

Public Transparency Policy

Document control

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Policy details

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| Date of Adoption | Date approved by Council: 17 August 2020 |
| Responsible department | Governance & Communications |
| Legislative Context | <p>The Banyule Public Transparency Policy is made in compliance of section 57 of the Local Government Act 2020. 57 Public transparency policy:</p> <ol style="list-style-type: none">1) A Council must adopt and maintain a public transparency policy.2) A public transparency policy must –<ol style="list-style-type: none">a) give effect to the public transparency principles; andb) describe the ways in which Council information is to be made publicly available; andc) subject to section 58(b), specify which Council information must be publicly available, including all policies, plans and reports required under this Act or any other Act; andd) include any other matters prescribed by the regulations.3) A Council must adopt the first public transparency policy under this section on or before 1 September 2020.4) For the purposes of the public transparency policy and the public transparency principles, information includes documents. |
| Victorian Charter of Human Rights and Responsibilities Act | <p>In developing this policy, the subject matter has been considered to determine if it raises any human rights issues. In particular, whether the scope of any human right established under the Victorian Charter of Human Rights and Responsibilities Act 2006 is in any way limited, restricted or interfered with by the contents of this policy.</p> <p>It is considered that the Public Transparency Policy is consistent with the rights outlined in the Charter. The human rights most relevant to this policy are the rights to:</p> <ul style="list-style-type: none">• protection of privacy and reputation (section 13)• right to public life (section 18) <p>The policy strengthens these rights.</p> |
| References | <ul style="list-style-type: none">• Local Government Victoria – Draft Public Transparency Policy and Fact Sheet• Freedom of Information Act 1984 – Part II Statement• Banyule Engagement Framework and Principles and Policy• Banyule Complaint Handling Policy• ‘Act for the future’ - Directions for a New Local Government Act• Victorian Ombudsman Investigation into Decision Making and Transparency |
| Related documents | <ul style="list-style-type: none">• Banyule City Council – Freedom of Information Part II Statement (this document provides information on how to access information at Banyule).• Banyule Service Promise• Banyule Privacy Policy• Banyule Community Engagement Policy |

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Definitions and key terms used this policy

| Key term | Definition |
|---------------------|---|
| Community | A group of people, the members of which reside in the same geographical area or have a shared background, interest, affiliation or membership. |
| Stakeholder | Individuals or organisations, which affect, or can be affected by Council decisions. |
| Transparency | <p>Organisations are transparent when they enable others to see and understand how they operate in an honest way. To achieve transparency, an organisation must provide information about its activities and governance to stakeholders that is accurate, complete, and made available in a timely way.</p> <p>Transparency enables accountability. This does not mean all information should be made publicly available. There are certain types of information that may not be provided publicly, including private information such as client records, and 'commercial in confidence' material such as tender submissions.</p> |
| Engagement | A genuine process of working with people to build understanding, strengthen relationships and inform decisions. |
| Consultation | Seeking feedback or advice on a select topic or project. |
| Delegation | Giving decision-making power by Council and/or the Chief Executive Officer (CEO) to members of Council staff. |

1 Purpose

This policy supports Council in its ongoing drive for good governance and the importance of open and accountable conduct, and how council information is to be made publicly available.

Council must adopt and maintain a public transparency policy under section 57 of the *Local Government Act 2020* (the Act). This policy gives effect to the **Public Transparency Principles** outlined in section 58 of the Act.

2 Public transparency principles

Council is committed to, and will uphold, the following principles:

- (a) 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;
- (b) Council information must be publicly available unless—
 - (i) the information is confidential by virtue of this Act or any other Act; or
 - (ii) public availability of the information would be contrary to the public interest;
- (c) Council information must be understandable and accessible to members of the municipal community;
- (d) Public awareness of the availability of Council information must be facilitated.

3 Public transparency

Transparency is a fundamental tenet of democratic governance. Openness, accountability and honesty are essential to build high levels of accountability and trust among citizens and enable fully informed engagement in the democratic process.

Without transparency, effective community engagement, planning, financial management and any number of other council responsibilities cannot be performed legitimately.

4 Council decision making

4.1 Council decisions made at Council meetings

Policy Principle

Decisions will:

- be undertaken in accordance with the Act and the Governance Rules;
- be conducted in an open and transparent forum, unless in accordance with the provisions in the Act and Governance Rules; and
- be made fairly and, on the merits, and where any person whose rights will be directly affected by a decision of the Council, that person will be entitled to communicate their views and have their interests considered.

We will

- Ensure Council meetings are open to the public and accessible via livestream/audio.
- Carefully consider and will minimise confidential reports and only close meetings to the public in accordance with the Local Government Act 2020.
- Ensure the title for any confidential reports will be included in the Ordinary Agenda with the relevant confidentiality clause.
- Determine expiry dates for any confidential reports.
- Make Council meeting agendas available five days prior to the Council Meeting on Council's website, other than special meetings. Where this cannot be met, advice will be provided on Council's website.
- Communicate when we cannot meet the deadlines for agenda papers.

4.2 Decisions made by officers under delegation

Delegation to the Chief Executive Officer (CEO) and other staff are made as:

- It is not practical for Council and its CEO alone to exercise the many statutory powers given to Council; and
- Delegation facilitates the achievement of good governance by empowering appropriate members of staff to make decisions on behalf of Council and its CEO.

Policy Principle

Decisions will:

- be undertaken in accordance with the relevant Act and regulations the officer has delegation for;
- be made clear to the recipient of the decision; and
- be made fairly and, on the merits, and where any person whose rights will be directly affected by a Council decision, that person will be entitled to communicate their views and have their interests considered.

We will

- Publish the Register of Delegation on Council's website
- Ensure that any review process, including how to make a complaint is made clear, noting that there are some review processes, such as infringements, which are subject to the appeal rights as per the relevant legislation.
- Decisions made by officers under delegation are subject to Council's Complaint Handling Policy, whereby a request to review the decision can be made.

Council's complaint Handling Policy has a four-tiered approach.

More information is provided under the Complaints section in this policy.



4.3 Community engagement commitment

Policy Principle

Our community engagement commitment is to:

- foster mutual trust, goodwill and respect between Council, community and stakeholders;
- inform, involve and engage communities and stakeholders, and establish processes to facilitate community participation in shaping and influencing decisions affecting them; and
- promote and practice good governance through accountability, transparency and responsiveness.

We will

- Engage with the community and those who are directly affected by a Council decision;
- Use Council's engagement online platform, Shaping Banyule to communicate all current engagement projects;
- Use Council social media platforms to communicate current engagement projects; and Use various methods as outlined in the Council Community Engagement Policy to engage as outlined below:
- Strategic – to inform strategic decisions related to policy, plans or programs
- Statutory – to obtain feedback to inform statutory approvals related to policy, plans, programs
- Research – to obtain evidence to review or design services programs
- Dialogue – to enable an ongoing dialogue with the community
- Transactional – to respond to queries or concerns
- Awareness – to create awareness through local media or other avenues.

5 Publicly available information

Policy Principle

- Banyule proactively releases information with a commitment to providing as much information as possible, for free or at the lowest possible cost.
- Council will make available on its website all publicly required information.
- Council will respond to requests for information in alignment with the Act, including the Public Transparency Principles and this policy.

We will publish on Council’s website:

- all publicly required information, except information outlined in section 7, subject to privacy, security or commercial considerations wherein only summaries or redacted information will be made available;
- the availability of documents in the document called a “Part II Statement” published in accordance the Freedom of Information Act 1982. Part II of the Freedom of Information Act 1982 requires government agencies and councils to publish a number of statements designed to assist members of the public in accessing the information it holds;
- public notices as required by legislation.

5.1 Publicly available information

Council’s website provides public access to numerous documents, policies, registers and publications. A number of these are also available in print at Council offices and libraries. Certain publications may be mailed or emailed upon request. A summary of documents and publications is provided below:

| Information that must be made available as required by an Act or regulation | Information available on Council website |
|--|--|
| Council Plan | Terms of reference/charters of Council Committees (formally known as Advisory Committees) |
| Strategic Resource Plan | Registers of travel undertaken by Councillors or Council Staff |
| Budget | Councillor Expense reimbursements* |
| Annual Report | Registers of gifts, benefits and hospitality offered/accepted by Councillors or Council Staff* |
| Councillor Code of Conduct | Council meeting agendas and minutes |
| Procurement Policy | Tender appointments in Council meetings open to the public (only the evaluation matrix is marked confidential of each tender over \$100,000. |
| Audit and Risk Committee Performance Reporting | Code of Conduct for Council Staff |
| Register of Election campaign donations | Register of Delegation made by the CEO |
| Summary of Personal Interests* | Register of Authorised Officers |
| Register of Planning Permits | Register of Interstate and Overseas Travel by Councillors and Staff |
| Register of Planning Applications on Advertising | Register of Land Leases entered into by Council |
| Copy of Planning Permits and Endorsed Plans (by application, charges will apply) | Register of Donations and Grants made by Council |
| Register of Building Permits, Occupancy Permits and Temporary Approvals | Register of Contracts Awarded by Council* |
| Copies of Building Permits, plans and documentation (by application, charges will apply) | |
| Register of Animal Registrations | |
| Register of Public Roads | |
| FOI Part II Statement | |

* New requirements will be implemented with development of new policies or when new provisions are in operation under the Local Government Act 2020

5.2 Access to information

Where the information is not available on Council's website, the following options are available:

Proactive release

A person or party may request a document with the relevant Council department. In some cases, the document is available for purchase or inspection under the specific legislation.

The Customer Service Centre is available to assist with requests. Call 9490 4222 or email enquiries@banyule.vic.gov.au.

Freedom of Information (FOI)

Under the *Freedom of Information Act 1982*, the Act establishes a general right of access to information. Exceptions and exemptions may be necessary for the protection of essential public interests, such as personal information, commercially sensitive or legal information.

Information on how to access information or make a FOI application is available on Council's website. [Policies and documents for Inspection and FOI](#)

6 Making information understandable and accessible

Policy Principle

- Council information that is publicly available will be understandable and accessible, and regularly reviewed and updated.
- Consideration will be given to accessibility and cultural requirements in accordance with the Charter of Human Rights and Responsibilities Act 2006.
- Council will use social media to publish or stream appropriate Council information, such as Council meetings, and other online tools, such as Shaping Banyule, to publish Council information and encourage community engagement and consultation on projects and community-related matters.

We will

- assist the community in accessing its publicly available information and will inform the community of its right to make an application under the Freedom of Information Act 1982 for information which is not considered publicly available information;
- will facilitate the awareness of access to Council information through Council's website and through community engagement opportunities; and
- provide ongoing training to staff to improve communication and report writing.
- uphold the Banyule Service Promise (outlined below).
- implement customer experience and continuous improvement projects that review Council services and information.
- ensuring printed materials are designed for legibility and advertise the availability of language translation.
- commit to making online information accessible to everyone and more user-friendly in general, regardless of disability or technology, and following best practice principles and Web Content Accessibility Guidelines (WCAG) standards.

The Banyule Service Promise

The Banyule Service Promise outlines Council's commitment to the Banyule community and customers on the type and level of service they can expect to receive.

Council developed the Service Promise with a community reference group based on five key customer service principles:



These principles inform how Council builds and delivers services, creates processes and procedures, writes policies, and supports staff to deliver exceptional service.

In particular, three of these principles support Council to make information clear and understandable:

- **Accountable:** communicate clearly, accurately, in plain language and within appropriate time frames.
- **Proactive:** use a range of communication methods to cater for all demographics.
- **Accessible:** have a range of options to contact Council, assisting all individuals equally.

7 Information not available

Some Council information may not be made publicly available. This will only occur if the information is confidential information or if its release would be contrary to the public interest or not in compliance with the Privacy and Data Protection Act 2014.

Confidential information is defined in section 3 of the Local Government Act 2020. It includes the types of information listed in the following table.

| Type | Description |
|---|--|
| Council business information | Information that would prejudice the Council's position in commercial negotiations if prematurely released. |
| Security information | Information that is likely to endanger the security of Council property or the safety of any person if released. |
| Land use planning information | Information that is likely to encourage speculation in land values if prematurely released. |
| Law enforcement information | 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 privileged information | Information to which legal professional privilege or client legal privilege applies. |
| Personal information | Information which would result in the unreasonable disclosure of information about any person or their personal affairs if released. |
| Private commercial information | 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 meeting information | Records of a Council and delegated committee meetings that are closed to the public to consider confidential information |
| Internal arbitration information | Confidential information relating internal arbitration about an alleged breach of the councillor code of conduct. |
| Councillor Conduct Panel confidential information | Confidential information relating to a Councillor Conduct Panel matter. |
| Confidential information under the 1989 Act | Information that was confidential information for the purposes of section 77 of the Local Government Act 1989 |

Council may decide, in the interests of transparency, to release information to the public even though it is confidential under the Act. However, this will not happen if its release is contrary to law, in breach of contractual requirements or it is likely to cause harm to any person or is not in the public interest to do so.

8 Public interest

Council is not required to make publicly available information if the release would be contrary to the public interest, in accordance with the Local Government Act 2020. When considering public interest, Council will apply the test that exists in the Freedom of Information Act 1982. 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.

Information that might be withheld because it is contrary to the public interest may include:

- internal working documents that have not been approved or submitted to Council, especially where their release may mislead the public;
- directions to Council staff regarding negotiations in contractual or civil liability matters, where release may damage the Council's capacity to negotiate the best outcome for the community; and
- correspondence with members of the community, where release may inappropriately expose a person's private dealings.

9 Human Rights Charter

This policy has been reviewed against and complies with section 13 of the *Charter of Human Rights and Responsibilities Act 2006*, as this policy aligns with and provides for the protection of an individual's right not to have their privacy unlawfully or arbitrarily interfered with. It is also in line with section 18 which recognises a person's right to participate in the conduct of public affairs. See Appendix A.

10 Complaints

If a person wishes to question a decision about the release of information, this should be raised directly with the officer handling the matter in the first instance.

Following this, if the person is still not satisfied with the outcome and would like to contest the decision, this can be referred to the manager of the relevant area in line with Council's Complaint Handling Policy.

If not satisfied with Council's response, the concerns can be raised directly with the Victorian Ombudsman's office on (03) 9613 6222. or via the website – www.ombudsman.vic.gov.au.

11 Review of the policy

Council commits to monitoring processes, information sharing and decision making to understand the overall level of success in the policy's implementation.

A periodic review of this policy will be undertaken to ensure any changes required to strengthen or update the policy are made in a timely manner.

Appendix A

Human Rights Charter – Assessment of compatibility

In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006*, this statement of compatibility is made with respect to the Public Transparency Policy and supports two of the Charter's human rights.

Objectives

- To ensure transparency and accountability strengthen governance and accountability
- To provide confidence to the community in the way Council operates
- To provide access to information and documents
- To ensure information is accessible and clear

Human Rights Assessment

| What human rights are impacted? List each right - refer to 'Appendix A – Your Rights Explained' for a detailed explanation of rights. | Will any person feel their rights are limited and why? Refer to 'Limiting Rights' on page 2 of the Human Rights Guidelines for advice. | What are the interests you have to balance? List any other interests of the community that need to be considered. | Is the limitation reasonable? Against each right limited, state why the limitation is reasonable. | What practical solutions are available to reduce the limitation? If a limited right is not reasonable, ensure comment made that the document was amended so the right is either not limited or reasonably limited. |
|--|--|--|--|---|
| 1. Right to public life (18) | This policy supports and encourages the community to access Council services and information and participate in engagements or matters that impact them. | | No limitation | Not required |

| What human rights are impacted? List each right - refer to 'Appendix A – Your Rights Explained' for a detailed explanation of rights. | Will any person feel their rights are limited and why? Refer to 'Limiting Rights' on page 2 of the Human Rights Guidelines for advice. | What are the interests you have to balance? List any other interests of the community that need to be considered. | Is the limitation reasonable? Against each right limited, state why the limitation is reasonable. | What practical solutions are available to reduce the limitation? If a limited right is not reasonable, ensure comment made that the document was amended so the right is either not limited or reasonably limited. |
|--|---|--|--|---|
| 2. Dignity: Protection of privacy and reputation (13) | This policy supports and protects the privacy of individuals where possible and within the FOI Act. | The right to information and the rights of people's personal information, including community members, customers and staff, to remain private. | No limitation | Not required |