

Meeting:	Standards Committee
Date:	19 September 2006
Subject:	Confidentiality of Documentation
Key Decision:	No
Responsible Officer:	John Robinson
Portfolio Holder:	Leader
Status:	Part I
Encs:	

SECTION 1 – SUMMARY AND RECOMMENDATIONS

This report provides an explanation of the rules relating to various rights of access to information that relates to complaints of breach of the Code of Conduct against Members.

RECOMMENDATION:

To note the report.

SECTION 2 – REPORT

1. Introduction

- 1.1 Concern was expressed at your last meeting about the disclosure of the details of complaints. Should the details of an investigation be made generally available to all Members of the Standards Committee? Should the paperwork for the meeting be given to the public?
- 1.2 This report attempts to answer all these questions and provide an explanation to the rules relating to various rights of access to information.

The report brings together three sets of rules

- (a) The Access to Information legislation governing reports made to local authority meetings and the rights of the public to inspect background papers.
- (b) The common law rights of Members to have information held by the authority to enable them to better carry out the duties of councillor.
- (c) The regulation governing the holding of investigations and hearings, together with the guidance from the Standards Board.

2. Local Investigation

- 2.1 Where the investigation is carried out ‘locally’ by the Investigating Officer, the agreed procedure states (at paragraph 3.4) “that information provided to the Investigating Officer during the course of the investigation should be treated as confidential”.

Members are also instructed that they “must not disclose any information they receive in confidence and are reminded of their obligation under paragraph 3 of the Code of Conduct”.

The procedure, which is taken from guidance issued by the Standards Board, then states that “Information must not be disclosed UNLESS:

- the disclosure will assist ethical standards officers to perform their statutory functions under the law
- the disclosure will assist the monitoring officer to perform his or her statutory functions under the law
- permission has been given by the person to whom the information relates to disclose it;
- the information has already lawfully been made public;
- the disclosure is made for the purposes of criminal proceedings in the UK

- 2.2 These rules on confidentiality apply to the period of investigation.

When the Investigating Officer has completed a draft report (s)he sends it for comments to the Member complained about. Any statements made by witnesses or others interviewed are also sent for comments but only to the person making the statement.

- 2.3 Thus until the report of the Investigation has been completed any drafts will only have been seen by the Member complained about.

- 2.4 What happens next is that the report, whether it concludes there has or has not been a failure is reported to the Hearing Panel. The procedure refers to the report being made to the Standards Committee. This is in accord with the Standards Board guidance. Members could decide to change the procedure and restrict circulation to only members of the Hearing Panel.

The Investigating officer will be asked whether (s)he wants any part of the report or accompanying documents or any part of the hearing to be held in private. Although the procedure doesn't require it the Member complained about will also be asked whether (s)he wants any part of the report and documentation and/or meeting to be held in private.

- 2.5 The hearing will be open for the public to attend and the report and other documents will be open for public inspection unless the Panel determines that "in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information".

Before the meeting the legal adviser to the panel will keep the report and any documentation confidential if requested by the Investigating Officer or Member. The Panel then has to decide whether to release the information to the public and whether any part of the hearing should be held in private.

- 2.6 Hearing Panels clearly have what could well be a difficult judgment to make but have the power to determine that both the documentation and the hearing shall be public.

- 2.7 The Procedure then requires that a summary of the findings shall be published in a local newspaper and put on the Council's website.

The summary is agreed with the Chair of the Panel. The Member subject to the finding is shown a copy of the summary before publication and thus has the opportunity to make comments.

- 2.8 There is then a legal requirement to keep available for public inspection the agenda and any documents (not made private by the Panel) and the minutes for a period of 6 years after the hearing.

3. Standards Board Investigation

The procedure where the investigation is carried out by the Ethical Standards Office appointed by the Standards Board who then issues a report which is made to the Hearing Panel for determination, is very similar.

The Member complained about is allowed to comment on the draft report and there are similar rules on confidentiality when the report comes to the Panel.

4. In the circumstances where an individual makes a complaint to the Standards Board but the Board decide not to investigate, the Board sends a letter to the complainant copied to the Member complained about and usually to the Monitoring Officer.

5. Members rights to information

In brief Members of Council are entitled to see any documentation which is needed to help them better perform their duties as a Councillor. This is usually called the need to know test and is separate and additional to any statutory rights such as under the Access to Information legislation. It could well be that Members would be able to inspect files even if the content was not part of the documentation for the hearing. This is so even if the Panel determine that the documentation be kept in Part II and not circulated to the press and public.

SECTION 3 - STATUTORY OFFICER CLEARANCE

Chief Finance Officer	<input type="checkbox"/>
Monitoring Officer	<input type="checkbox"/>

SECTION 4 - CONTACT DETAILS AND BACKGROUND PAPERS

Contact: John Robinson, Director of Corporate Governance
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Background Papers: Agreed procedures for the conduct of investigations and hearings.

IF APPROPRIATE, does the report include the following considerations?

1.	Consultation	N/A
2.	Corporate Priorities	N/A
3.	Community Safety (s17 Crime & Disorder Act 1998)	N/A
4.	Manifesto Pledge Reference Number	N/A