

Code of Practice for Considering Confidential Business (Council and Council Committees)

Introduction

The University of South Australia is committed to the principles of ethical, open and accountable governance. The practices of the University Council and its Committees in dealing with confidential matters will reflect these principles.

The University Council recognises that during the course of its business, there will be some occasions where it may be necessary to deal with matters in confidence and to subsequently retain those matters (in whole or in part) as confidential.

The aim of the Code is to provide clear guidance for Council members and staff about their obligations in relation to Confidentiality. Once information is released into the public sphere it is no longer confidential and there is no duty of confidentiality attached to it.

Legislative Background

The University of South Australia Act (1990) ('the Act') deals with the Procedure of meetings of Council. The Act does not direct the Council on dealing with confidential matters/items. In terms of proceedings at Council meetings, section 13(5) of the Act provides that '*Subject to this Act, the proceedings of the Council may be conducted as it thinks fit*'. This Code of Practice is prepared in accordance with that Section of the Act.

Policy Background

The Council Handbook provides information for members on their personal responsibilities regarding confidentiality, the status of Council information and the type of business which is generally considered confidential. This Code of Practice is consistent with that information and should be considered in conjunction with it.

Confidential Business

Business of a Council or Committee meeting dealing with any of the following matters is confidential (unless the Council resolves otherwise and noting any overriding legal requirements):

- Matters relating to human resources (including personal affairs) affecting individuals or groups of employees or students of the University.
- Personal information regarding students.
- Any proposal to grant an honorary degree, the title of 'Emeritus', or any other special honour.

- Commercial information the disclosure of which may lead to an advantage or disadvantage.
- Legal or other expert advice the disclosure of which would compromise the University's interests in future negotiations.
- Tenders for the supply of goods and services where the disclosure could prejudice the University's competitiveness in those activities.
- Matters requested by third parties, e.g. Minister of the Crown, to be kept confidential.
- Matters deemed confidential by legislation.
- Information whose disclosure could harm the proper, safe and efficient conduct of the operations of the University.

The Chancellor may determine that information to be provided to the Council or a Committee should be confidential and, in those cases, the business will be confidential unless the Council or Committee determines otherwise.

The Council or Committee may determine that any other business dealt with at a meeting of the Council or the Committee is also confidential.

If a matter is confidential, all material relating to the confidential business is confidential. The material includes but is not limited to:

- An item of business on the agenda of the meeting.
- Minutes of any discussion relating to the confidential business.
- Reports (including attachments) from University of South Australia staff.
- Reports (including attachments) from external experts or agencies.
- Advice received in forms other than reports e.g. legal advice in the form of correspondence.
- Selected regular reports that it receives e.g. ITEK Quarterly reports, Finance Committee reports.
- Discussion in relation to a Council or Committees of Council matter.
- Resolutions of Council or Committee.

Where the Council or Committee makes a determination of confidentiality in respect of an item of business, it remains confidential until the Council or the Committee resolves otherwise. The Council may make or override a determination of confidentiality in respect of an item of business dealt with at a Committee meeting.

Members and all other University staff and advisors remain bound by a duty of confidentiality in respect of all information in respect of which a determination of confidence is made at a Council or Committee meeting.

Finance Committee

Due to the ongoing Commercial in Confidence nature of the business of the University of South Australia Finance Committee, all agendas (and associated papers including Committee reports to Council) and minutes of its meetings will be confidential unless otherwise determined.

Copies of all agendas and minutes will be kept in hard copy form in secure storage.

Council and Committee Agendas and Minutes

Council and Committee agendas will contain a section in which confidential items can be listed. Items are to be listed with a general heading e.g. 'Tender', 'Staff Matter', 'Legal Proceedings', 'Funding Bid', 'State Ombudsman's Office' etc. For those items, only the headings will be listed in the versions of the agendas and minutes published on the UniSA intranet site.

Agenda papers for confidential items will be included in the agenda papers for the following recipients:

- Council and Committee members.
- Senior Management Group.
- Director Council Services and Chancellery.
- Secretariat Executive Officer.

Confidential papers will be retrieved by the Council or Committee Executive Officer at the conclusion of each Council or Committee meeting.

Other recipients will receive agenda papers without confidential papers. Those wishing to access confidential papers should approach the Director Council Services and Chancellery who will discuss the request with the Chancellor. A record will be kept of all requests.

All confidential agenda papers (Council and Committee) will be held in Chancellery in secure storage.

Confidential papers appearing in Council and Committee agendas will be copied on red paper.

Confidential Reports

All reports which are to be dealt with in the Confidential section of the Council or Committee agenda and which deal with matters other than those listed in the section of this Code of Practice headed **Confidential Business** should contain a brief explanation of why the author recommends that it be dealt with in confidence e.g. *'It is recommended that Council consider*

this matter in confidence as it relates to a legal case currently before the courts'. This explanation should appear at the beginning of the report in the 'Purpose' section.

The report should also include a recommendation from the author suggesting the length of time the matter should be kept confidential e.g. *'it is recommended that this item be kept confidential until settlement of the contract'*. A report may be kept confidential indefinitely and only disclosed by resolution of the Council.

The report may wish to identify limited situations where the confidential material may be released e.g. to particular staff to allow negotiation on a legal matter.

Confidential Minutes

Minutes relating to items that Council or its Committee has deemed confidential will be kept in a Confidential Minute Book. The Confidential Minute book will be kept in secure storage.

Confidential minutes are not to be released via any medium including the staff intranet. WORD files of confidential items will be kept in a password protected section of the Chancellery share drive.

Procedure during Council Meetings

When confidential matters/items are being discussed by Council or its Committees, all observers will be asked by the Presiding Member to leave unless the Council or the Committee decides otherwise. The minutes of the meeting will record those present for the confidential item. Observers will be re-admitted to the meeting following the conclusion of confidential items.

Wherever possible, confidential items will appear as the final items on the Council or Committee agenda. This will minimise disruption to observers attending the meeting.

Access to Confidential Material – External Review

Even though matters are deemed confidential they may still be accessed through some external review processes. For example, the State Ombudsman has full inquiry powers to access information the Council or its Committee has determined to be confidential, and also the Freedom of Information Act provisions will prevail over any decision of the Council or Committee.

Advice on Confidentiality

Council Members or staff requiring advice on confidentiality should refer in the first instance to the Director Council Services and Chancellery. External advice will be sought where appropriate.

Availability of Code

The Code of Practice for Confidential Matters will be available in the following places:

- The University of South Australia Council Handbook.
- The Chancellery web site (University Council section).

Review of Code

The Code of Practice for Considering Confidential Business (Council and Committees) will be reviewed every two years, or at any time by resolution of Council.