

MEMORANDUM

TO: Board of Trustees

FROM: Matthew Dent
Chair

Josh Nelson
General Counsel

SUBJECT: Review, discuss, and potentially adopt Board Policy 23.1.0 regarding access to confidential and non-public information

RELATED STRATEGIC PLAN INITIATIVES: Long Range Principle #6 Communication
Long Range Principle #7 Governance

DATE: November 8, 2023

I. RECOMMENDATION

That the Board of Trustees review, discuss, and potentially adopt Board Policy 23.1.0 regarding access to confidential and non-public information.

II. BACKGROUND

The District has a strong commitment to transparency. However, there is some information that must or should be kept private. Trustees must have access to this private information while still ensuring that it does not become public. The District has considered different approaches to balancing this tension. Historically, the District provided very limited information to Trustees upon request and treated most requests as public records requests. More recently, the District has provided this information upon request to Trustees. However, there is no formal policy on this matter.

At a recent Board of Trustees meeting, Chair Dent requested that the General Counsel prepare a policy to provide greater clarity around the requirements for providing private information to Trustees.

Staff previously provided an overview of the draft policy at the September 19, 2023 Board meeting. The Board requested several clarifying updates, which are reflected in the redline version attached hereto, and which are summarized below:

- “Draft documents” are now included in the definition of confidential information
- Relocation of the requirement that individual trustees may not access employee or personnel files for staff that report to the General Manager
- Clarification that names, addresses, phone numbers, or identifying information that is used to make reservations at a recreational facility or enroll in an instructional or recreational activity or event provided by IVGID qualify as non-public information.
- Sets a requirement that individual trustees may not disclose confidential or non-public information, as defined, unless the Board authorizes such disclosure at a public meeting.
- Inclusion of a requirement for the General Manager to adopt and implement policies and procedures to ensure non-public and confidential documents are handled appropriately.

III. **FINANCIAL IMPACT AND BUDGET**

No direct impact by adoption of the policy.

IV. **ALTERNATIVES**

Below are alternatives to the recommended action:

1. Adopt the proposed policy.
2. Decline to move forward at this time with this proposed amendment.
3. Suggest changes to the proposed policy and bring it back for discussion at the next meeting.

V. **BUSINESS IMPACT**

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.

VI. **ATTACHMENT**

Draft Policy 23.1.0 (redline)
Draft Policy 23.1.0 (clean)



Access to Confidential and Non-Public Information Policy 23.1.0

0.1 PURPOSE. The Incline Village General Improvement District is governed by a five-member Board of Trustees. The Board of Trustees has elected to manage IVGID under the “Board-manager” form of government. Under this form of government, the Board hires a General Manager who hires, disciplines, and otherwise manages IVGID personnel subject to Board oversight and District policies. The only other staff member that reports directly to the Board of Trustees is the General Counsel.

Board of Trustees deliberations and the maintenance of IVGID records are subject to the general rule that they are “the public’s business” and subject to a general obligation of transparency. However, the Board and IVGID staff also have a superior duty not to disclose some information, including, but not limited to attorney-client confidences and work product, matters of employment, and other recognized exceptions as set forth in this Policy. To ensure Trustees are informed and can effectively govern the District, they may receive Confidential and Non-Public Information that members of the public would not receive in response to a request for public records. This Policy outlines the terms and conditions applicable to Trustee and employee access of Confidential and Non-Public Information.

0.2 CONFIDENTIAL AND NON-PUBLIC INFORMATION. The following terms shall have the definitions below in this Policy:

- a. Confidential Information. Information and documents that are related to IVGID that are not disclosable publicly without the concurrence of a majority of the Board of Directors. This is information protected by the attorney-client communication or work product privileges, pending labor negotiations, matters discussed in a closed session, **draft documents**, and other legally recognized protected or privileged information.
- b. **Notwithstanding the foregoing, individual Trustees may not access documents held in employment or personnel files for staff reporting to the General Manager.**
- c. Non-Public Information. Documents that are related to IVGID that are not Confidential Information and are not a public record under NRS 239. The facts and circumstances underlying Non-Public Information may **not** be discussed publicly ~~to the extent it is relevant to IVGID business but personally identifying information should not be disclosed to the extent possible. Non-Public Information shall not be provided to any third party.~~ Examples of Non-Public Information include documents regarding



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~~recreational privileges or fees for individuals or parcels, and draft documents, and names/addresses/phone numbers or other identifying information used to make reservations at a recreational facility or enroll in an instructional/recreational activity/event provided by IVGID.~~

0.3 INFORMATION TO BOARD. Confidential and Non-Public Information shall be provided by staff or legal counsel as necessary to inform the Board's discussion, deliberation, or general oversight of IVGID matters. Staff shall ensure the Board understands the Confidential or Non-Public status of the information.

0.4 INFORMATION UPON REQUEST. Trustees may request access to Confidential or Non-Public Information by contacting the General Manager with a copy to General Counsel. Requests shall be based on a legitimate IVGID-related purpose and not for political, financial, or other personal reasons. Requests will be received and reviewed by the General Manager and General Counsel. The Director of Human Resources will be consulted regarding any requests for documents that are maintained by the Department of Human Resources. If the requested document is available for review, it will be provided in a read only electronic format or in hard copy for viewing only. Appropriate staff or legal counsel will be present for document viewing, and no photos of documents are allowed. After viewing, staff is responsible for shredding of the materials reviewed. Staff shall ensure that Trustees understand if a document is Confidential or Non-Public Information. The entire Board of Trustees will be promptly notified of any request under this subsection and provided an opportunity to review the provided document.

~~0.5 LIMITATIONS ON ACCESS.~~

~~Notwithstanding the foregoing, individual Trustees may not access confidential documents held in employment or personnel files for staff reporting to the General Manager.~~

0.6 DUTY NOT TO DISCLOSE.

Trustees must not disclose any Confidential or Non-Public Information or documents unless permitted to do so by a majority of the Board as declared in a public meeting. Trustees may not disclose photos, copies or excerpts of any Confidential or Non-Public Information ~~but may be entitled to discuss the underlying facts and circumstances. Trustees shall confer with the General Manager and General Counsel prior to discussing any underlying facts and circumstances of Non-Public Information with non-IVGID third parties.~~



Access to Confidential and Non-Public Information Policy 23.1.0

0.7 EMPLOYEE ACCESS TO INFORMATION

The General Manager shall adopt and implement personnel policies ~~and procedures to ensure Confidential and Non-Public Documents and Information are protected and handled appropriately by staff and the Trustees that implement this Policy and outline when and how employees may access Confidential and Non-Public Information.~~

0.8 RIGHT TO DISCLOSE UNDER APPLICABLE LAW

This Policy shall not be interpreted or applied in a manner that prevents a Trustee from complying with or exercising his or her rights under applicable law to disclose information, including, but not limited to, whistleblower laws and policies. Disclosures shall be as limited as possible to ensure the compliance with or exercise of such legal rights.

0.9 REMEDIES FOR VIOLATIONS

Violations of this Policy by Trustees shall be subject to discipline as set forth in the Code of Conduct. The Board may also enforce this Policy through other legally available remedies.



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