

Advice Note

Responsible Officer:	<u>Executive Manager Governance and Legal Services</u>
Date of Meeting:	<u>15 September 2020</u>
Meeting of the:	<u>Ordinary Meeting of Council</u>
Item:	<u>Motion with Notice – Creation of new Council Policy – Elected Member Access to Information</u>

DETAIL

A Councillor's role is defined in s2.10:

A Councillor —

- (a) represents the interests of electors, ratepayers and residents of the district; and
- (b) provides leadership and guidance to the community in the district; and
- (c) facilitates communication between the community and the council; and
- (d) participates in the local government's decision-making processes at council and committee meetings; and
- (e) performs such other functions as are given to a councillor by this Act or any other written law

The Department of Local Government website provides the following information in relation to Elected Member access to information:

“Council and committee members have rights to access information additional to those given to the public. These rights ensure members are properly informed on matters that are relevant to their functions.

Members can access the following additional information held by a local government:

- *all written contracts of the local government;*
- *all documents relating to written contracts which the local government proposes to enter; and*
- *any information that is relevant to their functions.*

The functions of council members in this context are likely to include:

- *any function that a member is appointed or authorised to carry out by the council (such as attending a meeting or conference);*
- *preparations for an upcoming meeting agenda item decision; or*
- *anything the member is doing in carrying out his or her role as mayor or president or councillor.*

The access provisions do not give members unlimited licence to information held by the local government. Members may only seek access to information that is relevant to the performance of a specific function. Access arrangements should be made through the CEO.

Important to note: Council members, committee members or employees who make improper use of information acquired in the performance of their functions to:

- *gain an advantage for themselves or any other person either directly or indirectly; or*
- *cause detriment to the local government or any other person,*
- *may be liable to a penalty of up to \$10,000 or two years in jail. The Local Government Act 1995 does not define the term “improper use”, but it is likely to include wilfully taking advantage of confidential or restricted information held by a local government.*

Key concept: Council members have a right to be informed before making decisions, and they should always ask for further information if they need it.”

<https://www.dlgsc.wa.gov.au/local-government/local-governments/council-elections/council-members-responsibilities-and-rights>

Additionally, Part 7 – Access to information of the *Local Government (Administration) Regulations 1996* provides a list of the information that is publically available and as outlined above, under s5.92 of the *Local Government Act 1995*, a Councillor may request access to information if it is relevant to their role as a Councillor.

5.92. Access to information by council, committee members

- (1) A person who is a council member or a committee member can have access to any information held by the local government that is relevant to the performance by the person of any of his or her functions under this Act or under any other written law.
- (2) Without limiting subsection (1), a council member can have access to-
 - (a) all written contracts entered into by the local government; and
 - (b) all documents relating to written contracts proposed to be entered into by the local government.

It is the Councillor's responsibility to provide reasons as to why that is the case (e.g. it is related to a decision that needs to be made by Council in an upcoming agenda item). However, if the request relates to operational matters, it may be considered 'involvement in administration', which could be a breach of Regulation 9 of the *Local Government (Rules of Conduct) Regulations 2007*.

A Policy is not required where legislation prevails and the motion as proposed appears to be in conflict with the provisions of the *Local Government Act 1995* and associated Regulations. Officers recommend that the Chief Executive Officer be directed to seek independent legal advice on behalf of Council before progressing this matter.