

MEMBERS' RIGHTS TO CONFIDENTIAL INFORMATION

A GUIDANCE NOTE FOR OFFICERS

1. Purpose of this note

To provide guidance on how to deal with requests for information from Members where the subject matter is confidential.

2. Rights of Members

Basically any Member is entitled to see any information held by the Council if the Member believes he/she needs to know that information in order to be able to better perform their duties as a Member.

This right extends to all information whether on paper or held electronically and whether sent to the Council in confidence by other persons.

However, Members are not entitled to see any information if it is requested for some other private or business reason or if it relates to a constituent who may be in conflict with the Council, unless that constituent has authorised the Member to act on their behalf.

3. What should you do if a Member asks you to show them information, which you regard as confidential or if it relates to a constituent who may be in conflict with the Council?

- a. Tell the Member you will need to first seek advice and will contact your Director or Senior Manager.
- b. Further advice is available from the Director of Legal Services or the Director Corporate Governance.
- c. Your Director or Senior Manager should contact the Member very quickly and within two days if at all possible.
- d. Members are not required to state why they need the information but any grounds given as to why it is being requested should be passed to your Director or Senior Manager.

4. Are there grounds on which Members can be refused information?

Yes. A Member must justify that they need the information to better perform their duties as a councillor and cannot ask for information for some private or business reason.

Your Director will consider whether or not the request should be refused. They will also consider whether the Member should be advised on how the information should be used.

5. Will Members know about this guidance?

Yes. They will receive similar guidance, which tells them that staff may well ask for time to consult their Director/senior manager before providing certain information.

6. Can Members then release the information publicly?

If a Member knows that the information is confidential then they may be in breach of the Members' Code of Conduct.

7. Do all Members have access to confidential (Part II) Committee reports or Portfolio Holder Decision reports?

Yes, all Members automatically have access via the intranet to all Committee reports and Portfolio Holder Decision reports, including Part II reports, and officers should bear this in mind when drafting reports. If a report contains highly sensitive/confidential information, which it is not appropriate to make available to all Members, then access to the document can be restricted to Members of the relevant Committee/the relevant Portfolio Holder only. Officers must specify this when forwarding the report to Democratic Services for processing, otherwise all Members will be able to access the document.

8. Additional guidance for Directors/Senior Managers

Whilst a Member may be entitled to see all the information they have requested, it may be the case that more information than necessary has been included in the request. It is good practice to try and meet the Member to discuss what it is they want to know and, if appropriate, help them to narrow down the requirements.

There is also a difference between allowing Members to have "access to" certain papers or files and allowing Members to take away copies. Members will usually accept that certain information needs to be handled very carefully and that they only see the papers. Again, it is good practice for the Director or a Senior Manager to be present to answer any queries.

Third parties that provide confidential information to the Council will expect that such information is not shared with anyone outside the Council (at least not without their consent). Members are part of the Council and sharing information with Members is not the same as sharing it with "outsiders". Some third parties may not understand this.

It is essential that third parties feel free to provide confidential information to the Council and have confidence in the Council not to share that information any more widely than necessary. For this reason there are some circumstances where the information may be regarded as so confidential or where a leaking of the information will cause serious harm to the Council that special arrangements may be needed. If Directors are concerned about the

level of confidentiality attached to the information, they should ask for the request to be made in writing. In addition, the need for confidentiality must be explained to the Member and confirmed in writing. The Member should then be asked to agree in writing that they would maintain this confidentiality.

This procedure is only appropriate for cases where the adverse consequences of a release of the information are regarded as likely to be very serious. Members will be advised that if information is passed in any way to others in breach of this arrangement that Member is likely to be in a very serious breach of the Members' Code of Conduct.