

Policy 7.3.28 Request by Council and Councilmembers for Information and Records

POLICY PURPOSE:

Council Policy 7.3.13 addresses councilmembers' request for information and records of a routine and non-routine nature and primarily addresses records which are available to the general public. This Policy will establish Guidelines and Standards regarding requests by the Council and individual councilmembers for City records and information which may not be available to the general public. This Policy obligates the City Manager and City Attorney to determine the appropriate labeling of the records or information and is intended for benefit of the City, staff and the community.

POLICY STATEMENT:

1. Guiding Principles.
 - A. The Sunnyvale City Charter provides that the Sunnyvale Municipal Government shall be conducted as a "Council-Manager" form of government and requires the Council to deal directly with the officers and employees of the City through the City Manager or City Attorney. The Charter also provides that the City Attorney shall control all legal business and proceedings and, subject to contracting requirements and budget constraints, may employ other attorneys, appraisers and other technical expert services to assist with or take charge of any litigation or matter.
 - B. The Council has the clear authority under the Charter to conduct an inquiry into the affairs of the City or the conduct of any department or office which the City Council authorizes with at least four (4) votes. An individual councilmember may request a vote of the Council to initiate such an inquiry.
 - C. While the vast majority, perhaps 95% of public records are available to the general public, some information and records are by law restricted and may not be released to the public. Some public records are maintained on a strictly "need-to-know" basis and may not be released by staff, even to the City Council. Laws governing these records often impose a legal obligation on part of City staff (e.g. personnel records, medical and health records; some tax information; police records) and also may create privileges to that privacy or non-disclosure.
 - D. This Policy acknowledges that some non-public records may become public records in the future. Some records such as personnel records or medical information may never lose their cloak of privacy, absent the consent by the party who possesses the privilege or protection.

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- E. The City Charter and principles of governance provide that the City Council can establish rules for the conduct of its business and proceedings and may sanction a person for disorderly or improper conduct at any meeting or for the disclosure or abrogation of any of the rights of the City, staff or its residents as it may be related to the right to privacy and non-disclosure of information and records.

2. Closed Session Information and Records.

- A. No person shall disclose confidential information that has been acquired by being present in a closed session to a person not entitled to receive it unless the legislative body by affirmative vote authorizes disclosure of that confidential information.
- B. This Policy hereby creates a presumption that any information, records or written materials received as part of a closed session are confidential in nature and may not be disclosed without permission of the City Attorney, the City Manager after consultation with the City Attorney, or disclosure is authorized by a majority vote of the City Council. The Council is free to request clarification of this issue while in closed session or independently with the City Attorney.
- C. All materials provided as part of a closed session including materials distributed before the closed session and those distributed in the closed session are to be returned to City staff prior to the conclusion of the closed session unless the City Attorney, the City Manager, in consultation with the City Attorney, or a majority vote of the Council authorizes retention of the materials. The authorization to retain materials does not affect the privilege of confidentiality affecting those materials, the information and/or the obligation to not disclose any of said information or materials.

3. Personnel, Medical Information and Public Safety Records.

- A. As a general rule City Council has no authority to review individual employee personnel records and/or medical information, with the exception of the personnel files and non-medical information relating to the City Attorney or City Manager.
- B. Council has a limited privilege to review information which may be necessary in the personnel context as part of labor negotiations. If that that information is received in closed session, Section 2 of this Policy applies.
- C. Council may have access to information and records maintained by the public safety department which are accessible public records and non-confidential in nature as determined by the Chief of Public Safety in consultation with the City Attorney.

4. Attorney-Client and Work-Product Privileged Information and Records.

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- A. Consistent with City Charter Section 908, while the City Attorney controls all legal business and proceedings of the City subject to contracting and budget constraints, the City Council can review with the City Attorney the handling of any matter, including litigation and shall have the right to view contracts authorized by the City Attorney and the negotiation and payment of legal invoices.
- B. Council shall exercise this right through either the supervision of individual cases as those matters come before the Council or as part of the City Attorney evaluation process.

5. Procedure for Access to Information

- A. Litigation/Legal – Any individual councilmember seeking to examine individual contracts, invoices, payments or records involving confidential information or records handled by the City Attorney may request that Council conduct an inquiry as is authorized under Section 807 of the City Charter. If the inquiry arises as part of the evaluation of the City Attorney, the Mayor shall advise the City Attorney in advance of the evaluation proceeding that the Council has voted by at least four affirmative votes to inquire into one or more matters specified in this Policy. The City Attorney shall respond with sufficient information and detail as may be required by the Council.
- B. If the request or inquiry is made as part of a public meeting the requesting councilmember shall state the request in the form of a motion. If the motion receives a second, the matter shall be voted on and four votes shall authorize access by the Council. The City Manager and City Attorney are directed to determine in what context the access can occur to maintain any privilege or comply with any obligation imposed on the City by law.
- C. If legally permissible, a councilmember may review confidential information directly with the City Manager or City Attorney in a manner which preserves and protects the attorney-client and attorney work-product privileges of the City and is consistent with the time limitations of Policy 7.3.13.
- D. Attempts to access information or records in violation of this policy shall be ruled as “out of order” by the Mayor if the attempt occurs at a public meeting and reported to the Mayor if the violation occurs outside of a public meeting.

6. Limitations and Exclusions

- A. The Policy is supplementary to and in no way is intended to conflict with the City Charter or to compromise or abrogate the privileges possessed by the City including, but not limited to, the attorney-client privilege, the attorney work-product privilege, the obligations and privileges with respect to personnel records, medical information and records under HIPPA and other laws and regulations.

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This policy also does not impact the City's rights and obligations under the California Public Records Act, *Government Code 6254, et seq.*

- B. Confidential public records shall only be disclosed to staff on a need-to-know basis only as may be determined by the custodian of those records in consultation with the City Attorney.
- C. If a confidential record no longer needs to be held as confidential, it shall be considered an accessible public record.

((Adopted: RTC 12-156 (6/19/12))

Lead Department: Office of the City Attorney