

COUNCILLORS' ACCESS TO INFORMATION

General

1. The following paragraphs identify the rights of Councillors and the procedures that they must comply with when applying for access to Cabinet/Committee/Sub-Committee papers and other documents/ information. These paragraphs take into account the following:
 - Relevant legislation including the Public Bodies(Admission to Meetings) Act 1960, as amended, Local Government Act 1972, as amended; the Data Protection Act 2018 General Data Protection Regulation (GDPR); Environmental Information Regulations 2004; the Freedom of Information Act 2000; the Licensing Act 2003 (Hearings) Regulations 2005, and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (SI 2012/2089)
 - Local Government Transparency Code 2015 (see Local Government (Transparency Requirements) (England) Regulations 2015/480)
 - Open and accountable local government: plain English guide
 - Access to Information Procedure Rules (Part 4B of the Constitution)
 - Protocol on Staff-Councillor Relations (Part 5B of the Constitution)
 - Members Code of Conduct (5I of the Constitution)
 - Relevant case law
2. In principle, Councillors have the same ordinary rights of access to certain information as is enjoyed by the general public, but they also have the right to access any other information (i.e. confidential or exempt) held by the Council of which they are a Councillor provided that it is reasonably necessary to enable the Councillor to properly perform their duties as a Councillor (see "Need to Know" below). This right of additional access may not extend to the publication of or otherwise making public such information as there may be issues of confidentiality, data protection and legal professional privilege.

Access to Committee Papers for Meetings

3. The rights of Councillors can be summarised as follows:-
 - (i) Councillors enjoy the same access rights as members of the public in respect of Part A Cabinet/Committee/Sub-Committee papers.
 - (ii) Councillors of the appropriate Cabinet/ Committee/ Sub-Committee will have a good reason for access to all Part B exempt information on the respective Cabinet/ Committee/ Sub-Committee agenda under the "Need to Know" principles (see below).
 - (iii) Councillors of the Scrutiny and Overview Committee will have a prima facie "Need to Know" where they require access to Part B Cabinet agenda items as part of their scrutiny function provided the subject matter is within the Committee/ Sub-Committee's terms of reference.
 - (iv) All other Members who require access to confidential/ exempt Cabinet/Committee/ Sub-Committee documentation will need to request disclosure under the Freedom of Information Act 2000 or Environmental

Information Regulations 2004 or demonstrate a “Need to Know” by complying with the principles set out below.

Access to Other Documents/Information – “The Need to Know”

4. It is important to note that in some cases access to information to which the public is not entitled only applies where Councillors are clearly carrying out their role as elected representatives. Where a Councillor has a financial or personal interest in a matter the Councillor will only be entitled to the same access as would be the case for a private individual. In these circumstances, the Councillor must make it clear that they are acting in their private capacity and not as a Councillor. Failure to do so may have a bearing on a Councillors duties under the Member Code of Conduct and the Protocol for Staff Officer Relations.
5. Under common law principles Councillors have the right to access information held by the Council where it is reasonably necessary to enable the Councillor to properly perform their duties as a Councillor. This is known as the “Need to Know”. This means that information must not be used for party political purposes, as set out in the Code of Recommended Practice on Local Authority Publicity.
6. The common law “Need to Know” is the prima facie right of Councillors to inspect documents of the authority which exist, as Councillors are under a duty to keep themselves informed of Council business which relate to their role as elected representatives. Thus, this right applies to Councillors who do not have statutory rights to exempt or confidential information and to other documents held by the Council under local government legislation, the Freedom of Information Act 2000 or data protection legislation including the Data Protection Act 2018.
7. For example, a Councillor is likely to have a prima facie “Need to Know” where they have a legitimate Ward problem and access is needed to the documents that are relevant to that specific problem. Another example would be a Cabinet Member whose Portfolio covers the matter in question, requiring them to be aware of what is occurring for the purpose of their Cabinet position.
8. A further example would be a Scrutiny & Overview Committee requiring access to information to inform a scrutiny review. Any request from scrutiny for to access confidential information should be made by the Chair of the respective Scrutiny Committee/Sub-Committee via the Council’s Statutory Scrutiny Officer and will need to confirm why it is required.
9. Access to information on the basis of a ‘Need to Know’ does not exist where the Councillor is considered to be “fishing” for information or seeks access for an ulterior/improper purpose (e.g. for a private purpose). Case law has established that mere idle curiosity as to what is in the documentation will not be sufficient.
10. It should be noted that some material (for example, exempt information such as that relating to financial or commercial interests) may be redacted from any information that is disclosed, if this does not affect the ability of a Councillor to exercise their role as an elected representative.
11. There will also be a range of documents which, because of their nature are either not accessible by Councillors (such as the personal records of an individual) or are accessible only by the political group forming the administration and not by the Councillors of other political groups. An example of this latter category could be draft documents compiled in the context of emerging Council policies and draft Committee

reports, the premature disclosure of which might be against both the Council's and the public interest.

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 Councillor of one political 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 political group, for instance relating to the process of policy development.

Use of Council Information – Confidentiality

13. Procedural Rules and specific local procedures (e.g. on contracts) require Councillors and officers to maintain confidentiality in certain circumstances. Officers are bound by their contracts of employment and an interaction with a Councillor which leads to a breach of confidentiality will almost certainly lead to disciplinary action. The expected behaviour of both Councillors and Officers is set out in the Protocol for Staff-Councillor Relations (Section 5B of the Council Constitution) and should be used as the basis for the interaction between Councillors and Officers when requesting information.
14. Officers must distinguish between assisting an elected representative in the course of the Councillor's council business and dealing with the same person as a client or customer, e.g. a Housing Benefit claimant. In the latter case, Officers will treat the Councillor with the same degree of helpfulness, courtesy and confidentiality as would be afforded to any other member of the public in the same situation, and interpret the relevant rules and procedures as they would for any other client or customer.
15. Equally, any council information provided to a Councillor on the basis of a 'Need to Know' must only be used by the Councillor for the purpose for which it was provided, i.e. in connection with the proper performance of the Councillor's duties as an elected representative of the Council. Confidential or exempt information provided to Councillors may be discussed in Part B Committee meetings or in informal meetings of appropriate Councillors and Officers. However, it should not be discussed with, or released to, any other persons. Any information that is provided should be clearly marked as confidential before it is released to Councillors.
16. In cases where a Councillor discloses information given to him/her in confidence by anyone, or information acquired by the Councillor which they believe, or ought reasonably to be aware, is of a confidential nature then that Councillor may find themselves the subject of a complaint that they have contravened the Code of Conduct for Members.
17. Similarly, the unauthorised disclosure of confidential or exempt information is regarded by the authority as a serious disciplinary offence for Officers. This includes an unauthorised disclosure to a Councillor. For further information see the Protocol for Staff-Councillor Relations.
18. Any request from a Councillor for information will be treated by Officers in the same confidence as any other member of the public and will not be made known to any other Councillor or political group. Officers are also under a duty not to relate any information disclosed privately by a Councillor(s) (e.g. during Part B discussions at Committee, informal briefings etc.) to another Councillor, Officer or person not already privy to that information.

19. The duty of officers to observe a Councillor's confidence however will not apply if the information disclosed relates to something which could severely damage the Council or which is illegal or constitutes maladministration. In this event the matter will be referred to the appropriate Corporate Director and/or Monitoring Officer and Chief Executive for further investigation and action as appropriate. It would also be expected that officers would seek advice from their senior officers as part of any query they may have on their interaction with a Councillor.
20. In case of a decision made by an individual executive member or officer, a councillor can inspect the document within 24 hours of the conclusion of the meeting or the decision being made. In addition, if as a member of an Scrutiny and Overview committee, a councillor can ask for any document that contains business transacted at a meeting of the executive, its committees or sub-committees or officer of the authority and the executive must provide the document within 10 days after it (the executive) receives the request. In an instance where the executive cannot release the whole or part of the document, the executive must provide the councillor with a written explanation.

If in doubt, Members should seek advice from the Monitoring Officer regarding any duties, obligations or requirements which arise as a result of access to information.