

**To the Chair and Members of the
ELECTIONS AND DEMOCRATIC STRUCTURES COMMITTEE**

**PROTOCOL FOR DISCLOSURE OF CONFIDENTIAL OR EXEMPT
INFORMATION BY MEMBERS**

Wards Affected N/A	Relevant Overview and Scrutiny Sub-Committee (if appropriate) N/A
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Purpose

1. The purpose of this report is to seek the Committee's endorsement of a proposal to incorporate a protocol for the disclosure of confidential or exempt information by Members into the Council's Constitution.

Recommendation

2. That, subject to the views of the Standards Committee, this Committee recommends the Full Council to adopt the draft Protocol for the disclosure of confidential or exempt information by Members, as set out in Appendix 1 to this report, and that this be incorporated where appropriate into the Access to Information Procedure Rules in the Council's Constitution (Part 4 – Section II).

Background

3. Paragraph 4(a) of the revised Code of Conduct for Members prohibits the disclosure by councillors of confidential information, or information believed to be of a confidential nature, except in any of the following circumstances:
 - The member has the consent of the person authorised to give it.
 - The member is required by law to do so.
 - The disclosure is made to a third party for the purposes of obtaining professional advice (for example, a lawyer or other professional adviser) provided that person agrees not to disclose the information to any other person.
 - The disclosure is in the public interest. This is only justified in limited circumstances, when all of the following four requirements are met:
 - i) the disclosure must be reasonable
 - ii) the disclosure must be in the public interest
 - iii) the disclosure must be made in good faith

- iv) the disclosure must be made in compliance with any reasonable requirements of the authority.
4. In relation to the disclosure of confidential information in the public interest, the four requirements to be met are outlined in more detail below.
- i. The first requirement, that the disclosure must be reasonable, requires a member to consider matters such as:
 - Whether they believe that the information disclosed, and any allegation contained in it, is substantially true. If they do not believe this, the disclosure is unlikely to be reasonable.
 - Whether they make the disclosure for personal gain. If they are paid to disclose the information, the disclosure is unlikely to be reasonable.
 - The identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for a member to disclose the information to the world at large through the media.
 - The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.
 - The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.
 - The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing, or is likely to re-occur.
 - Whether the disclosure involves the member's authority failing in a duty of confidence owed to another person.
 - ii. The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future:
 - (a) A criminal offence is committed.
 - (b) The member's authority or some other person fails to comply with any legal obligation to which they are subject.
 - (c) A miscarriage of justice occurs.

- (d) The health or safety of any individual is in danger.
 - (e) The environment is likely to be damaged.
 - (f) That information tending to show any matter falling within (a) to (e) is deliberately concealed.
- iii. The third requirement, that the disclosure is made in good faith, will not be met if a member acts with an ulterior motive, for example, to achieve a party political advantage or to settle a score with a political opponent.
 - iv. The fourth requirement, that members comply with the reasonable requirements of their authority, means that before making the disclosure a member must comply with their authority's policies or protocols on matters such as whistle-blowing and confidential information. They must first raise their concerns through the appropriate channels set out in such policies or protocols.
5. In summary, to decide whether the disclosure is reasonable and in the public interest, the member may need to conduct a balancing exercise weighing up the public interest in maintaining confidentiality against any countervailing public interest favouring disclosure. This will require a careful focus on how confidential the information is, on any potentially harmful consequences of its disclosure, and on any factors which may justify its disclosure despite these potential consequences.
6. In some situations, it is extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, or where the information disclosed is protected by legal professional privilege.
7. Further guidance on the above points, including key facts and answers to frequently asked questions regarding the disclosure of confidential information is set out in a Standards Board for England Factsheet, attached at Appendix 2.

Options Considered and Reasons for Recommended Option

8. In accordance with the fourth requirement set out in paragraph 4 (iv) above, that before making any disclosure a member must, in addition to considering the first three requirements, comply with the authority's policies or protocols on matters such as whistle-blowing or member/officer relationships and confidential information, the Standards Board recommends that authorities ensure they have such policies in place to cover the possibility of a member considering a release of information, and that they take steps to ensure that all councillors are familiar with the provisions.
9. It is recommended, therefore, that this would be best dealt with by incorporating the protocol set out in Appendix 1 to this report into the Access to Information Procedure Rules in the Council's Constitution. This is effectively a revision to the Constitution and, therefore, the appropriate decision-making route and timeframe in seeking approval is as follows:

22 January 2008 – Elections & Democratic Structures Committee
6 February 2008 – Standards Committee
25 February 2008 - Full Council

Consultation

10. The views of the Council's Statutory Officers Group have been sought on the issues raised in this report.

Risks and Assumptions

11. Implementation of the draft protocol should help to minimise the risk to the authority of confidential and exempt information being released inappropriately, and therefore avoid any potentially harmful consequences of its disclosure.

Legal Implications

12. The Local Authorities (Model Code of Conduct) Order 2007 set out the model code of conduct issued by the Secretary of State under Section 50 of the Local Government Act 2000 as regards the conduct which is expected of members and co-opted members of relevant authorities.
13. Under Section 51(2) of the Local Government Act 2000, it is the duty of a relevant authority, before the end of the period of six months beginning with the day on which any subsequent order under Section 50 which applies to them is made, to pass a resolution adopting a code of conduct in place of their existing code of conduct, or revising their code of conduct. The Council passed a resolution adopting a code of conduct in place of their existing code of conduct on 18th May, 2007.
14. The draft protocol is a means to assist and promote the compliance of the code of conduct by members and co-opted members.

Financial Implications

15. There are no specific financial implications associated with this report.

Conclusions

16. The draft protocol appended to this report will meet the Standards Board's recommendation that authorities ensure they have such policies in place to cover the possibility of a member considering the release of confidential or exempt information, and that they take steps to ensure that all councillors are familiar with the provisions.
17. Appropriate and robust authority protocols can assist in ensuring the protection of confidential and exempt information where appropriate, and in promoting and upholding high ethical standards more generally.

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Background Papers

The Local Authorities (Model Code of Conduct) Order
2007
The Code of Conduct – Guide for Members May 2007,
Standards Board for England

Tal Michael
Strategic Director Policy, Partnerships and Governance

PROTOCOL

DISCLOSURE OF CONFIDENTIAL OR EXEMPT INFORMATION BY MEMBERS

Under paragraph 4 of the Members' Code of Conduct, there are only limited situations where a Member is entitled to disclose confidential information. One of these is where the disclosure is reasonable and in the public interest, and is made in good faith and in compliance with the 'reasonable requirements' of the Council. These requirements are set out below.

Where a decision has been made under these Rules to exclude public access on the basis that confidential or exempt information would otherwise be disclosed, or in any other circumstances where a Member wishes to disclose a document containing confidential or exempt information, the Council requires the Member to approach the Monitoring Officer or Deputy Monitoring Officer for a decision as to whether that information should be disclosed by taking the following steps: -

- 1) The Member must submit a request in writing to the Monitoring Officer or Deputy Monitoring Officer stating:
 - the information which he/she proposes to disclose;
 - to whom it is proposed disclosure will be made to; and
 - the rationale for its disclosure stating why they consider it to be reasonable and in the public interest to do so.
- 2) The Member should give reasonable notice of their intention to make such a disclosure (usually 5 working days notice unless exceptional circumstances apply which are set out in the request).

The Monitoring Officer or Deputy Monitoring Officer will consider whether, if the Council received a Freedom of Information request at the time, the Council would not be obliged to disclose that information. In such a case disclosure will be refused. The Monitoring Officer/Deputy Monitoring Officer in coming to his/her decision will give particular consideration to the public interest reasons for disclosure proposed by the Member, and to the Member's right of freedom of expression and the particular importance of that right for elected representatives.