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| REPORT TO: | Ethics Committee 26 May 2021 |
| SUBJECT: | Access to Information Protocol |
| LEAD OFFICER: | Asmat Hussain – Interim Executive Director of Resources and Deputy Monitoring Officer |
| WARDS: | All |
| PUBLIC/EXEMPT: | Public |
| SUMMARY OF REPORT: | |
| The purpose of this report is to set out a protocol that can be adopted by the Council to clarify the rights of Members to access information held by the Council. | |
| CORPORATE PRIORITIES 2020 - 2024 | |
| The issue of Councillors being able to access the information they require to fulfil their roles effectively has been identified as part of the Croydon Renewal Plan. | |
| The purpose of the Access to Information Protocol is to clarify the rights of Members to access information held by the Council and to set out the expectations of officers responding to requests. | |
| FINANCIAL IMPACT: | |
| There are no direct financial implication arising from the Access to Information Protocol. However, the protocol will help manage the time of both Members and officers by clarifying the process. | |
| RECOMMENDATIONS: | |
| The Ethics Committee is asked to:- | |
| 1.1 Endorse the Access to Information Protocol. | |
| 1.2 Agree that the Protocol will be placed in the Members Handbook as a reference point for Members. | |
| 1.3 Note that the Interim Executive Director of Resources will arrange a briefing for all Members on the implications and operation of the protocol. | |

2. ACCESS TO INFORMATION PROTOCOL

- 2.1 Councillors from both Groups have expressed concern about their ability to access information held by the Council, which would assist them in their role as elected Members. This was highlighted in both the Governance Review (completed in 2020) and the Centre for Governance and Scrutiny's review of the Council's scrutiny function (completed March 2021).
- 2.2 These concerns about Members ability to access information were also reflected in the Report in the Public Interest issued by the Council's External Auditor, Grant

Thornton, in September 2020, resulting in it being incorporated as an action in the Croydon Renewal Plan.

- 2.3 At present the rights of a Councillor to request access to information held by the Council are set out in the Council's Constitution under the following sections:
 - Access to Information Procedure Rules (Part 4B of the Constitution)
 - Protocol on Staff Councillor Relations (Part 5B of the Constitution)
- 2.4 Given the feedback from Councillors, it has become apparent that there is a lack of clarity amongst Members on their rights to access information. As such it was decided that Access to Information Protocol would be created to clarify the existing access arrangements available in the Council's Constitution. A draft of the Protocol is attached as Appendix A to this report.
- 2.5 In addition to Sections 4B and 5B in the Council's Constitution, the Protocol has been written with regard to relevant legislation and case law, as outlined in the introduction of the Protocol. It has also been informed by guidance produced by the Local Government Association and the Centre for Governance & Scrutiny.
- 2.6 The Ethics Committee is asked to give its endorsement to the Protocol. Providing the Committee's endorsement is given, it is proposed that the Protocol would be incorporated into the Members Handbook as a reference for Members going forward. It is also recommended that the Ethics Committee notes that a briefing for Members on Access to Information will be arranged and that it be incorporated into any future training on the Code of Conduct and the Staff Councillor Protocol.

3. CONSULTATION

- 3.1 The Protocol is being presented to the Ethic Committee for its feedback and endorsement before it is rolled out to all Members.

4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 4.1 **Revenue and Capital consequences of report recommendations**
- 4.2 There are no financial consequences as a result of the report recommendations.

5. LEGAL CONSIDERATIONS

- 5.1 The Head of Litigation and Corporate Law comments on behalf of the Director of Law and Governance that Part 4B of the Council's Constitution details access to information requirements which apply to the Council and its meetings.
- 5.2 Section 100F Local Government Act 1972 (as amended) ("the 1972 Act") provides that any document which is in the possession or under the control of a principal council and contains material relating to any business to be transacted at a meeting of the

council or a committee or sub-committee of the council shall be open to inspection by any member of the council.

- 5.3 This does not require the document to be open to inspection if it appears to the proper officer (being the officer designated by the authority for these purposes) that it discloses exempt information although the document may still have to be open to inspection if the information is information of a description for the time being falling within the following descriptions:
- 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
 - 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.
- 5.4 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 make provision in relation to the access to information pertaining to executive decision making. This includes setting out the additional rights of local authority members and members of overview and scrutiny committees to access documents (Part 5) and general provisions relating to information, such as the information which is exempt from disclosure (which includes advice from a political adviser).
- 5.5 Members can, like a member of the general public, also resort to The Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
- 5.6 The Local Audit and Accountability Act makes provision in relation to the rights of objection, inspection and questioning of the local auditor in relation to local authority accounts.
- 5.7 Under common law principles councillors have the right to access information held by their authority where it is reasonably necessary to enable the member to properly perform their duties as a councillor.
- 5.8 However, if the councillor's motive for seeing documents is indirect, improper or ulterior this may be raised as a bar to their entitlement. Councillors are not, therefore, allowed to go off on a 'fishing expedition' through their council's documents. If a councillor is a member of a particular committee or sub-committee, then they have the right to inspect documents relating to the business of that committee or sub-committee. If not a member of that committee or sub-committee, the councillor would have to show good cause why sight of them is necessary to perform their duties (See *R v. Clerk to Lancashire Police Committee ex parte Hook* [1980] Q.B. 603).
- 5.9 A member must not disclose information given to them in confidence nor disclose information acquired which they believe is of a confidential nature, unless they: a) have received the consent of a person authorised to give it; or b) are required by law to do so. If information is accessed using the Freedom of Information / Environmental Information Regulations provisions the information can be regarded as public and the

Member may share the information with others. If on the other hand the Member has accessed the information via the provisions of the 1972 Act or the common law 'need to know' then in some cases the information may still be confidential and the Member will be bound by confidentiality. In that case Members should not publish or otherwise disclose the information to a third party.

Approved by Sandra Herbert, Head of Litigation and Corporate Law on behalf of the Director of Law and Governance & Deputy Monitoring Officer

6 HUMAN RESOURCES IMPACT

- 6.1. There are no direct human resources impacts as a consequence of this report and its recommendations
- 6.2. Approved by: Sue Moorman on behalf of the Director of Human Resources

7 EQUALITIES IMPACT

- 7.1 There is no equalities impact arising from the consideration of this report. We will take steps to ensure information to Members is accessible in relation to language and formats where possible
- 7.2 Approved by: *Yvonne Okiyo, Equalities Manager*

8 ENVIRONMENTAL IMPACT

- 8.1 There is no environmental impact arising from the consideration of this report.

9 CRIME AND DISORDER REDUCTION IMPACT

- 9.1 There is no crime and disorder impact arising from the consideration of this report

10 DATA PROTECTION IMPLICATIONS

- 10.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**
NO

- 10.2 **HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?**
NO - The subject matter of this report does not directly have any data protection implications from the consideration of the report.
The actual process of administering access to information may have data protection implications, but these will need to be assessed on a case by case basis when requests are made.

- 10.3 Approved by Asmat Hussain – Interim Executive Director for Resources

CONTACT OFFICER: Simon Trevaskis – Senior Democratic Services & Governance Officer – Scrutiny.

APPENDICES TO THIS REPORT

Appendix A: Draft Access to Information Protocol

BACKGROUND DOCUMENTS:

None