

## EVIDENCE ACT APPLICATIONS FOR NON-PARTY DISCLOSURE

### 21 February 2018

#### What is an Application made under Section 134A of the *Evidence Act 1977*?

Where a person (or company) who is a party to a **civil** legal proceeding believes Council is in possession of documents relevant to an issue in the proceedings, they may make a written application to the Chief Executive Officer of Council for access to these documents.

This process is an alternative process to a party formally subpoenaing documents from Council by Court Order.

#### How are applications made?

Applications must be made by:

- paying the prescribed fee as per section 6 of the *Evidence Regulation 2007* (see below) - *note this amount is set by the State Government and may change from time to time*;
- quoting section 134A of the *Evidence Act 1977* (the Act);
- providing full contact details (full name, address, telephone number);
- providing Council with a copy of the relevant pleadings/affidavit for the matter and a copy of the Court or Hearing Notice; and

- providing particulars of the subject matter of documents the applicant wishes council to search for, as well as the type of documents and the relevant time period for the request.

#### What type of documents can be requested?

Documents which may be requested are limited to a document which:

- Is in the possession or under the power of Council; and
- Is relevant to an issue in the proceeding if the agency could be ordered by the court to produce the document in the proceeding (i.e. legal professional privilege and some other categories of exemption may therefore still apply to some documents).

Council is then required to search for documents and assess whether documents in Council's possession are relevant to an issue in the proceeding. If a document is considered to be relevant, the applicant will be required to agree to pay any further relevant costs for inspection of documents and/or for copies of documents.

**Note:** this provision only applies to circumstances where Council is **not** a party to the proceedings. Inspection of documents will only be available by prior appointment between 9am and 3pm Monday to Friday and there may be timeframes associated

with document searches necessitated by Council's operational requirements.

## Can Council refuse to provide access?

Council may refuse to provide access to requested documents where:

- The request is considered too wide in scope; or
- Documents requested are not considered relevant to the civil legal action; or
- It is unclear from the request which documents are required; or
- The matter is a criminal proceeding; or
- Council is a party to the proceeding.

It is noted that if a matter is particularly sensitive and/or there may be potential legal issues arising from Council releasing the documents, legal advice should be sought and where there is not a clear link between the documents requested and a matter at issue in the legal proceedings, the CEO may decide not to disclose these documents without a subpoena.

Under section 134A(4), Council is not required to notify another party to the proceeding that Council has received an application or any action Council will take with respect to the application.

## What can documents released be used for?

Council supplies documents requested for a legal proceeding in accordance with Section 134A (3) of the *Evidence Act 1977*. Documents are supplied on the condition that they are only used or disclosed for the purpose of the legal proceedings.

A person supplied with documents in accordance with section 134A of the Act may be held in contempt of court for disclosing documents obtained under the *Evidence Act 1977* for any other purpose.

## Application and copy charges (as at February 2018)

### *Evidence Regulation 2017*

#### **Fee for inspecting etc. a document—Act, s 134A**

- (1) For section 134A(2) of the Act, the prescribed fee for inspecting a document and taking a copy of, or an extract from, the document is the total of—
  - (a) an amount calculated under subsection (2) for inspecting the document; and
  - (b) if a copy of, or extract from, the document is given—an amount calculated under subsection (3) for giving a copy of, or extract from, the document.
- (2) The amount payable for inspecting the document is—
  - (a) if the document is an article or material from which sounds or visual images are capable of being reproduced—the amount the agency considers reasonable for making arrangements to hear or view the document; or
  - (b) otherwise—\$49.15 for each hour, or part of an hour.
- (3) The amount payable for giving a copy of, or extract from, the document is—
  - (a) if a copy or extract is a photocopy in A4 size, the following—
    - (i) first copy—\$2.80 for each page up to a maximum fee of \$72.45;
    - (ii) additional copy—65c for each page up to a maximum fee of \$28.80; or
  - (b) otherwise—the amount the agency considers reasonable.
- (4) An amount mentioned in subsection (2)(a) or (3)(b) must not be more than the amount that reasonably reflects the cost of making the arrangements or giving the copy or extract.

\*Note these fees are subject to change by the State Government (see section 6 *Evidence Regulation 2017*).

**What do I do if I receive an inquiry or I believe a person should consider making an application under this section?**

For further advice or information regarding whether a person is eligible to lodge an application under section 134A of the *Evidence Act 1977*, contact Council's Governance section.