

25. Members' access to information and to Council documents

Introduction

- 25.1 Members all have the ability to ask for information pursuant to their legal rights to information. This right extends to such information, explanation and advice as they may reasonably need in order to assist them in discharging their role as a Member of the Council. This can range from a request for general information about some aspect of the Council's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Head of Service or another officer of the division concerned. In cases of doubt, Members should approach the Head of Democratic Services for assistance.
- 25.2 As regards the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by common law.

Statutory Right of Access

- 25.3 Members have a statutory right to inspect any Council document which contains material relating to the business which is to be transacted by a meeting of Full Council or Committee thereof. This right applies irrespective of whether the Member is a Member of the Committee or Sub-Committee concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers. This right does not, however, apply to documents relating to certain items which may appear as confidential/exempt (pink) item on the agenda for a meeting, see appendix 1: Exempt Information – Schedule 12A Local Government Act 1972. Examples of the items in question are those which contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, the care of children, contract and industrial relations negotiations, legal advice and criminal investigations.
- 25.4 In relation to business of the Executive, by virtue of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations, 2012 (the regulations) any document:
- (a) which is in the possession/under the control of the Executive; and
 - (b) contains material relating to the business to be conducted at that meeting, that document shall be available for inspection;
- must be available for inspection by members of the Council.
- 25.5 The Regulations do not require a document to be available for inspection by member if it discloses exempt information of a description falling within exempt information (see appendix 1) subject to a document is to be available

for inspection if the information is information of a description for the time being falling within:

(a) paragraph 3 of Schedule 12A - Information relating to the financial or business affairs of any particular person (including the authority holding that information). Except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract); or

(b) paragraph 6 of Schedule 12A - Information which reveals that the authority proposes:

i) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or

ii) to make an order or direction under any enactment.

25.6 In addition a member has the same rights of access to information held by the Council under the Freedom of Information Act 2000 as a member of the public. The Act contains a number of exemptions, for example, where information is confidential, contains personal data or is commercially sensitive, it is likely to be exempt from disclosure under the Act.

Individual Members of Overview and Scrutiny Committee

25.7 In addition to the above rights, and per paragraph 23 of these Procedure Rules, the regulations provide that 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.

25.8 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. Confidential information is defined as:

i). Information provided to the local authority by a government department which has forbidden the disclosure of the information to the public; or

ii). Information which cannot be disclosed to the public by a law or court order.

Common Law (Case law determined by the Courts)

- 25.9 The common law rights of Members remains intact, are much broader and are based on the principle that any Member(s) has a prima facie right to inspect Council documents so far as his/her access to the document is reasonably necessary to enable the Member(s) properly to perform his/her duties as a Member of the Council. This principle is commonly referred to as the “need to know” principle.
- 25.10 The exercise of this common law right depends therefore, upon an individual Member being able to demonstrate that he/she has the necessary “need to know”. In this respect a Member has no right to “a roving commission” to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the “need to know”. This question must initially be determined by the particular Head of Service Manager whose Division holds the document in question (with advice from the Monitoring Officer).
- 25.11 In some circumstances (e.g. a Committee Member wishing to inspect documents relating to the business of that Committee) a Member’s “need to know” will normally be presumed. In other circumstances (e.g. a Member wishing to inspect documents which contained personal information about third parties), the Member will normally be expected to justify the request in specific terms. Furthermore, there will be a range of documents which, because of their nature are either not accessible to Members or are accessible only by the political group forming the administration and not by other political groups. An example of this latter category would be draft documents compiled in the context of emerging Council policies and draft Committee reports, the disclosure of which prematurely might be against the Council’s and the public interest.
- 25.12 Whilst the term “Council document” is very broad and includes for example, any document produced with Council resources, it is accepted by convention that a Member of one party group will not have a “need to know” and therefore, a right to inspect, a document which forms part of the internal workings of another party group.
- 25.13 Further and more detailed advice regarding Members rights to inspect Council documents may be obtained from the Monitoring Officer.
- 25.14 Finally, any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, i.e. in connection with the proper performance of the Member’s duties as a Member of the Council. Therefore, for example, early drafts of Committee reports/briefing papers are not suitable for public disclosure and should not be used other than for the purpose for which they were supplied. This point is emphasised in paragraph 3 of the Code of Local Government Conduct:-

“A Member must not:

- (a) disclose information given to him in confidence by anyone, or

information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required by law to do so; nor

- (b) prevent another person from gaining access to information to which that person is entitled by law.”

Protocol for requesting information

- 25.15 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.
- 25.16 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.
- 25.17 Where personal information is requested, the Member should complete the form attached at Appendix 2.
- 25.18 The Director should consider whether the information should be provided in accordance with the guidance above.

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.
- 25.18 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 Democratic 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.
 - 25.19 Where the Director of Legal and Democratic Services decides that the information should not be provided, the request may be referred to the Chair of the Standards Committee for consideration in consultation with the Director of Legal and Democratic Services..
 - 25.20 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.

- 25.21 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

Schedule 12A Local Government Act 1972

- 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 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 standards committee or of a sub-committee of a standards committee in reaching any finding on a matter relating to the conduct of a Councillor or Co-opted member.