

# I. Members' Rights to Access Information

## Guidance and Protocol

### Introduction

1. Members have a right to see the majority of information which the Council holds so they can carry out their duties as Councillors. This can range from information about services to information about their constituents. The general rule is that information should be supplied if requested. However, there is certain information, particularly that held about individuals, where access may be restricted.
2. This document sets out general guidance on the circumstances in which members may gain access to information owned by the Council. A protocol is provided for members and officers to follow in relation to requests for confidential information. If further advice regarding a particular situation is required, this can be obtained from the Director of Legal and Governance Services Department or their staff.

### Rights to Access Material

3. Members have a right to see documents, or parts of documents, where this is reasonably necessary to enable them to perform their duties as a Councillor or their role within the Council. This is commonly referred to as the 'need to know' principle. This covers cases where a councillor seeks to see information which relates to a committee of which he/she is a member.
4. This does not amount to an automatic right to see documents. The basis of this rule is that the member needs the information to carry out his duties. If the member was seeking to see documents for improper purposes, this would not be covered.
5. In addition to the general right, any member has a statutory right to see documents which contain information relating to:
  - a. business transacted at meetings of the Executive (including panels and forums), the Council and its Committees,
  - b. any decision taken by a portfolio holder in accordance with the Council's constitution and
  - c. any key decision made by the Officer.
6. Some categories of information are exempt from this provision, including that related to individuals. The list of exemptions is set out at Appendix 1. The practice in the Council is that members can generally see such information. However, there will be some circumstances where this is not the case, for example, where it affects the member's personal affairs. All information disclosed is treated as confidential for the purpose of the members' Code of Conduct.

7. If the Council is minded not to disclose exempt information, it will consider whether, in all the circumstances of the case, the public interest in disclosing the information outweighs the public interest in maintaining the exemption. If so, the information will be disclosed.

### **Overview and Scrutiny Committee**

8. In addition to the above rights, members of the Overview and Scrutiny Committee can obtain exempt information as set out in Appendix 1 or confidential information (see paragraph 9 below) but only if it is relevant to an action or decision that the Committee is reviewing or scrutinising; or which is relevant to any review contained in any work programme of the committee. These members will also be entitled to copies of any document which is in the possession or control of the Executive, Executive (Cabinet) Committee, a Portfolio Holder, Advisory Panel or Consultative Forum and which contains material relating to:
  - a. any business transacted at a meeting of the Executive, Executive (Cabinet) Committee, Advisory Panel or Consultative Forum; or
  - b. any decision taken by an individual member of the Executive
9. Confidential information is defined as:
  - a. Information provided to the local authority by a government department which has forbidden the disclosure of the information to the public; or
  - b. Information which cannot be disclosed to the public by a law or court order

### **Freedom of Information Act 2000 (FOIA)**

10. Members have the same rights as any other member of the public to request information under the FOIA. Any such request should be dealt with under the Council's procedure for FOI requests.
11. It should be noted that a political group is not part of the Council and therefore the Freedom of Information Act does not apply to it.

### **Data Protection Act**

12. The provisions of the Data Protection Act will apply to any personal information relating to individuals. The position differs according to the capacity in which the member is acting.

#### **Member acting on behalf of local residents**

13. A local authority does not generally have to get the consent of an individual to disclose their personal information to an elected member as long as:
  - a. The elected member represents the ward in which the individual lives;
  - b. The elected member makes it clear that they are representing the individual in any request for their personal information to the local authority; and

- c. The information is necessary to respond to the individual's complaint
14. In these circumstances, a member will be required to sign a form confirming this. A copy of the form is attached at Appendix 2.

#### **Member acting as a member of the council**

15. Personal information can be disclosed on a 'need to know' basis. An elected member is in the same position as an employee when acting in this capacity.

#### **Disclosure to members for political purposes**

16. This is generally not permitted except where the local authority is required to publish information, or where information is aggregated and does not identify any living individuals, so long as the data cannot be linked to specific individuals.

#### **Sensitive information**

17. Certain information is classified as sensitive under the Data Protection Act including information about racial or ethnic origins, political opinions and religious beliefs. Normally, consent from the individual or another condition specified under the Act is required. However, disclosure of such information to a member is allowed where he or she has been asked by the individual to take action on their behalf and the information is necessary in order for them to assist.

### **Care Proceedings**

18. The Family Proceedings Court Rules 1991 lay down strict rules in respect of information relating to family proceedings. Information can only be disclosed with leave of the court. This is not restricted to documents filed with the court but covers any information relating to these proceedings. Members cannot see any such information in any circumstances, even where he or she is representing a constituent.

### **Code of Conduct**

19. Members should bear in mind the provisions of the Code of Conduct where they hold Council information. This restricts the circumstances in which they can disclose confidential and exempt information.

### **Protocol for Requesting Information**

20. If a member requests information and the officer concerned has no doubts that it can be disclosed, the information should be provided. However, where the officer has doubts that the information should be disclosed, the steps below should be followed.
21. Members should be asked to make a written request to the appropriate Director for the information to be provided. The request must state the purposes for which the information is required, having regard to the above guidance.
22. Where personal information is requested, the Member should complete the form attached at Appendix 2.

23. The Director should consider whether the information should be provided in accordance with the guidance above.
24. The Director should reply to the member within 5 working days and should either:
  - a. Provide the information,
  - b. Refuse to grant the request, stating reasons in writing, or
  - c. Give a timescale for providing the information which should be as soon as possible but not longer than 20 working days after the date of the request
25. Where the request is not granted and the member is not satisfied with the reasons provided, the member may seek advice from the Director of Legal and Governance Services on whether the refusal is justified. If the Director of Legal and Governance Services decides that the information should be provided, then the Director who has refused the information must provide it to the member within a further 5 working days of that decision.
26. Where the Director of Legal and Governance Services decides that the information should not be provided, the request may be referred to the Chair of the Governance, Audit, Risk Management and Standards Committee for resolution.
27. Where the request is granted, the member may be allowed to inspect the relevant information, or to take away copies, depending on the information. Where copies are taken off site, the Director may specify steps which the member must take to keep the information secure, for example, keeping documents in a lockable cabinet.
28. The member must not use information for any other reason than that specified in the request and, where it is confidential or exempt, must keep it confidential in accordance with the code of conduct.

## Appendix 1

### Exempt information

- 1) Information relating to any individual.
- 2) Information which is likely to reveal the identity of an individual.
- 3) Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 4) Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
- 5) Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- 6) Information which reveals that the authority proposes:
  - a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - b) to make an order or direction under any enactment.
- 7) Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

*The following categories apply to meetings of the Governance, Audit, Risk Management and Standards Committee or sub-committee in connection with the investigation and consideration of an allegation of a breach of the Code of Conduct for Councillors:*

- 7A) Information which is subject to any obligation of confidentiality
- 7B) Information which relates in any way to matters concerning national security
- 7C) The deliberations of a Governance, Audit, Risk Management and Standards Committee or of a sub-committee in reaching any finding on a matter relating to the conduct of a Councillor or Co-opted member.

**Appendix 2**

**Request for Information relating to an Individual**

This form is to be completed by a Councillor requesting information regarding an individual.

**Name of person about whom information is requested (please print)**

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**Type of Information requested (please be as specific as possible)**

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I confirm that:

- a) The person named above has asked me to represent him/her;
- b) I represent the ward in which the person named above lives; and
- c) The information requested is necessary to respond to the individual's complaint

Signed: .....

Print name: .....

Date: .....