

**Subject:** *Guidance to Members on Confidential Information*  
**Date of Meeting:** **19 January 2010**  
**Report of:** *Director of Strategy & Governance*  
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**Wards Affected:** All

**FOR GENERAL RELEASE****1. SUMMARY AND POLICY CONTEXT:**

- 1.1 In September 2007, guidance on confidential information was issued to Members and Officers outlining the legal position and to reflect the revised Code of Conduct for Members. The Guidance is attached as Appendix 1.
- 1.2 This report seeks to update the guidance to take account of some recent decisions of the Adjudication Panel for England. It was considered by the Governance Committee on 17 November and the extracts from its proceedings are attached as Appendix 2.

**2. RECOMMENDATIONS:**

- 2.1 That Members note the principles summarised in paragraph 3.3 and approve the revised guidance incorporating those points as indicated in the document in Appendix 1.
- 2.3 That a copy of the revised guidance be circulated to all Members following approval by the Committee.

**3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

- 3.1 A combination of national legislation and the Council's policies mean that there is always a presumption in favour of openness and transparency. However, there are circumstances when the business interests of the council (and ultimately the public) or the protection of individuals requires that the confidentiality of some information is respected. This is recognised in law and the Code of Conduct for Members imposes a duty not to disclose confidential information.
- 3.2 In 2007, guidance was issued to Members outlining the legal position and making some practical suggestions (attached as Appendix 1.) Although the overall level of compliance with the duty of confidentiality among Members and Officers in the Council remains high, there have been some instances

where information of a confidential nature was disclosed without authority. Some of these include information relating to the Waste PFI contract, terms of retirement of some officers and matters relating to industrial relations. In most cases, it is not possible to ascertain how confidential information is disclosed without authority but the Council will continue to remind Members and Officers of their obligations under the law and relevant Codes of Conduct.

3.3 The Adjudication Panel for England in recent years heard two cases: a North Dorset case involving a planning matter and a West Somerset case involving the disclosure of terms of retirement of the Chief Executive. The principles emerging from these cases are:

- (1) The fact that information given in confidence has been improperly made public does not mean that it loses its confidential nature and can thereafter be recited in public with impunity. It is a breach of the code to disclose information of a confidential nature however it is acquired;
- (2) There is a public interest in Councils being able to rely on confidential information remaining so where the proper process has been followed. This would for example be the case where Members unanimously resolve that an item should remain exempt from disclosure;
- (3) The legitimate expectations of third parties about the information being kept confidential are an important relevant factor when considering whether the disclosure is reasonable;
- (4) In looking at whether disclosure is reasonable and in the public interest for the purposes of the code of conduct for Members, one has to take account of the Human Rights Act. In particular, article 10 (right to freedom of expression) and article 8 (right to respect for private and family life, home and correspondence.) Any interference with the public interest in disclosure has to be balanced against the interference with the right of the individual to respect for their private life. Neither article 8 nor article 10 has any pre-eminence over the other.

3.4 Although the above principles may be implicitly recognised in the current guidance, it would be useful to have them referred to in the section on Members' duty of confidentiality and the "public interest" exemption. A revised draft with the suggested amendments in bold and underlined is attached in Appendix 1. It is proposed that, subject to Members' agreement the revised draft incorporating these principles is circulated to Members.

3.5 The proposals in this report were considered by the Governance Committee on 17 November. The Committee supported the proposed changes. Extracts from the proceedings of the Committee are attached as Appendix 2.

#### **4. CONSULTATION:**

- 4.1 The proposals in the report are simply updating the current guidance to reflect case Tribunal decisions. There has therefore not been any prior consultation with Members.

#### **5. FINANCIAL & OTHER IMPLICATIONS:**

##### 5.1 Financial Implications:

There are no financial implications arising from this report.

##### 5.2 Legal Implications:

These are incorporated in the body of the report and the guidance itself.

*Lawyer consulted: Abraham Ghebre-Ghiorghis          Date: 05/11/09*

##### 5.3 Equalities Implications:

There are no equalities implications directly arising from this report.

##### 5.4 Sustainability Implications:

There are no sustainability implications arising from the report.

##### 5.5 Crime & Disorder Implications:

In some cases the disclosure of confidential information or the obstruction of access to information may constitute an offence. The guidance will contribute to minimising such risks.

##### 5.6 Risk and Opportunity Management Implications:

None.

##### 5.7 Corporate / Citywide Implications:

The proposals will contribute towards continuous development and improvement of our governance arrangements and higher ethical standards reflecting the Council's priority regarding Leadership.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Guidance regarding Confidential Information.

### **Documents In Members' Rooms:**

None.

### **Background Documents:**

None.