INFORMATION:	Adopted 19 March 2012 – Minute No 03/12.15.4.069 Amended 21 August 2014 – Minute No 08/14.15.4.254 Amended 18 February 2019 – Minute No 02/19.16.5.40

POLICY

By way of summary, if an Elected Member seeks information or documentation from Council Officers, they must:

- Make the request in writing to the General Manager;
- The request must identify what information or document is required.
- It must be relevant to an Elected Member's function as a Councillor.
- If there is a pecuniary interest, it must be declared.

This policy also addresses Elected Members becoming involved in operations at a Council work site or during on site meetings involving members of the community.

Council's employees have obligations to comply with the requirements of the Local Government Act and the Personal Information Protection Act in respect of employee information and records. Council's employees also have responsibilities to maintain a safe work site and undertake their duties in a safe manner as required by the Work Health & Safety Act 2012.

1. RELEVANT LEGISLATION – LOCAL GOVERNMENT ACT 1993

- 1.1 The *Local Government Act 1993* (Tas) ("Local Government Act") outlines the functions of Elected Members.
- 1.2 Relevantly, at s.28(2): "The Councillors of a Council collectively have the following functions:...(b) to determine and monitor the application of policies, plans and programs for – (iii) the fair and equitable treatment of employees of the Council;" and

"(d) to appoint and monitor the performance of the General Manager;"

- 1.3 The Local Government Act provides that: “In performing any function under this Act or any other Act, a Councillor **must not** – (a) direct or attempt to direct an employee of the Council in relation to the discharge of the employee’s duties: s.28(3)(a);
- 1.4 Where an Elected Member wishes to seek information or documents relating to their functions they may request (in writing to the General Manager) any information or document or a copy of any information or document in the possession of Council that may be required for the purpose of performing any of the Elected Member’s functions: section 28A(1).
- 1.5 An Elected Member who makes a request for information and documents has to state the **relevance** of the information or document **to the Elected Member’s functions** and declare that he or she does not have any pecuniary interest in the matter to which the information or document relates if it was an item on the agenda of a Council meeting: s.28A(2).
- 1.6 The General Manager has a discretion to refuse a request on the following grounds:
 - 1.6.1 If the General Manager believes the request would unreasonably extend the resources of Council (s.28A(3)(a)); or
 - 1.6.2 The Elected Member has declared an interest under s.48; or
 - 1.6.3 If the Elected Member has not made the appropriate declaration as required by subsection 2(b); or
 - 1.6.4 Where he or she considers that the information or document requested is not required for the purpose of performing any of the Elected Member’s functions.
- 1.7 If the General Manager refuses the request, they must advise the Elected Member in writing, stating the reasons for the refusal: s.28A(4).
- 1.8 Further, if the General Manager determines to make any information or document available to an Elected Member, it must be made available to any other Elected Member on request: s.28A(5).
- 1.9 If an Elected Member has been refused a request by the General Manager under s.28A, they may seek a decision of Council to require the General Manager to make a document or particular information available: s.28B.
- 1.10 Further, the General Manager has the following relevant functions:
 - 1.10.1 to implement the policies, plans and programs of the Council (s.62(1)(a));
 - 1.10.2 to be responsible for the day to day operations and affairs of the Council (s.62(1)(c));
 - 1.10.3 to manage resources and assets of the Council (s.62(1)(h)); and
 - 1.10.4 to perform any other function the Council decides (s.62(1)(i)).
- 1.11 Further, the General Manager has a very broad discretion, namely to “do anything necessary or convenient to perform his or her functions under this or any other Act”: s.62(2).

- 1.12 In relation to employees, the General Manager has very wide-ranging powers again which covers the full human resource management function (at 63(1)), such as:
- 1.12.1 appointing employees;
 - 1.12.2 allocating duties to employees;
 - 1.12.3 controlling and directing employees; and
 - 1.12.4 suspending and dismissing employees.
- 1.13 An Elected Member must not approach Council Employees at a Council work site or at any other place to:
- 1.13.1 express their views as to how work should be undertaken; or,
 - 1.13.2 to question the work which is occurring; or,
 - 1.13.3 to seek information on day-to-day operations.
- An Elected Member must contact the General Manager to discuss the matter or to seek information.
- 1.14 Further, the General Manager is to “develop human resource practices and procedures in accordance with policies of the Council to ensure employees of the Council receive fair and equitable treatment without discrimination”: s.63(2).
- 1.15 In terms of the Mayor, his or her functions are to “liaise with the General Manager on the activities of the Council and the performance of its functions and exercise of its powers”: s.27 (1)(ba) The Mayor also has very important functions regarding leadership of the community, acting as a chairperson of the Council and acting as a spokesperson: s.27(1).

2. OTHER RELEVANT LEGISLATION - PRIVACY

- 2.1 Under the *Privacy Act 1988* (Cth) (“Privacy Act”) at s.7B(3), the handling of employee records in relation to current and former employees is exempt from the national privacy principles.
- 2.2 To be exempt, an act or practice retain to an employee record must be directly related to the employment relationship.
- 2.3 Employee records are defined at s.6(1). They are a record of personal information relating to the employment of an employee, including:
- The engagement, training, disciplining, resignation or termination of employment of an employee;
 - The terms and conditions of employment of an employee;
 - The employee’s performance or conduct, hours of employment, salary or wages, personal and emergency details;

- The employee's membership of a professional or trade association or trade union membership;
 - The employee's recreation, long service leave, personal, maternity or other leave; and
 - The employee's taxation, banking and superannuation details.
- 2.4 Given the Privacy Act exempts employee records from its coverage, this means that records falling within the exemption do not have to be managed within the rules of the privacy legislation.
- 2.5 There is also state legislation, the *Personal Information Protection Act 2004* (Tas) ("Personal Information Protection Act"). This legislation needs to be considered in how it interacts with the Privacy Act.
- 2.6 The Personal Information Protection Act has a similar broad definition of what is included as employee information.
- 2.7 The use and disclosure of employee information is protected by the Personal Information Protection Act. This means that Council is a "personal information custodian" in relation to employee records held by Council and must maintain their privacy (subject to the exclusions regarding collection of the information, unique identifiers and sensitive information).
- 2.8 Accordingly, Council Officers can only use and disclose personal employee information in compliance with the legislation. If any request is made for a particular employee's information by an Elected Member, the employee in question would need to consent to the release of their information.

3. OTHER LEGISLATION – WORK HEALTH & SAFETY ACT

- 3.1 Under S.19 of the Work Health & Safety Act 2012 a person undertaking a business or undertaking has a "primary duty of care".
- 3.2 The person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person. An Elected Member entering a work site without the necessary authorisation may give rise to an unacceptable risk.
- 3.3 Section 29 of the Act would apply to any Elected Member:
- A person at a workplace (whether or not the person has another duty under this Part) must –
- (a) take reasonable care for his or her own health and safety; and
 - (b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and
 - (c) comply, so far as the person is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person conducting the business or undertaking to comply with this Act.

4. MONITORING AND REVIEW

This Policy will be reviewed every four (4) years following a Council Election in line with the Council's Policy Framework or earlier in the event of major changes to legislation or related policies, procedures of if deemed necessary by the Mayor and the General Manager.