

## **Part Two – Councillors**

### **Section Two – Protocol on Councillors’ Rights of Access to Information**

#### **1. Introduction**

- 1.01 The public has rights of access to documents. These are set out in Part Eight of the Constitution. This protocol concerns the additional rights of Councillors (and co-opted members of Council committees) to obtain information held by the Council, its officers, agents and contractors in order to undertake their role.
- 1.02 This protocol should be read in conjunction with the Councillor and officer codes of conduct, the Access to Information Procedure Rules and the Council’s Standing Orders.
- 1.03 This protocol does not affect Councillors’ rights to obtain information held by the Council and which is publicly available under the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or any other statutory entitlement to information or public register.

#### **2. Access to information**

- 2.01 Councillors may require information for a variety of reasons to undertake their role which includes:
- representing their constituents
  - carrying out official council duties; for example as committee members, Lead Members or Council representatives on outside bodies.

#### **3. Additional rights of access to documents for Members**

- 3.01 These rights apply to documents in the possession of or under the control of the Leadership Team (the Council’s executive) which contain material relating to any business to be transacted at a public meeting. Such documents must be available for inspection by any Councillor at least five clear working days before the meeting. Where a meeting is convened at shorter notice, such a document must be available for inspection when the meeting is convened; and where an item is added to an agenda at shorter notice, such a document must be available for inspection when the item is added to the agenda.
- 3.02 These rights do not apply to documents which disclose exempt information other than information which
- (i) relates to the financial or business affairs of any person (except to the extent that the information relates to any proposed terms of a Council contract) or
  - (ii) reveals that the Council proposes to serve a statutory notice or make a statutory order or direction.

**Additional rights of access to documents for Members of Scrutiny Committees**

- 3.03 Scrutiny committee members are entitled to a copy of any document which contains material relating to any business that has been considered at a Leadership Team meeting or a meeting of any other decision-making executive body; and/or any executive decision that has been made by an individual Lead Member or officer.
- 3.04 Where a Scrutiny member requests such a document the executive must provide it as soon as reasonably practicable and in any case no later than 10 clear days after the request is received. Where a Scrutiny member is denied a copy of a document or part of any such document, the Leadership Team or Lead Member must provide Scrutiny with a written statement setting out its reasons for that decision.
- 3.05 The above entitlement to documents does not apply to any document or part of a document which contains exempt or confidential information unless that information is relevant to:
- (i) an action or decision that that member is reviewing or scrutinising; or
  - (ii) any review contained in any programme of work of such a committee (or sub-committee).

**4. Presumption of openness**

- 4.01 In addition to the complying with the above specific rights of members, the Council operates under a presumption in favour of openness and allowing Councillors (and co-opted members of Council committees) to have access to information wherever possible.
- 4.02 There may be some occasions however when it will not be appropriate to provide members with certain information. Examples of such circumstances are:
- Confidential information that has been given to the Council
  - Personal information about an individual
  - Exempt information (on committee documents)
  - Information that includes legal advice
- 4.03 This is not an exhaustive list. The Council is obliged to take particular care when dealing with confidential information relating to the financial and business affairs of the Council and third parties and when dealing with personal data. Personal data can only be given to members where to do so is consistent with the Data Protection Act and the requirements of GDPR.
- 4.04 In circumstances where it does not seem to be appropriate to allow access to information or documents under the general principle of openness, a Councillor must demonstrate that he or she has the right to the information before it will be released. A Councillor has the right to information if he or she requires it in order to accomplish his or her work as a member. This is referred to as the ‘need to know’. The legal position is that whilst a Councillor does not have a roving commission to access any and every piece of information held by the Council they will have extensive rights where they can demonstrate a need to know in order to carry out their duties as a Councillor.

- 4.05 Usually, a Councillor will be able to show that he or she ‘needs to know’ something if the information involves that Councillor’s official council duties. It is less likely that a Councillor can prove a ‘need to know’ in relation to their activities as part of a political group or party. Generally speaking a need to know will arise where the information sought relates to a committee upon which the Councillor sits or where it is reasonably required in order to deal with a ward matter.
- 4.06 Where a Councillor’s ‘need to know’ is not obviously apparent that Councillor may be asked to explain why they want the information and the uses to which it will be put. Councillors are requested to co-operate with such requests.

## **5. Confidentiality and restrictions on the use of information**

- 5.01 Councillor who receive information from the Council have a responsibility to deal with the information in a responsible manner. Councillors must be alert to whether the information is confidential and whether it retains the quality of confidentiality.
- 5.02 Councillors should not use information obtained in the course of their official duties and which is not public information, apart from for the specific purpose of fulfilling their work as a member.
- 5.03 There are detailed provisions concerning the use of personal data by elected representatives contained in the Data Protection Act and General Data Protection Regulations (GDPR), and advice is included on the Council’s website.

## **6. Procedure**

- 6.01 Where a Councillor wishes to have access to Council information or documents a request may be made to officers in the appropriate Council service.
- 6.02 If the officer who is dealing with the request has any doubts as to whether or not information should be disclosed the matter should be referred to a senior manager for advice. Further advice to assist in the resolution of issues about access to information is available to Councillors and officers from the Information Management Team and/or from Legal Services.
- 6.03 In the event of a dispute as to a Councillor’s ‘need to know’ the decision of the Chief Executive or the Monitoring Officer shall be final.

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