PROTOCOL ON MEMBERS RIGHTS OF ACCESS TO INFORMATION AND DOCUMENTS

Introduction

1 Members may ask any Council Service to provide them with information, explanation and advice so that they can carry out their role as councillors. This can range from a request for general information about some aspect of a Service's activities to a request for specific information on behalf of a constituent.

2 In addition to general information, explanation and advice Members may also seek access to specific documentation held by the Council, its Officers or Cabinet and have a number of common law, statutory and constitutional rights for that purpose.

3 Any consideration of Member's rights of access to information and documents must take into account the general rights available to any person under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

The Purpose of the Protocol

4 The purpose of the protocol in paragraph 10 is to help clarify for members what they are entitled to see, and how to go about seeing it, and to give officers clear guidelines about the members rights particularly in the light of the constitutional arrangements, and the role of scrutiny. Whilst not in any way seeking to limit member's rights, it also seeks to avoid any unnecessary cost and use of Council resources in dealing with every request for information under the Freedom of Information Act.

5 The Council will continue to monitor arrangements to make sure that members get to know information in a timely and appropriate manner.

The Legal Position – Statutory Powers

6 These are set out in the Appendix but briefly mean that:-

6.1 Any member can see documents which contain information relating to the public and private meetings of the Cabinet, meetings of the Council and its Committees, any decision to be taken by an individual member of the Cabinet and any key decision made by an Officer. This statutory right does not extend to certain categories of exempt and confidential information.

6.2 All members of a Scrutiny Committee have a right to copies of documents which contain information relating to the public and private meetings of the Cabinet, any decision to be taken by an individual member of the Cabinet and

any key decision made by an Officer. However, they are only entitled to a copy of a document containing exempt and confidential information where the information is relevant to an action or decision which the member is reviewing or scrutinising or which is relevant to any review contained in a work programme of the Committee or Review Panel.

6.3 Members have rights in relation to the accounts of the Council under section 228 of the Local Government Act 1972

6.4 Members have the same rights to information as any member of the public under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 subject to the exemptions and exceptions in that legislation.

The Legal Position - The Common Law Position

7 At common law any member has a prima facie right to inspect any Council documents if access to the documents is reasonably necessary to enable the member properly to perform their duties as a member of the Council. This principle is commonly referred to as the "need to know" principle.

8 The exercise of this common law right depends upon the member's ability to demonstrate a "need to know". In this respect, a member does not have "a roving commission" to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is whether there is a "need to know". More guidance on this principal is contained in a separate guidance note.

Data Protection

9 Data protection legislation restricts the processing of information relating to individuals. As a result, any such information cannot be shared without the agreement of that individual or unless one of the legal exemptions applies.

Protocol for Access to Documents

10 Against this background the Council has agreed the following protocol:-

10.1 Where a Member has a clear right of access, as available to any member of the public, to the documents required under Rule 6, Rule 8 or Rule 9.2 of the Access to Information Procedure Rules the documents will be supplied.

10.2 If the documents are not available under paragraph 10.1 the Member shall if appropriate request the material under Rule 18 of the Access to Information Procedure Rules. This rule gives a right to inspect documents relating to business transacted or to be transacted at a meeting of the Council or committee, and to inspect documents relating to business transacted at a decision making meeting of the Cabinet after that meeting.

10.2 If the documents are not available under paragraph 10.2 the Member shall if appropriate request the material under Rule 17 of the Access to Information Procedure Rules. This rule gives a member of a scrutiny committee a right to inspect documents relevant to the work of that committee.

10.3 If none of the foregoing routes are available a formal request should be made to a relevant Senior Officer and in this the Member should:-

10.3.1 identify what they wish to see;

10.3.2 indicate whether they are asserting a 'need to know' (see paragraphs 0 and 0 above) and if so state the reason(s) that they need to see the material (members should carefully consider the guidance before doing so); and

10.3.3 make it clear whether they have a personal interest in the matter (as defined in the Members' Code of Conduct) and if so what it is.

10.3.4 If asserting a need to know, whether they wish the request to be formally considered under the Freedom of Information Act in the event that the 'need to know' is not accepted. Members are encouraged not to invoke Freedom of Information unnecessarily in circumstances where the material is unlikely to be suitable for general publication e.g. because of commercial confidentiality

10.4 The Officer is entitled to ask the member to make this request in writing if he or she is in any doubt about any of these matters, and may at any time seek further clarification.

10.5 The Officer receiving the request should make an initial assessment where appropriate as to whether the request should be considered initially under Freedom of Information or the 'need to know'. The Officer may consult the Monitoring Officer or Information Management Services for advice. The purpose of this stage is to ensure that:

10.5.1 Where it is likely that material can be made available under the 'need to know' basis restricted disclosure may be offered to the Member without incurring the cost of a full Freedom of Information assessment

10.5.2 Where it is likely that the material would not be exempt under Freedom of Information full disclosure may be given without incurring the cost of deciding whether 'need to know' has been established

10.6 Where the 'need to know' is being considered an officer who is in any reasonable doubt regarding the release of the information will consult the Monitoring Officer for advice.

10.7 If, after receiving this advice, it is not considered appropriate to release the information either because:-

10.7.1 the member has not established a need to see it or

10.7.2 because the Officer has other concerns (for example the Councillor has personal interest in the matter, the information is commercially or otherwise sensitive, or the amount of work involved in identifying and producing the information is considered to be excessive) and the member takes a different view, the matter will be referred to the Monitoring Officer, who may consult the relevant Group Leader before making a decision.

10.8 Any information provided under the 'need to know' must be only used in connection with the members' duties as a Councillor, e.g. speaking at a relevant Committee or at full Council. Information not already in the public domain should not be divulged by the Member to third parties (including the press) unless and until it enters the public domain e.g. by discussion at a meeting where the public have not been excluded, nor should information be used improperly. Where information has been provided under 'need to know' subject to specific restrictions on its use, officers will use best endeavours to advise the Member if and when the need for those restrictions ceases.

10.9 If it is decided that a 'need to know' has not been established the Member will retain the right (notwithstanding paragraph 0 above) to invoke the Freedom of Information Act. The time for answering the request under the Act will start to run from the date of refusal under 'right to know' in cases where the Member has initially agreed not to invoke the Act.

10.10 Where Freedom of Information is being considered this will be done in accordance with the Council's normal Freedom of Information procedures since under Freedom of Information Members have no special status

10.11 If disclosure under Freedom of Information is refused the Member will retain the right (notwithstanding paragraph 0 above) to invoke the 'need to know'.

10.12 Finally, the effect of the Data Protection legislation is that information relating to an individual should not be provided unless either the individual has agreed to its release or one of the legal exemptions applies. As a result, any member wishing to obtain access to personal information should first seek that persons consent. If that consent is not given, or there is a difficulty with requesting it, then legal advice should be sought.

Protocol for Access to Other Information

11 The protocol in the previous section relates to Members' legal rights of access to documents. Many Member enquiries may not require consideration of these rights at all or in part. The enquiry may be for general information, explanation and advice about Council activities. Members need to be aware when making such requests that the legal rights referred to above do not strictly apply to such requests. Nevertheless all parties accept that the effective and efficient governance of the Council requires that such enquiries require appropriate and timely response.

12 The mechanics of responding to requests from Members is dealt with in a separate correspondence protocol.

13 Subject to the following paragraph the appropriate officer will respond to such requests in such a manner that such that the Member has sufficient information to be able to take an informed view and so as to be able to carry out their duties as a Councillor. Technical or professional advice will be given on an impartial basis.

14 Responding to requests for information from Members will be subject to the following limitations:

14.1 No information or advice will be given which contains information which would not have been disclosed as part of an existing record under the protocol in paragraph 10 above

14.2 Where the amount of work, research or consultation required to provide an answer to a Member would be disproportionate having regard to the nature of the enquiry the appropriate officer may decline to give a full and complete response. In the event of any dispute as to the amount of work which may be reasonable the matter will be referred to the Monitoring Officer for a decision as to whether the work required is disproportionate.