

## **APPENDIX 2**

### **CODE OF CONDUCT RELATING TO MEMBERS ACCESS TO COUNCIL DOCUMENTS**

#### **1. MEMBERS' RIGHTS OF ACCESS TO COUNCIL DOCUMENTS**

- 1.1 A Councillor is entitled by virtue of his/her office to have access to all documents in the possession of the local authority of which she/he is a member provided she/he has good reason for such access. \*

#### **2. RIGHTS OF ACCESS: GENERALLY**

- 2.1 A Councillor whilst serving on the Council is entitled to see all documents relating to a matter he wishes to investigate provided he has a genuine interest in the matter in question.
- 2.2 In the case of a Councillor with a bona fide and reasonably based concern, the bias, if any, should be in favour of allowing access to information rather than concealing information.
- 2.3 Councillors must be able to do their jobs properly as a member of the Council and to perform their duties adequately on behalf of their constituents. It is unacceptable to refuse access to documents on the grounds that there are "other ways of finding out about such matters".
- 2.4 A Councillor with a legitimate ward problem may well be able to show that he has the necessary "need to know" to enable him to see Council documents that are relevant.
- 2.5 An Officer (or indeed the Council itself) in judging whether a Councillor requesting information has a right to it is entitled to know his reason for wanting it.
- 2.6 On every occasion a Councillor wishing to see files and papers will certainly need to show that the request is a proper one and give reasons for requiring the information. Any request regarding access to a personal file will require the prior consent of the person who is the subject of the file before this disclosure can be made.

#### **3. RIGHTS OF ACCESS: COMMITTEE MEMBERSHIP**

- 3.1 A Councillor as a general rule will have good reason for access to all written material relating to any Committee/Board on which he serves. So for example each member of a Social Services Committee is in general entitled by virtue of his office to see all the papers which have come into the possession of a Social Worker in the course of his duties as an employee of the Council. "There is no room for any secrecy between a Social Worker and a member of the Social Services Committee". (House of Lords decision R v Birmingham City Council, Ex parte, O).

- 3.2 An exception needs to be made for child care proceedings. All documentation relating to these proceedings is confidential. Any request for access to documentation would require a separate application to be made to the Court. Councillors should be aware that the duty of confidentiality to the child who is the subject of care proceedings is paramount and that therefore disclosure will rarely be granted.
- 3.3 A Councillor has no automatic right of access to documents of a Committee/Board of which he is not a Member.
- 3.4 To gain such access he has to establish that the information sought was needed to enable him properly to carry out his duties.
- 3.5 A Councillor is entitled to see documents of a Committee/Board on which he does not serve provided he can establish "a need to know".
- 3.6 A Councillor has no right to a roving commission to go and examine books or documents simply because he is a Councillor. Mere curiosity or desire to see and inspect documents is not enough.
- 3.7 The decision whether access to a document is to be allowed or refused is an administrative decision. The decision whether to allow access to a document is ultimately one to be taken by the Audit and Governance Committee. If the appropriate Officer of the Council refuses a request for access and if upon application to the relevant Committee/Board and, on its refusal, application to the Audit and Governance Committee is of no avail, the Councillor can in the last resort bring proceedings for judicial review. Where disclosure would involve confidential or sensitive reports, correspondence or information supplied by third parties the Chief Executive, in consultation with the Leader of the Council, shall instigate a review to consider whether the express consent of affected third parties should be obtained. Selective disclosure may be deemed appropriate in certain circumstances.
- 3.8 For the avoidance of doubt, Councillors who are not Members of a particular Committee/Sub-Committee/Board have no automatic right to remain in a meeting of a Committee/Sub-Committee/Board once a resolution has been passed under Section 100 (A) (4) of the Local Government Act 1972 excluding the press and public from the meeting. A Councillor would only be entitled to remain in the meeting if he or she had been able to establish a "need to know" as described above to the satisfaction of the Committee/Sub-Committee/Board. In these circumstances, a Councillor who is not a Member of the Committee/Sub-Committee/Board wishing to remain in a meeting following a passing of the appropriate resolution shall demonstrate the "need to know" on a report by report basis to the Chief Executive no later than the day preceding the meeting or as soon as possible. The Chief Executive will then consult the relevant Chair. This will enable due consideration to be given to the request in order that appropriate advice may be given to the Committee/Sub-Committee/Board to assist them in making the decision.

#### **4.0 RIGHTS OF ACCESS: LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

- 4.1 Of course in addition to their special powers Councillors have the same rights as any other member of the public. They have a right to see Council papers relating to any business to be transacted at a future meeting, other than those containing certain exempt information.
- 4.2 Councillors have the right to see other papers including confidential or exempt information if they can establish their "need to know" in order to perform properly their duties as Councillors and this need is not outweighed by any public interest requiring non-disclosure.
- 4.3 Councillors have the right to see the Council's accounts (or, indeed, the accounts prepared by a proper officer of the authority) and they may also take advantage of the more general right to see all books, deeds, contracts, bills, vouchers and receipts relating to the accounts.
- 4.4 Councillors have a duty not to disclose any information classified as exempt unless publicity would have occurred as a normal incidence of Council activity.
- 4.5 Rights to information will vary from Member to Member and will arise and change at different times. Each application for access must be judged on its merits taking account of the evidence and circumstances of the case.
- 4.6 The Data Protection Act 1998 extends registration and access rights and confidentiality duties to written records. Previously these controls applied only to information held on computer. The 1998 Act is not yet fully in force. The implications of the Act will need to be considered in each case.
- 4.7 A further exception will apply in relation to disclosure of reports, correspondence or information provided by third parties typically health professionals, the police or other groups or individuals who supply information to the Council often pursuant to different disclosure rules. Such third party data cannot be disclosed to Members without the express consent of the relevant third party.

<p><b>* This Protocol is intended to be gender neutral; the masculine includes the feminine and vice versa.</b></p>
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