

Guidance to Members on the Disclosure of Confidential Information

The Standards Committee offers members the following guidance in dealing with confidential information.

- 1 The Code of Conduct provides that councillors must not disclose information given to them in confidence by anyone or information acquired by them which they believe or ought reasonably to be aware is of a confidential nature. This applies to information contained in reports considered under Part 2 of the agenda, information of a confidential nature given to members by other members or officers and information given to a member by anybody else where the information is given to and received by the member in their capacity as a councillor.
- 2 There are four exemptions to this duty of confidentiality.
- 3 The first exemption is where the member has the consent of a person authorised to give it. This in effect means that the member has the permission of the person to whom the duty of confidentiality is owed to divulge the information to third parties.
- 4 The second exemption is where the member is required by law to disclose the information. Clearly this would apply where information is requested by a person with a statutory authority to require it. (This would cover for example benefit fraud inspectors). However, the First Tier Tribunal Local Government Standards in England have placed a gloss on this by saying that members have a duty to report any suspected crimes to the Police. It has held that such disclosures (even where there is no reasonable basis for suspecting a crime has been committed) do not breach the duty of confidentiality.
- 5 The third exemption is where the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person. Members should note that such disclosure may only be for the purpose of obtaining professional advice. Members are recommended to ensure that they have an audit trail showing that the advisor was aware of the duty and had agreed to be bound by it.
- 6 The final exemption is that the disclosure is:
 - a) Reasonable and in the public interest and
 - b) Made in good faith and in compliance with the reasonable requirements of the authority.
- 7 Standards for England have issued guidance on the application of this exemption.

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- 8 Based on such guidance in determining the question of reasonableness factors which the committee would take into consideration when determining a complaint are:
- a) Is the information true?
 - b) Does the member stand to gain by making a disclosure?
 - c) Who is the disclosure being made to? (Disclosure to the police or a regulator is more likely to be reasonable than a disclosure to the world at large through the media).
 - d) The extent of the information being disclosed. (The disclosure of unnecessary details and in particular personal data is more likely to be unreasonable).
 - e) The seriousness of the matter. (The more serious the matter the more likely it is that disclosure will be justifiable).
 - f) Timing. (If events have occurred and are unlikely to reoccur it is less likely to be reasonable to make a disclosure than if the events were continuing or likely to recur).
 - g) Whether the disclosure would place the authority in breach of a duty of confidentiality owed to another.
- 9 On the issue of public interest, the factors which the committee would consider are:
- a) Whether or not the information disclosed related to a criminal offence.
 - b) Whether there was a failure to comply with a legal obligation.
 - c) Whether there had been a miscarriage of justice.
 - d) Whether there were threats to health or safety.
 - e) Whether there was a risk of damage to the environment.
 - f) Whether there was information which tended to show that any of the factors set out in paragraphs a) to e) above are concealed.
- 10 In determining whether the disclosure is made in good faith the factors to be considered by the Standards Committee would be:
- a) Whether there was an ulterior motive.
 - b) Whether disclosure was made with a view to securing a party political advantage.
 - c) Whether the disclosure was made to settle old scores.
 - d) Whether the disclosure was made with a view to personal gain.
- 11 Members are reminded that the council has a whistle-blowing procedure. Members should consider therefore raising concerns through the appropriate channels before disclosing confidential information to third parties.
- 12 In deciding whether disclosure is reasonable and in the public interest it is necessary to conduct a balancing exercise weighing up the public interest in maintaining confidentiality against the public interest favouring disclosure. This

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requires a careful focus on how confidential the information is, on any potential harmful consequences of disclosure and on any factors which may justify its disclosure despite the potential consequences.

- 13 Members should be aware that in certain circumstances disclosure of confidential information could interfere with the process of an investigation. The disclosure of confidential information may also leave a member facing an allegation of a breach of the Code of Conduct.
- 14 In the circumstances the Standards Committee strongly recommends that any member who is considering disclosing information received in confidence should seek advice before doing so. Such advice may be obtained from the Chief Executive, Section 151 Officer or Monitoring Officer. However, members may seek advice from external professionals using the exemption referred to at paragraph 5 above.