

## Freedom of information and section 125 of the *Local Government Act 2020*

### The *Local Government Act 2020* and transparency

The *Local Government Act 2020* (**LG Act**) was recently passed, representing the most comprehensive reform to local government in Victoria for 30 years. One of the five principles that guided the development of the LG Act is transparency. This is reflected in sections 9, 57 and 58 of the LG Act:

- Section 9 of the LG Act states Councils must give effect to overarching governance principles including that “transparency of Council decisions, actions and information is to be ensured” and take into account the “public transparency principle” in section 58 of the LG Act.
- Section 58 of the LG Act sets out the public transparency principles including requiring Council information to be publicly available unless it is confidential, or unless making information public would be contrary to the public interest.
- Section 57 of the LG Act requires Councils to adopt and maintain a public transparency policy by 1 September 2020.

The transparency principle is also reflected in published guidance like the [Local Government Act 2020 – Principles of Public Transparency](#). This guidance reiterates the importance of public transparency and states that the LG Act 2020 “assumes, instead, that all matters must be public, except in very specific and limited circumstances.”

The guidance also explicitly expects Councils to have regard to the principle underpinning the *Freedom of Information Act 1982* (Vic) (**FOI Act**) – “to provide a right of access to information ... limited only by exceptions and exemptions necessary for the protection of essential public interests.”

### Section 125 of the *Local Government Act 2020*

The LG Act protects confidentiality through a secrecy provision – section 125 of the LG Act 2020:

#### **125 Confidential information**

(1) *Unless subsection (2) or (3) applies, a person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, must not intentionally or recklessly disclose information that the person knows, or should reasonably know, is confidential information.*

*Penalty: 120 penalty units.*

(2) *Subsection (1) does not apply if the information that is disclosed is information that the Council has determined should be publicly available.*

(3) ...

“Confidential information” is defined in section 3 of the LG Act. It contains 12 subsections that describe different types of information that are confidential under the LG Act (unless overridden by sections 125(2) or (3)). These subsections are reproduced in **Table A** below.

Section 125 of the LG Act commenced on 24 October 2020. Prior to then, its predecessor in section 77 of the *Local Government Act 1989* was in force.

## How the secrecy provision interacts with the *Freedom of Information Act 1982*

### Section 125 of the LG Act is a secrecy provision for the purpose of the section 38 FOI Act

Under the FOI Act, Councils must generally disclose a document upon request unless it is exempt. Section 38 of the FOI Act exempts a document if:

- there is a secrecy provision in force in another Act;
- the secrecy provision applies specifically to information of a kind in the document; and
- the secrecy provision prohibits persons from disclosing that information.

OVIC considers that each of these pre-conditions are met because:

- section 125 came into force from 24 October 2020;
- each subsection in the definition of “confidential information” applies section 125 to that information with sufficient specificity; and
- section 125 prohibits Councillors and Council staff from disclosing confidential information.

### Overlap between the FOI Act and the secrecy provision

Some of the twelve types of “confidential information” in subsections (a) to (l) overlap with existing exemptions in the FOI Act.

There are three types of overlap that are reflected in Table A below:

- **Similar** - The secrecy provision and FOI exemption(s) are similarly worded, but actually capture different documents.
- **Same** - The secrecy provision captures all the documents captured by the FOI exemption(s).
- **None** - The secrecy provision has no comparable FOI exemption.

### How to deal with the overlap – the secrecy provision takes precedence

Where the same document is captured by both the secrecy provision and an FOI Act exemption, the secrecy provision should be primarily claimed. Consequently, FOI requests for the three types of overlap should be processed differently.

- **Similar** – Separately apply the secrecy provision and any other exemptions. Potentially claim both the secrecy provision and exemption where both apply.
- **Same** – Apply the secrecy provision (using section 38) rather than the parallel FOI exemption.
- **None** – Apply the secrecy provision (using section 38).

## Interpreting section 125 and “confidential information” to promote transparency

When relying on each subsection, Councils should carefully read and apply the terms of the subsection to ensure each pre-condition in the subsection is met. OVIC’s guidance about these pre-conditions is set out in Table A.

OVIC prefers to narrowly interpret “confidential information” to promote transparency and give effect to section 9, 57 and 58 of the LG Act. OVIC’s interpretation is reflected in Table A.

## Use section 125(2)

Section 125(2) allows Councils to determine that types of information should be publicly available. The power to make documents publicly available can be delegated by Council to the CEO or other appropriate Council staff. OVIC encourages Councils to consider information regularly sought to determine if they should be publicly available to limit the secrecy provision and promote transparency.

## Use FOI jurisprudence

Given that the secrecy provision was drafted to align with the FOI Act, OVIC encourages Councils to use FOI case law for tests or phrases in the secrecy provision that are also used in FOI Act exemptions. Some similar tests and phrases are:

- **Tests** – such as “likely”, “reasonably likely to prejudice”, “would prejudice”, “unreasonable” in the context of personal information or “unreasonably expose to disadvantage” in the context of commercial information.
- **Phrases** – such as “law enforcement”, “personal affairs” or “trade secrets”.

## Consult where you can and it’s appropriate

Subsections (f) about third party personal information and (g) about third party commercial information are identically worded to capture the same documents as the exemptions in sections 33 and 34(1) of the FOI Act. However, unlike the exemptions, the secrecy provision does not require consultation with the affected third party. Subsection (d) about law enforcement is very similarly worded to section 31 which also requires the agency to consult with the agency that is enforcing the law, where it is not the Council.

OVIC nevertheless encourages Councils to consult with affected third parties, where appropriate, to see if the exemption applies.

If the information is clearly exempt or clearly should be released, then consultation may not be needed. However, if you are unsure, or intend to exempt information, you should consult with the affected third party because:

- A business will have better insight into whether release of its information would “unreasonably expose it to disadvantage”.
- An individual can explain whether release of their personal affairs information is “unreasonable” or not.
- A prosecuting agency would know whether disclosure of information could prejudice its prosecution.

The third party’s opinion is important to help Councils decide a matter but is not determinative.

Table A: Elements of each subsection and OVIC’s guidance

| <b>(a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;</b> |  |
|--|--|
| <b>OVIC Comment</b>  | The subsection should be narrowly interpreted.   |
| <b>Approach</b>  | <b>Similar</b> to sections <b>34(4)(a)</b> and <b>36(2)(b)</b> . Separately apply the secrecy provision and other exemptions. If there is overlap, consider removing exemptions that are covered by the secrecy provision.   |
| <b>Elements</b>  | <p><b>Council business information:</b> applies to Council’s own “business” documents rather than 3<sup>rd</sup> party business documents held by Council.</p> <p><b>1 - Would prejudice council's position:</b> Councils should specifically identify the prejudice and explain why premature release of information would be prejudicial.</p> <p><b>2 - In commercial negotiations:</b> applies during active negotiations. “Commercial” engagements should be distinguished from general provision of council services. Specifically identify the commercial negotiation and connection to the document.</p> <p><b>3 - If prematurely released:</b> Contemplates a time frame around release (related to commercial negotiations) and sets parameters about prejudice. Councils should articulate why release is premature.</p> |
| <b>Similar tests or phrases</b>  | <b>“would prejudice”:</b> “Would” means that a result or effect will almost certainly occur. “Prejudice” means to hinder, impair, or undermine.  |
| <b>Examples</b>  | <p><b>Yes:</b> Council produced tender evaluation type documents during a tender process.</p> <p><b>Yes:</b> Score sheets for an evaluation committee or instructions from Council to negotiators.</p> <p><b>No:</b> Tender documents after the tender is concluded (Council can consider subsection (g) or section 34(4)(a) or section 36(2)(b)).</p> <p><b>No:</b> Tender responses or ongoing KPI compliance documents.</p>   |

| <b>(b) security information, being information that if released is likely to endanger the security of Council property or the safety of any person;</b> |  |
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| <b>OVIC Comment</b>   | <p>This subsection is broader than the exemption in section 31(1)(e). It extends to information that endangers the security or property as well as persons; refers to “safety” rather than “lives or physical safety” of persons; and extends to “any person” not just persons connected with law enforcement.</p> <p><b>Other matters for Council to consider:</b> Councils should consider potential overlap with other laws that affect the security and safety of persons such as the <i>Public Interests Disclosures Act 2012</i> or Child Safety Standards.</p>  |
| <b>Approach</b>   | <b>Same</b> as section <b>31(1)(e)</b> . Apply the secrecy provision (using section 38) rather than the other exemption.   |
| <b>Elements</b>   | <p><b>Security information:</b> sets the context to apply to documents about “security”</p> <p><b>1 – Likely to:</b> high threshold to meet. Councils should explain why the risk to Council property or safety of a person will probably occur.</p> <p><b>2A – endanger the security of Council property:</b> risk must be more than just damage, must include loss or serious damage. Councils should specifically identify the security risk, the Council property affected and why the security risk is “likely” to occur.</p> <p><b>2B – the safety of any person:</b> specifically identify the person affected, the safety risk and explain how that risk endangers the person, as well as why the risk is “likely” to occur.</p> |
| <b>Similar tests or phrases</b>   | <p><b>“likely”:</b> means the chance of occurrence is “probable” or “more likely than not”.</p> <p><b>“endanger”:</b> means “to bring into danger or peril”.</p>   |
| <b>Examples</b>   | <p><b>Yes:</b> Security company scheduled site visits after arson attack. Parking inspectors personal contact details.</p> <p><b>No:</b> Council officer names, email addresses or work telephone numbers absent a specifically identified risk.</p>   |

| <b>(c) land use planning information, being information that if prematurely released is likely to encourage speculation in land values;</b> |   |
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| <b>OVIC Comment</b>   | This subsection deals with specific information – land planning information that would encourage speculation in land values. Focus on identifying the specific information and showing how it would be likely to lead to speculation in land values.  |
| <b>Approach</b>   | <b>Similar</b> to sections 30 and 36(2)(a). Separately apply the secrecy provision and other exemptions. If there is overlap, consider removing exemptions that are covered by the secrecy provision.   |
| <b>Elements</b>   | <p><b>Land planning use information:</b> sets the context to apply to documents about land planning.</p> <p><b>1 - Prematurely released:</b> Contemplates a time frame around release and sets parameters about “speculation in land values”. Councils should articulate why release is premature.</p> <p><b>2 – Likely to encourage:</b> “Encourage” has a lower threshold test meaning to “persuade someone to do something” or “stimulate the development of”, in this case “speculation in land values”.</p> <p><b>3 – Speculation in land values:</b> Councils should specifically identify the information (see below for examples) and consider how premature release is likely to encourage speculation in land values, preferably with examples.</p> |
| <b>Similar tests or phrases</b>   | <p>“likely”: means the chance of occurrence is “probably” or “more likely than not”.</p> <p>“land planning use information”: Based on section 36(2)(a) this could include information about “contemplated movement in rates, fees, charges, interest charges or other levies, the sale or acquisition of land or property by the council, urban re-zoning, the formulation of land use and planning controls and the formation of imposts”.</p>   |
| <b>Examples</b>   | <p><b>Yes:</b> Confidential report into land acquisition for a new train station. Consultant report about effect of varying levels of rates increases across areas to inform decision to be made by Council on rates.</p> <p><b>No:</b> Draft and final design documents for completed roads. Details of publicly announced land acquisitions.</p>  |

| <b>(d) law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person;</b> |   |
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| <b>OVIC Comment</b>   | The wording is similar to section 31(1) however, it is narrower as it does not include prejudice to the “proper administration of the law”. Please note it does not require “a particular instance” of law enforcement to be identified.  |
| <b>Approach</b>   | <b>Similar</b> to sections 31(1)(a) and 31(1)(b). Separately apply the secrecy provision and other exemptions. If there is overlap, consider removing exemptions that are covered by the secrecy provision.   |
| <b>Consult</b>  | The parallel FOI exemption is section 31 - requires agencies to consult other agencies or authorities involved in the investigation or hearing for information about whether release is reasonably likely to prejudice that investigation or hearing. While not required, where possible, OVIC encourages Councils to consult.  |
| <b>Elements</b>   | <p><b>Law enforcement information:</b> The wording sets the context to apply to law enforcement documents about “investigations”, “trials” and “hearings”.</p> <p><b>1 – Reasonably likely to prejudice:</b> high threshold, but not as high as “likely”.</p> <p><b>2A – Investigation into an alleged breach of the law –</b> The investigation should be an actual, usually active, investigation and the information must relate to that investigation. Councils should specifically identify the investigation, the law alleged to be breached and demonstrate the documents were prepared for, or during, that investigation. Councils should also explain how disclosure could prejudice that investigation.</p> <p><b>2B – Fair trial or hearing –</b> Councils should specifically identify the affected trial or hearing including the parties in the proceeding, the offence or cause of action, the relevance of the document to the proceeding and the status of the proceeding. Councils should also explain how disclosure would be reasonably likely to prejudice the fair conduct of that trial or hearing.</p> |
| <b>Similar tests or phrases</b>   | <p>“reasonably likely: slightly lower threshold than “likely” in that it does not require absolute certainty, only a chance that is “real not fanciful or remote” and one that is “more than a mere possibility”.</p> <p>“prejudice”: means to hinder, impair, or undermine.</p> <p>“law enforcement”: deals with the process of enforcing of the law, for example, prosecuting cases, or pursuing of fines and court orders.</p>   |
| <b>Examples</b>   | <p><b>Yes:</b> Draft brief of evidence for a prosecution yet to be commenced.</p> <p><b>No:</b> Final investigation report of an internal investigation.</p>  |

| <b>(e) privileged information, being information to which legal professional privilege or client legal privilege applies;</b> |   |
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| <b>OVIC Comment</b>   | While the subsection is drafted more concisely than section 32, the legal test is the same. Both the secrecy provision and the exemption cover the same ground and require the same elements to be established.   |
| <b>Approach</b>   | <b>Same</b> as section 32. Apply the secrecy provision (using section 38) rather than the other exemption.  |
| <b>Elements</b>   | <p><b>1 – Identify what privilege applies:</b> litigation privilege or advice privilege.</p> <p><b>2 – Establish the communication occurred in lawyer/client relationship, or for litigation:</b> specifically identify who created the document, who the document was sent to, why the document was created. Specifically identify whether it is the lawyer giving advice or the relevant litigation (current or anticipated) based on the privilege that is claimed.</p> <p><b>3 - Establish the ‘dominant purpose’ for the communication or document:</b> set out the facts that establish the information was created either to obtain/receive legal advice or in relation to litigation.</p> <p><b>4 - Establish that the communication or document was intended to be, and remains, confidential:</b> Confidentiality is essential to legal privilege and should be clarified if there is any doubt.</p> <p><b>5 - Ensure that privilege is not waived.</b></p> |
| <b>Similar tests or phrases</b>   | <b>Privilege:</b> OVIC’s <a href="#">Exemption Practice Note 9</a> has case law and guidance including definitions of “client”, “lawyer”, “confidential communications”, “legal advice”, “dominant purpose”, “litigation” and “waiver”.   |
| <b>Examples</b>   | <p><b>Yes:</b> Legal advice from a law firm about a contract (as opposed to commercial or policy advice).</p> <p><b>No:</b> Invoices merely showing the cost and not the substance of legal advice provided to an agency.</p> <p><b>No:</b> administrative or policy documents from a Council’s lawyers.</p>  |

| <b>(f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;</b> |   |
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| <b>Comment</b>  | <p>The test in the subsection is identical to section 33 of the FOI Act however, the FOI Act has features and processes to deal with child welfare, family violence, harm to third parties, harm to the applicant and circumstances where the existence of the document should not be acknowledged. If these issues arise, consider also applying section 33.</p> <p><b>Other matters for Council to consider:</b> Section 33 of the FOI Act requires decision-makers to consider certain matters, OVIC encourages Council to take into account these matters (or also rely on section 33):</p> <ul style="list-style-type: none"> <li>• whether disclosure would “endanger the life or physical safety or any person”: section 33(2A).</li> <li>• any increased risk of family violence: section 33(2AB).</li> <li>• any risk of child safety: section 33(2AC).</li> <li>• whether release would pose a serious threat to the life or health of the applicant: section 33(4).</li> </ul> <p>Section 33(6) also allows an agency not to confirm or deny the existence of a document in certain cases.</p> |
| <b>Approach</b>   | <b>Same</b> as section 33. Apply the secrecy provision (using section 38) rather than the other exemption.  |
| <b>Consult</b>  | The parallel FOI exemption in section 33 requires agencies to consult with third parties whose personal information is affected. OVIC encourages Councils to consult the affected individual who may have relevant and persuasive information about whether disclosure is unreasonable.   |
| <b>Elements</b>   | <p><b>Personal information:</b> sets the context to apply to personal affairs information</p> <p><b>1 – Information about a person or their personal affairs:</b> This includes any information that could directly or indirectly identify a person. Council should specifically identify the information and explain how it identifies a person.</p> <p><b>2 – Disclosure would be unreasonable:</b> determine whether release of the personal information would be unreasonable in all the circumstances. This involves considering many factors including the nature of the information, the applicant’s reasons, the wishes or interests of the affected individual, and public interest factors for and against disclosure.</p>  |
| <b>Similar tests or phrases</b>   | <p><b>“personal affairs” information:</b> see section 33(9) of the FOI Act for a statutory definition.</p> <p><b>“unreasonable”:</b> There is extensive case law regarding factors to consider when deciding if disclosure of personal affairs information is unreasonable. See OVIC’s <a href="#">Exemption Practice Note 10</a> for a list of factors for consideration</p>   |
| <b>Examples</b>   | <p><b>Yes:</b> Personal contact details of a confidential complainant or CCTV footage of persons attending council premises to make complaints.</p> <p><b>No:</b> Professional contact details of Council staff making decisions in an official capacity.</p>   |
| <b>(g) private commercial information, being information provided by a business, commercial or financial undertaking that—</b>  |   |

| (i) relates to trade secrets; or<br>(ii) if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage; |   |
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| <b>OVIC Comment</b>  | Very similarly worded to section 34(1)(b) of the FOI Act, this subsection has a higher threshold and Council may need to consider applying the FOI Act instead. The threshold for this subsection is that the unreasonable disadvantage “would” be caused, whereas section 34(1)(b) only requires that unreasonable disadvantage is “likely”.   |
| <b>Approach</b>  | <b>Similar</b> to section <b>34(1)(a)</b> . Separately apply the secrecy provision and other exemptions. Rely on the stronger exemption and remove the other.   |
| <b>Consult</b>   | The parallel FOI exemption in section 34 requires Councils to undertake consultation with undertakings to determine whether disclosure would cause unreasonable disadvantage. While not required for this subsection, where possible, OVIC encourages Councils to consult.  |
| <b>Elements</b>  | <p><b>Private commercial information</b> – applies to commercial information of third parties held by Council, not the commercial information of the Council.</p> <p><b>1A – trade secret:</b> Generally proprietary knowledge of the undertaking such as secret formulas, processes or methods used to produce goods and services known only to the undertaking, not the industry. Council should specifically identify the trade secret and its relevant characteristics as set out in <a href="#">Exemption Practice Note 11</a>.</p> <p><b>1B – business, commercial or financial information:</b> This type of information is broad, based on the ordinary meaning of the words. Councils should specifically identify the information claimed to be exempt.</p> <p><b>1B – would unreasonably expose the undertaking to disadvantage:</b> specifically identify the unreasonable disadvantage (see <a href="#">Exemption Practice Note 12</a>) and explain why release would unreasonably expose the undertaking to disadvantage.</p> <p><b>2 – provided to council:</b> The exempt information must be acquired from the undertaking, not generated by Council. The actual document need not be acquired but must contain relevant information acquired from the undertaking. Information generated by Council about the undertaking, or mutual information arising from negotiations or collaboration is generally not ‘acquired’ by Council from the undertaking.</p> <p><b>3 – by a business, commercial or financial undertaking:</b> ‘Undertaking’ broadly applies to any entity, such as a company or organisation, that is engaged in business, trade, or commerce for a financial profit or gain. Councils should specifically identify the undertaking that provided the information.</p> |
| <b>Similar tests or phrases</b>  | <p><b>“Would”:</b> means that a result or effect will almost certainly come about.</p> <p><b>“Unreasonable disadvantage”:</b> depends on the information. Consider if the information is available to the undertaking’s competitors, would disclosure give the undertaking’s competitors a financial advantage, or lead to unwarranted conclusions about the undertaking’s financial affairs.</p> <p>OVIC’s <a href="#">Exemption Practice Note 11</a> and <a href="#">Exemption Practice Note 12</a> contain case law and guidance about key terms such as <b>“trade secret”</b>, <b>“business, commercial or financial information”</b> and <b>“unreasonable disadvantage”</b>. Section 34(2) of the FOI Act sets out factors to help determine if there would be unreasonable disadvantage.</p>  |
| <b>Examples</b>  | <p><b>Yes:</b> Documents detailing a contracted undertaking’s income, profits, losses provided as part of a tender</p> <p><b>No:</b> Invoices for work completed for Council or non-financial contractual terms for a cleaning contract or methodology to complete work generated by Council and a contractor together.</p>   |

| (h) confidential meeting information, being the records of meetings closed to the public under section 66(2)(a); |  |
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| <b>OVIC Comment</b>  | For closed Council meetings, section 66 of the LG Act replaced section 89 of the <i>Local Government Act 1989</i> on 1 July 2020. The secrecy provision in section 125 of the LG Act commenced 24 October 2020. Prior to this, the secrecy provision in section 77 of the <i>Local Government Act 1989</i> was in force. Consequently, apply these provisions based on <b>when the closed council meeting was held:</b> <ul style="list-style-type: none"> <li>before 1 July 2020 - sections 89 and 77 of the <i>Local Government Act 1989</i> and section 38 of the FOI Act.</li> <li>between 1 July 2020 and 23 October 2020 - section 66 of the LG Act, section 77 of the <i>Local Government Act 1989</i> and section 38 of the FOI Act.</li> <li>from 24 October 2020 - section 125 of the LG Act and section 38 of the FOI Act.</li> </ul> |
| <b>Approach</b>  | <b>None</b> (but similar to section <b>38A</b> Closed council meeting documents that was repealed from 1 July 2020). Apply the secrecy provision (using section 38).   |
| <b>Elements</b>  | The document is a record of a meeting closed to consider confidential information under section 66(2)(a).  |

| <b>(i) internal arbitration information, being information specified in section 145;</b> |   |
|--|---|
| <b>OVIC Comment</b>  | This subsection deals with a specific type of information not directly captured by an FOI exemption. Information that is provided to Council for an arbitration, but not to an arbiter, may be captured by section 35(1)(b).  |
| <b>Approach</b>  | <b>None</b> (but see section <b>35(1)(b)</b> material obtained in confidence). Apply the secrecy provision (using section 38).  |
| <b>Elements</b>  | <b>Internal arbitration information:</b> information from internal arbitration under sections 141 and 145 of the LG Act:<br><b>1 – Information provided to an arbiter or information produced by an arbiter:</b> Councils should specifically identify the information and state (date and form) when it was provided to, or produced by, an arbiter.<br><b>2 – for the purpose of an internal arbitration process, other than the findings and the reasons:</b> Councils should specifically identify the relevant arbitration process the information was used for. |

| <b>(j) Councillor Conduct Panel confidential information, being information specified in section 169;</b> |   |
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| <b>Comment</b>  | This subsection deals with a specific type of information not directly captured by an FOI exemption. Information provided to Council for a Panel, but not to Panel, may be captured by section 35(1)(b).  |
| <b>Approach</b>   | <b>None</b> (but see section <b>35(1)(b)</b> material obtained in confidence). Apply the secrecy provision (using section 38).  |
| <b>Elements</b>   | <b>Councillor Conduct Panel</b> – applies to information from processes under sections 163 and 169 of the LG Act and applies to three types of information:<br><b>1A – Information provided to, or produced by, a Principal Councillor Conduct Registrar, for the purposes of an application for a Councillor Conduct Panel to be formed;</b><br><b>1B – Information, other than a decision or reasons for a decision, provided to, or produced by, a Councillor Conduct Panel, for the purposes of conducting the Councillor Conduct Panel hearing;</b><br>For 1A and 1B, Councils should specifically identify the information and state (date and form) when it was provided to, or produced by, the Principal Councillor Conduct Registrar or Councillor Conduct Panel.<br><b>1C – Any part of a statement of reasons or other document of the Councillor Conduct Panel that the Panel determines contains confidential information:</b> Councils should identify the determination (date and title), ensure that it applies to the information being exempted and confirm that the determination is not revoked. |

**(k) information prescribed by the regulations to be confidential information for the purposes of this definition -** This subsection is inactive because no information has yet been prescribed.

| <b>(l) information that was confidential information for the purposes of section 77 of the Local Government Act 1989;</b> |   |
|---|---|
| <b>Comment</b>  | Section 77 of the <i>Local Government Act 1989</i> was in force until 23 October 2020. As of 24 October 2020, section 125 of the LG Act replaced section 77.  |
| <b>Approach</b>   | <b>None.</b> Apply the secrecy provision (using section 38).  |
| <b>Elements</b>   | Section 77 of the <i>Local Government Act 1989</i> , provides that three types of information are confidential where Council has not passed a resolution that the information is not confidential:<br><b>1A – Information provided to Council (or special committee) about a matter considered by Council at a meeting closed to members of the public:</b> Councils should specifically identify the relevant information, how and when it was provided to council and proof the issue was considered at a closed council meeting (for example agenda or minutes noting the information).<br><b>1B – Information designated as confidential by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2):</b> Councils should identify the determination (date and title), ensure that it applies to the information being exempted and ensure that the determination is not revoked.<br><b>1C – the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2):</b> Councils should identify the determination (date and title), ensure the determination states the section 89(2) ground and applies to the information being exempted. |

**Disclaimer:** The information in this document is general in nature and does not constitute legal advice.

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