

MEMBERS' RIGHTS TO ACCESS INFORMATION

GUIDANCE AND PROTOCOL

(based on statutory and case law)

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 held by the Council. A protocol is provided for Members and officers to follow in relation to requests for confidential information. Further advice regarding a particular situation can be obtained from the Assistant Director of Governance.
3. General principles:
 - Councillors have wide-ranging legal rights of access to Council documents, and officers have a general duty to provide information so that Councillors can fulfil their role effectively. The Access to Information Rules section of the Constitution set out the rights and responsibilities in relation to the Council's decision-making machinery. Councillors may choose to exercise these rights through the office of their Political Assistants.
 - While Councillors have substantial legal rights to information, court cases have established that they do not have a "roving commission" and that "mere curiosity or desire" to have the information is not sufficient reason to demand it. Therefore, in some cases, Officers may ask a Councillor to establish their "need to know" the information in question by giving specific reasons for the request and stating how it is required to fulfil their duties as a Councillor.
 - Councillors should be reasonable and flexible in their expectations relating to officers providing bulky and/or complex information, recognising that compiling and reproducing documents can be a time-consuming and expensive task.
 - Information provided to Councillors should be used for purposes related to their role as Councillors, and not for personal or party political purposes unconnected with the public office to which they are elected.

RIGHTS TO ACCESS MATERIAL

4. 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 they are a Member.

5. 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.
6. In addition to the general right, any Member has a statutory right to see committee documents which contain information relating to:
 - a. business transacted at meetings of the Executive, 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 an Officer.
7. 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.
8. 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

9. 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 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.
10. 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) AND ENVIRONMENTAL INFORMATION REGULATIONS (EIR)

11. Members have the same rights as any other Member of the public to request information held by the Council under the FOIA or EIR. Any such request should be dealt with under the Council's procedure for dealing with such requests.
12. It should be noted that a political group is not part of the Council and therefore the FOIA or EIR do not apply to it.

DATA PROTECTION ACT and GDPR

13. The provisions of the Data Protection Act and the UK GDPR will apply to the disclosure to Members of 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

14. A local authority must get the consent of an individual to disclose their personal information to an elected Member.

SENSITIVE INFORMATION

15. Certain information is classified as 'special category' (sensitive) under the Data Protection Act and the UK GDPR including information about racial or ethnic origins, political opinions and religious beliefs. Express consent from the individual is required to disclose this category of information.

CARE PROCEEDINGS

16. The Family Proceedings Court Rules 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

17. 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. Members should therefore consider carefully if they can further disseminate information with which they have been provided. Doing so could be a breach of the Members' Code of Conduct.

PROTOCOL FOR REQUESTING INFORMATION

18. 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.

19. Members should be asked to make a written request to the appropriate Chief Officer for the information to be provided. The request must state the purposes for which the information is required, having regard to this guidance.
20. The Chief Officer should consider whether the information should be provided in accordance with this guidance.
21. The Chief Officer should reply to the Member in good time 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
22. Where the request is not granted and the Member is not satisfied with the reasons provided, the Member may seek advice from the Monitoring Officer on whether the refusal is justified. If the Monitoring Officer decides that the information should be provided, then the Chief Officer who has refused the information must provide it to the Member in good time.
23. 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.