

## PART 5 - CODES AND PROTOCOLS

### 1. Protocol for Councillors Rights to Information

In principle, councillors have, in addition to the ordinary rights of access to information enjoyed by the general public, the right to access any information held by the council of which they are a member. This right of access may not extend to publishing or otherwise making public such information and, indeed, councillors may be asked to sign a confidentiality undertaking before being provided with certain information.

#### The statutory position

[Section 100F Local Government Act 1972](#) (as amended) (the 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.

This does not require the document to be open to inspection if it appears to the Proper Officer that it discloses exempt information under [Schedule 12A](#) of the Act. However, under the [Local Government \(Access to Information\) \(Variation\) Order 2006](#), the document will still be open to inspection by members if it contains the following:

- (a) 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) 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.

[The Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\)\(England\) Regulations 2012](#) (the Regulations) apply to local authorities in England that operate executive arrangements under [Part 1A Local Government Act 2000](#), as amended by s.21 and Schedule 2 of the Localism Act 2011. The Regulations:

- (a) clarify and extend the circumstances in which executive decisions are public. There is a presumption that a meeting will be open to the public unless the nature of the business being transacted would result in confidential information being disclosed
- (b) make provision for the publicity that must be given before a Key Decision is taken by the Executive and for the inclusion of prescribed information in a written statement of the Executive decision
- (c) set out additional rights of members generally, and members of overview and scrutiny committees in particular, to access documents; and general provisions relating to information that is exempt from disclosure (including advice from a political adviser)

#### All Members

Regulation 16 contains rights for any member to access documents that:

- (a) are in the possession or under the control of the Executive; and

- (b) contain material relating to any business to be transacted at a public meeting.

Any such document must be available for inspection for at least five clear days before the meeting, except that:

- (a) where the meeting is convened at shorter notice, such a document must be available for inspection when the meeting is convened; and
- (b) where an item is added to the agenda at shorter notice, a document that would be required to be available in relation to that item, must be available for inspection when the item is added to the agenda.

Any document which:

- (a) is in the possession or under the control of the Executive and
- (b) contains material relating to:
  - (i) any business transacted at a private meeting;
  - (ii) any decision made by an individual member in accordance with executive arrangements; or
  - (iii) any decision made by an officer in accordance with executive arrangements

must be available for inspection by any member when the meeting concludes or, where an Executive decision is made by an individual member or an officer, immediately after the decision is made. Any such document must be available for such inspection, in any event, within 24 hours of the conclusion of the meeting or the decision being made.

Neither of these provisions applies if it discloses exempt information. However, the document will still be open to inspection if it contains:

- (a) Information relating to the financial or business affairs of any 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) Information which reveals that the authority proposes:
  - (i) to give a notice under which requirements are imposed on a person; or
  - (ii) to make an order or direction

All agendas, reports and other documents and proceedings of committees and sub-committees shall be treated as confidential and shall not be disclosed unless and until they become public in the ordinary course of the council's business.

### **Overview and Scrutiny Members**

Regulation 17 provides additional rights of access for members of overview and scrutiny committees who are entitled to a copy of any document that:

- (a) is in the possession or under the control of the Executive; and
- (b) contains material relating to:
  - (i) any business that has been transacted at a meeting of a decision-making body of the authority;
  - (ii) any decision that has been made by an individual member of the Executive; or
  - (iii) any decision that has been made by an officer in accordance with Executive arrangements.

The Executive must provide that document as soon as reasonably practicable and in any case no later than 10 clear days after it receives the request.

No member of an overview and scrutiny committee is entitled to a copy:

- (a) of any document or part of a document that contains exempt or confidential information unless that information is relevant to:
  - (i) an action or decision that the member is reviewing or scrutinising; or
  - (ii) any review contained in any programme of work of such a committee or sub-committee of such a committee; or
- (b) of a document or part of a document containing advice provided by a political adviser or assistant.

Where the Executive determines to refuse such a request it must provide the overview and scrutiny committee with a written statement setting out its reasons for that decision.

## **FOIA and EIA**

Local councillors can, like a member of the general public, also resort to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. The Information Commissioner's Office provides two very helpful publications; first, the [Guide to Freedom of Information](#) and second, the [Guide to the Environmental Information](#). In addition, there is detailed guidance on the exemptions that may be applicable.

## **Local authority accounts**

The [Local Audit and Accountability Act 2014](#), and the [Accounts and Audit Regulations 2015](#) provide a right to inspect, question and make objections to the council's auditor, take copies of statements of accounts and auditors' reports. These rights are explained fully in the [National Audit Office guidance](#), but are restricted to prevent access to documents containing personal information about staff.

In addition, [s.228\(3\) of the Act](#) provides that "The accounts of a local authority and of any proper officer of a local authority shall be open to the inspection of any member of the authority, and any such member may make a copy of or extract from the accounts".

## **The common law 'need to know'**

Under common law principles, all members have the right to access information held by their authority where it is reasonably necessary to enable them to properly perform their duties as a councillor.

However, if the member's motive for seeing documents is indirect, improper or ulterior, this may be raised as a bar to their entitlement. Members are not, therefore, allowed to go 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.