

Elected Members:

1. This item is a result of the MRRA's motion put to and unanimously passed by Electors at the February 6, 2023. No one spoke against this Privacy motion which was:

"The Electors ask Council to implement a Privacy policy, in line with the principles set out by the Australian Human Rights Commission, Australia's Privacy Act 1998 (sic) (Cth.,) and other legislation, to ensure the City takes all reasonable steps to protect the public's rights to privacy. The Policy must ensure sufficient controls are introduced to prevent the recurrence of incidents such as; the unlawful or unnecessary publication or release of residents' personal information or the Administrations' monitoring of communications between residents and Elected Members."

2. The reason for a Council Privacy Policy the MRRA presented at the Electors AGM, to which the community agreed, are provided in Attachment 2. The Administrations report on this item does not address all the issues raised, including the protection of the privacy of communications between the community and their Elected Members.
3. Your community has sent a clear message asking you to improve the way in which the City's Administration, and Elected Members, protect the privacy of the personal information of individual members of the public. **This is one of the many 'governance GAPS' at the City.**
4. The State Government's Information Commissioner *"has consistently found that there is a very strong public interest in maintaining the privacy of individuals. If you are seeking information about another person, the onus is on you to establish that it is in the public interest for private information about the other person to be disclosed to you (section 102)"* (<https://www.oic.wa.gov.au/en-au/FTP007>).
5. CEO Mr Marten Tieleman and the Manager Information and Communication Technology are recommending:

"That Council defers the decision to adopt a City of Melville Privacy Policy until the State Government Privacy and Responsible Information Sharing Reforms and legislation have been introduced."

6. That is, they are recommending Council delay doing anything until the State Government introduces new legislation which is "anticipated to come into effect in December 2024", at around 18 months away, and even then, we know there is little certainty in this, particularly as this is unlikely to be a priority for the Cook Government prior to the 2025 election.
7. Delaying any action to develop and implement a Council Privacy Policy for at least 18 months on such a foundational governance matter is not acceptable. Such a recommendation flies in the face of what your community has asked of you.
8. **We ask that you reject CEO Marten Tieleman and the Administration's recommendation and replace it with one to the effect of directing the CEO to present a draft Council Privacy Policy to Council for consideration, and community comment, to the August 2023 Council meeting.**

Reasons:

9. Council DOES NOT have to wait until the State Government introduces new legislation, whenever that may be. There is sufficient State and Federal legislation to provide the framework for a sound Council Privacy Policy now.
10. The Council Privacy Policy does not have to be complicated. It could simply be that Council fully adopts, and directs the CEO to apply the principles set out in:
 - a. The State Government's Open by design – FOI and Information Release in WA initiative. (<https://www.oic.wa.gov.au/Portals/0/Open%20by%20Design%20->

[%20FOI%20and%20Information%20Release%20in%20WAv1_0.pdf](#)) which clearly states:
“Dealing with a request for information outside of the formal procedures of the FOI Act does not mean that an individual’s privacy can or should be disregarded or ignored. In the absence of state privacy legislation, agency [ie the City of Melville’s] privacy policies are an important part of ensuring appropriate information access and privacy protection. In addition, the Australian Privacy Principles contained in the Privacy Act 1988 (Cth) and privacy guidance provided by the Office of the Australian Information Commissioner, may also assist agencies’ consideration of appropriate information access in the context of relevant privacy principles.”

- b. The Federal **Privacy Act 1988 (Cth)**.
 - c. The relevant provisions of the protection of personal information as contained in WA’s Freedom of Information Act 1992.
11. The simple example of the Council Privacy Policy the Town of Cottesloe has drafted, as given in Attachment 4, shows how simple a Council Privacy Policy could be.
 12. Council needs to act to ameliorate the Administration’s repeated incidences of disclosing the personal information of residents and ratepayers, has highlighted by the small sample of such incidents given in Attachments 1 & 2, that includes the recent release of ratepayer financial information to unknown third parties.
 13. Council should provide clear guidance on what it expects to see with respect to the protection of personal information prior to its spending significant ratepayer funds on designing and implementing new processes, practices, and systems for the City. Deputy mayor Tomas Fitzgerald’s media release about the disclosure of ratepayer financial information reinforces the need for such guidance prior to implementing new processes and systems with his statement “*I can confirm that this did occur and it’s not a scam letter. There was a human error that related to sending an email containing information meant to be sent internally to the wrong email address. As the letter sets out it is a very low risk, but of course we absolutely need to let people affected know. **We’ve also altered our internal systems to ensure that this should not occur again.***”
 14. It is evident that the CEO, the Administration and Elected Members have a poor understanding of the issues associated with the protection of personal information as demonstrated by the recent debacle with the protections requires with respect to the Weir Report. For example:
 - a. Mayor Gear and CEO Marten Tieleman clearly did not properly understand what constitutes personal information, as defined by various legislation.
 - b. CEO Marten Tieleman’s report and initial recommendations to Council failed to adequately address the requirements for the protection of personal information; and CEO Tieleman was forced to amend his recommendation; that still fell sort of the FOI Act privacy protections.
 - c. Sadly, Council had to rely on deputy mayor Tomas Fitzgerald legal opinion on the application of the various legislative provision with respect to protecting personal information as CEO Tieleman’s report to Council did not adequately deal with those issues, as the enclose audio at Attachment 5 demonstrates. Unfortunately, Cr Fitzgerald’s opinion was flawed with misguided and possibly mis-leading statements such as:
“*First, we need to separate the question of the FOI application from the question of privacy. The FOI application is separate is a request by an individual and where negotiation can lead to redactions that the individual seeking that information is happy with, then redactions are an appropriate way to deal with that. That does not answer the question whether that in is the public interest to release and whether it should be released. That is, the applicant can negotiate with the City and if they are happy for a redacted version then that is how FOI works. It is not us to making a determination that is what is in the public interest. The FOI process is different it was never an assessment of what was in the public interest to release and the redactions that are contained with the FOI are a feature of that negotiation. It should not signal to us what is appropriate or not appropriate to release.*” “*The second question that arises then is the question of privacy...*” which is arguably at odds with the State’s Open by Design privacy principles.

Attachments

1. City of Melville assures ratepayers recent information leak not caused by ‘malicious activity’, the West, June 2, 2023
2. City publication of residents’ personal information, emails from Corrine Newman, Head of Governance, October 5, 2022
3. MRRA summary of reasons for Council Privacy policy, as presented to Electors AGM, February 2023
4. Town of Cottesloe Council Policy – Privacy (simple example)
5. Deputy Mayor Tomas Fitzgerald’s legal opinion with respect to the application of legislated privacy in the context of releasing the Weir report, April 18, 2023, Ordinary Meeting of Council (audio recording enclosed).

- 1. City of Melville assures ratepayers recent information leak not caused by ‘malicious activity’, the West, June 2, 2023

The West Australian for 190 years

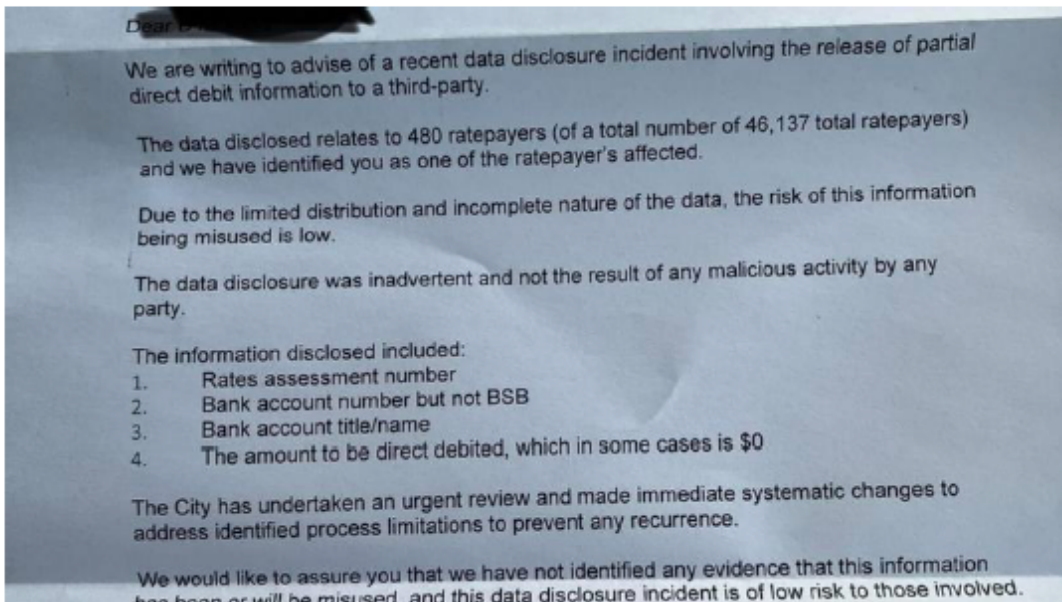
Perth Local Government WA News

City of Melville assures ratepayers recent information leak not caused by ‘malicious activity’



Indigo Lemay-Conway *The West Australian*
Fri, 2 June 2023 2:00AM [Comments](#)

Indigo Lemay-Conway



The letter sent by the City of Melville to ratepayers whose details were leaked. Credit: Melville City Chat/Facebook/Facebook

- Hundreds of Melville ratepayers’ personal banking details were accidentally disclosed to a third party last week, but the local authority won’t say to whom.*
- However, it has moved to quell any fears that the information could fall into the hands of hackers.*
- City of Melville chief executive Marten Tieleman said the information disclosed included a “rate assessment number, bank account number but not BSB, bank account title/name and the amount to be direct debited, which in some cases is \$0”.*

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He confirmed it was released to a "single third party" but declined to answer who that was.

"We have directly informed all the individuals involved and due to the limited distribution and the incomplete nature of the information involved, this data disclosure incident presents a very low risk to them," Mr Tieleman said.



"We also have no evidence that this information has been, or will be, misused."

Deputy mayor Tomas Fitzgerald told members of a Melville social media chat group that an email containing the information and meant for internal purposes was accidentally sent to the wrong external email address.

"The information was emailed to an individual who, for fairly obvious reasons, we won't be naming. It was emailed as part of an internal budget reconciliation process," Cr Fitzgerald said.

"As the letter sets out it is a very low risk, but of course we absolutely need to let people affected know."

The letter, sent to 480 of the City's 46,137 ratepayers, advised of a "recent data disclosure incident involving the release of partial direct debit information to a third party".

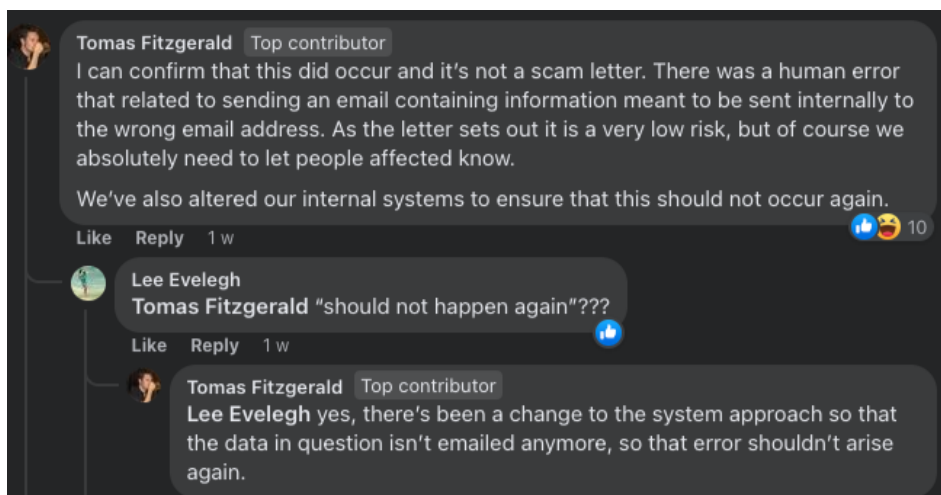
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Mr Tieleman also reassured ratepayers that the disclosure was not the result of malicious activity by any party.

"We've undertaken an urgent review and made immediate systematic changes to ensure this does not happen again," he said.

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2. **City publication of residents' personal information, emails from Corrine Newman, Head of Governance, October 5, 2022**

From: Corrine Newman <Corrine.Newman@melville.wa.gov.au>

Sent: Wednesday, 5 October 2022 1:18 PM

To: melville.residents@outlook.com <melville.residents@outlook.com>

Subject: FW: Residents' Personal Information published by the City of Melville on its website

Good afternoon Committee

Thank you for you email below. The City is working through this matter with the affected party.

Kind regards

Corrine Newman

Head of Governance

Corrine.Newman@melville.wa.gov.au

Phone: (08) 9364 0602

www.melvillecity.com.au

City of Melville, 10 Almondbury Road, Booragoon, Western Australia 6154

From: City of Melville Residents and Ratepayers Assoc. <melville.residents@outlook.com>
Sent: Monday, 3 October 2022 10:26 AM
To: Marten Tieleman <Marten.Tieleman@melville.wa.gov.au>
Cc: Cr Clive Ross <Clive.Ross@melville.wa.gov.au>; Cr Duncan Macphail <Duncan.Macphail@melville.wa.gov.au>; Cr Glynis Barber <Glynis.Barber@melville.wa.gov.au>; Cr Jane Edinger <Jane.Edinger@melville.wa.gov.au>; Cr Jennifer Spanbroek <Jennifer.Spanbroek@melville.wa.gov.au>; Cr Karen Wheatland <Karen.Wheatland@melville.wa.gov.au>; Cr Katy Mair <Katy.Mair@melville.wa.gov.au>; Cr Margaret Sandford <Margaret.Sandford@melville.wa.gov.au>; Cr Matthew Woodall <Matthew.Woodall@melville.wa.gov.au>; Cr Nicholas Pazolli <Nicholas.Pazolli@melville.wa.gov.au>; Cr Nicole Robins <Nicole.Robins@melville.wa.gov.au>; Mayor George Gear <George.Gear@melville.wa.gov.au>; Cr Tomas Fitzgerald <Tomas.Fitzgerald@melville.wa.gov.au>; Minister Carey <minister.carey@dpc.wa.gov.au>; Erin Gauntlett (DLGSC DDG) <erin.gauntlett@dlgsc.wa.gov.au>; Good Governance DLGSC <goodgovernance@dlgsc.wa.gov.au>; caroline.spencer@audit.wa.gov.au; Information Commissioner OoIC <catherine.fletcher@foi.wa.gov.au>; Kim Giddens (MLA, Bateman) <kim.giddens@mp.wa.gov.au>; Lisa O'Malley (MLA, Bicton) <bicton@mp.wa.gov.au>; Peter Tinley (MLA, Willagee) <peter.tinley@mp.gov.wa.au>; Central-email.CMRRRA <Central-email.CMRRRA.Residents@melville.wa.gov.au>
Subject: Residents' Personal Information published by the City of Melville on its website

CEO Tieleman,

Please explain and make a public apology to the community for this latest fiasco.

<https://www.facebook.com/MelvilleResidentsRatepayersAssoc/posts/pfbid0y31Vg2Gi41zTMVDNtXseKjBa4x7EM4YYw5WjihizfdXCLTKGJdsy5jbsBctEvFDul>

https://www.linkedin.com/posts/melvilleresidentsratepayers_warning-beware-the-city-of-melville-has-activity-6982522304417206272-mmpP?utm_source=share&utm_medium=member_desktop



www.linkedin.com [City of Melville Residents and Ratepayers Assoc Inc. on LinkedIn: WARNING, BEWARE the City of Melville has published personal information](https://www.linkedin.com/posts/melvilleresidentsratepayers_warning-beware-the-city-of-melville-has-activity-6982522304417206272-mmpP?utm_source=share&utm_medium=member_desktop) WARNING, BEWARE the City of Melville has published personal information on its website over the weekend. Some residents' personal informational, and a... www.linkedin.com

This is not the sort of TRANSPARENCY the Community has been calling for.

Yours sincerely

Committee

City of Melville Residents and Ratepayers Association

www.facebook.com/MelvilleResidentsRatepayersAssoc
<https://au.linkedin.com/in/melvilleresidentsratepayers>
<https://twitter.com/MRatepayers>

- 3. MRRA summary of reasons for Council Privacy policy, as presented to Electors AGM, February 2023**

Motion 1: Privacy

The Electors ask Council to implement a Privacy policy, in line with the principles set out by the Australian Human Rights Commission, Australia's Privacy Act 1988 and other legislation, to ensure the City takes all reasonable steps to protect the public's rights to privacy.

The Policy must ensure sufficient controls are introduced to prevent the recurrence of incidents such as the unlawful or unnecessary publication or release of residents' personal information or the Administrations' clandestine monitoring of communications between residents and Elected Members.

Talking Points:

Corrected

Thanks Electors and Elected Members.

Canva, Optus, Medicare, ProctorU, Australian National University, Service NSW, Australian Parliament House, WA Parliament, the list can go on.

All these entities relate to the personal information of private individuals being made public. I am sure a number of you have been caught-up in some of these disasters.

The City of Melville should be added to this list, albeit to a lesser extent, as it has over the past few years published personal and confidential information without the consent of the people involved.

Our personal privacy is a basic human right; as the Australian Human Rights Commission has stated:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Everyone has the right to the protection of the law against such interference or attacks.

In Australia, there is a Federal Privacy Act which was introduced to promote and protect the privacy of individuals and to regulate how Australian Government agencies and

organisations with an annual turnover of more than \$3 million, and some other organisations, handle personal information.

The Privacy Act defines “personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a. whether the information or opinion is true or not; and
- b. whether the information or opinion is recorded in a material form or not.”

That is personal information is more than just your name and address, it goes well beyond that.

The Privacy Act itself contains many clear principles to guide the way organisations manage Privacy; including principles relating to:

Anonymity: requires affected entities to give individuals the option of not identifying themselves, or of using a pseudonym, with limited exceptions.

Use or disclosure of personal information outlines the circumstances in which an entity may use or disclose personal information that it holds.

There are penalties under the Federal Privacy Act.

The Office of the Victorian Information Commissioner (OVIC), that also in Victoria has the mandate to oversee and govern Privacy in that State, has provided specific guidance to Victorian Local Governments including:

“When making personal information publicly available in accordance with a council’s public transparency policy, councils and councillors should provide individuals the opportunity to remain anonymous unless expressly required to publish or disclose personal information under the LG Act or other relevant legislation. As far as possible, documents should be published in a privacy-enhancing manner.”

Also they say

“Where it is lawful and practicable, individuals should be allowed to engage anonymously with councils as required by IPP 8. This is intended to maximise individuals’ ability to control their personal information. It can also minimise the amount of personal information councils collect thereby minimising the risk of harm caused by a data breach.”

Hopefully those words ring in your ears.

Sadly, the Federal Privacy Act does not apply to WA Local Governments and the WA State Government has no specific Privacy legislation or Commissioners to give effect to the Privacy Act's overarching principles. In WA there is some limited privacy related legislation bound up in the FOI Act; but this only relates to FOI Applications for information and not information disseminated outside of the statutory FOI processes.

Here at the City of Melville we have seen some indications of things that are very concerning:

- City officer, Elected Members' apparent lack of understanding of what personal information is.
- The City's publishing personal information on their website without the consent of the affected individuals.
- The City routinely demanding residents identify themselves publicly, vs maintaining their right to anonymity, as our human rights suggests.
- The City administration making recommendations to Council to publish personal information without the consent of the affected individuals.
- The City's administration accessing emails between residents and Elected Members without the knowledge of those parties. Residents and Elected Members need to feel confident their communication is not being monitored by the 'big brother' administration.

The City of Melville does not have a Council policy on Privacy and the protection of Personal Information. The City has a history of publishing Personal Information without the consent of the parties or a statutory requirement to do so.

Our Council has the power to implement a policy that adopts and enshrines the Australian Privacy principles into our City.

Other WA Local Governments Councils, such as Cottesloe, have done just so. So there is a strong argument for our Council consider doing the same.

If you care about the privacy of your personal information, then please vote for this motion.

Thank you.

4. Town of Cottesloe Council Policy – Privacy



Council Policy - New	Privacy Policy -DRAFT		
Reference	<i>Strategic Community Plan 2013-2023</i> Priority Area: 6.2 Major Strategy: 6.2	<i>Corporate Business Plan 2020 - 2024</i> Priority Area: 6.2 Actions: 6.2	
Responsible Officer	Manager Corporate Services and Governance		
Policy Area	Governance		
Council Adoption Date		Version Number	1
Amendment Dates		Next Review Date	

This Policy replaces all previous policies related to this topic.

1. Policy Purpose

- 1.1. This Policy provides the framework in which personal information is collected, used and disclosed by the Town of Cottesloe (the Town).
- 1.2. This Policy has the following aims:
 - To state what personal information is collected and why.
 - To state what use this information is put.
 - To state to whom this information may be disclosed

2. Policy Scope

- 2.1. This Policy applies to Elected Members, the Executive Management Team and all employees and contractors involved in any Town of Cottesloe operations.

3. Policy Requirements

3.1. Information collected

To allow the Town to respond to Customer/Community requests, there is the need to collect people's personal information. This may be collected by the Town through written correspondence, telephone, email and in-person interactions with the Town's Officers.

The Town maintains a comprehensive database of properties, which includes personal information relating to property owners such as names, addresses, and also records any issues such as complaints and enquiries relating to a property.

3.2. How Information Is Used

The information is used for responding to requests received by the Town relating to the various services provided by the Town. Personal information is often required to administer and manage those services, including billing arrangements. Additionally, this information may be used for ongoing research and development of services.

3.3. Sensitivity and Anonymity

- a. The Town will not collect sensitive information unless an individual has consented or is required to by law.
- b. The Town often collects information in the course of community engagement, the use of which is used solely for the purpose of gaining demographic insight to assist Council in its decision making.
 - Information that identifies a person may not be published in any part of publicly available data or documents related to the engagement.
- c. The Town uses "cookies" and similar technology on its websites. The use of such technology is an industry standard, and will be used to monitor the effectiveness of Town of Cottesloe advertising and how our websites are used. The Town also uses cookies to generate statistics, measure activity, improve the website/applications and to enhance the customer experience. Town of Cottesloe website users can opt-out of cookies and adjust their internet browsers to refuse cookies or to notify them when cookies are being used. Certain features on the Town's website may not function properly or optimally if cookies have been turned off.
 - It should be noted that the Town of Cottesloe website contains links to third party websites, which are not under the control of the Town; therefore the Town is not responsible for the privacy practices on any third party website.
- d. Emails received may only be used for the purpose for which it was provided and are subject to the conditions set out in this Privacy Policy. Due to the nature of the Internet, sending personal information in an email is at the discretion of and risk of the sender.

3.4. Information Disclosure

The Town of Cottesloe will not, without prior consent, disclose personal information for any purpose other than for purposes described in this Policy.

The exceptions to this are where information is required or authorised by law to do so or when in good faith the Town is of the belief that such action is necessary to:

- a. comply with the law or with legal process;
- b. protect and defend the Town's rights and property;
- c. protect against misuse or unauthorised use of the Town of Cottesloe's website; or
- d. to protect the personal safety or property of our staff and members of the public.

3.5. Security of Personal Information

The Town of Cottesloe takes all reasonable steps to protect the personal information it holds from misuse and loss, from unauthorised access, modification and disclosure.

In addition to the statutory obligations already imposed, the Town has in place physical, electronic, and managerial procedures to protect personal information held from unauthorised access, maintain data accuracy and ensure appropriate use of information, the personal information collected.

a. Data Breaches

The Town of Cottesloe will take reasonable steps to notify individuals impacted by eligible data breaches (as defined under the Privacy Act), as soon as it becomes aware of the breach.

3.6. Access and Correction of Personal Information

- a. Personal information provided by a person may be accessed by that person.
 - In the event access is denied the Town will provide reasons for such denial.
- b. Persons seeking access to information they have provided, or wanting to submit a correction to their personal information are required to contact the Town's Administration.
 - Identification may be required before such information is released.
 - Such applications may possibly be subject to the exemptions allowed by law under the *Freedom of Information Act 1992*.

4. Definitions

- 4.1. **Personal Information** as defined by the Office of the Australian Information Commissioner: *"...information or opinion (including information or opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion"*.

5. Legislation

- 5.1. The Town recognises the *Federal Privacy Act 1988* and the 13 Australian Privacy Principles. These principles are found in Schedule 1 of the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* and are observed by the Town in the development and implementation of this Policy.
- 5.2. *Local Government Act 1995* sections 5.94 (m) and (s) and 5.96 with respect to making available members of the public rates records, electoral rolls and registers owners and occupiers.
- 5.3. *Local Government (Administration) Regulations 1996* clause 29B in respect to privacy, places restrictions on providing information where it is suspected that the information may be used for commercial purposes. The Chief Executive Officer must be satisfied, by statutory declaration or otherwise, that a commercial purpose is not the intent of someone seeking such information.
- 5.4. *Freedom of information Act 1992*
- 5.5. *State Records Act 1992*

6. Other Relevant Procedures/Key Documents

- 6.1. Code of Conduct
- 6.2. Community Engagement Policy
- 6.3. Email Management Policy
- 6.4. Media Policy
- 6.5. Records Management Policy

7. Further Information and Contact

Further information may be obtained on privacy issues in Australia by visiting the Office of the Australian Information and Privacy Commissioner's website at:

<http://www.oaic.gov.au>

- 5. Deputy Mayor Tomas Fitzgerald's legal opinion with respect to the application of legislated privacy in the context of releasing the Weir report, April 18, 2023, Ordinary Meeting of Council**

Extract of audio recording enclosed