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Part 8 Codes and Protocols

8.4 Protocol on Member Access to Information and Council Documents

1. Introduction

1.1 It is a key feature of effective working and decision making in local authorities that Members should have access to necessary information in a form which is accessible and provided to them in a timely manner. North Tyneside Council has a general practice of openness and transparency about the information it holds. This is subject to some legal rules that affect the disclosure of information in some circumstances, and guidance about access is set out below.

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1.2 If Members need information to assist them with a particular enquiry or piece of work, it is helpful if the request is made at the earliest opportunity. This will enable Officers to provide the information within a reasonable time scale. It will not always be possible to respond immediately to requests for information. If matters are particularly urgent it is helpful if that is made clear. Where a request for information is pursued through the Members' Enquiry System then the system's response times will apply. Where a request for information is pursued outside of the system then the Officer must agree a reasonable response time with the Member concerned.

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1.3 Thought should also be given to the nature and scope of any information being requested. Where that information might not be easily and readily available, or might take considerable time or effort or expertise to collate and provide, an initial discussion with the relevant Officer (i.e. prior to any formal request) is both sensible and reasonable.

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1.4 A Member can ask any Directorate to give you information on that Directorate's work if you need that information to carry out your role as a Member. For example, general information about activities or specific information wanted by a constituent.

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1.5 [The Customer and Member Liaison Offices Services](#) will assist Members in approaching the Directorates for information, either through the Members' Enquiries system or by directing Members to the right source.

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1.6 The Council has targets for responding to Members under the Members' enquiries system. If a response to an enquiry is not received in the target time the issue will be raised with the relevant Director or Head of Service and thereafter the Chief Executive. Lack of a response will ultimately be referred to the Chair of the Overview and Scrutiny Committee.

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1.7 Members will have access to much information to help in their role. However, some of it will be subject to data protection, confidential, sensitive, possibly personal, or potentially damaging to the Council's interests or those of other people and organisations if it is not handled with care. Because of this, everyone with access to the Council's information must ensure it is used only for the purpose it was provided for. Under the Code of Conduct a Member must not reveal confidential information received unless permission has been given to do so. Also, Members must not prevent others from getting information to which they are entitled.

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Appendix 1

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2. Statutory Rights

2.1 A Member can inspect any council document, including reports and background papers, that contain material relating to any business discussed at a council, cabinet, committee, board or panel meeting (whether or not they are a Member of the cabinet, committee, board or panel concerned). This right also applies to members of the public.

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2.2 However, this right does not apply to documents relating to certain items that appear on the private part of the agenda for any meeting. This is a statutory rule. The types of information that should not be revealed are basically those set out in the Local Government Act 1972 (as amended). These enable or require the council to remove the public and the press from meetings (for example, personal matters relating to staff or applicants for services, details of negotiations on industrial relations, contractual, business or legal matters). Details of these are set out in Part 4.11 - Access to Information.

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2.3 Any Members who have access to information of this nature should not release it publicly or to the press. (See Part 8.2 - Code of Conduct for Elected Members)

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2.4 If there is any doubt about whether information should be revealed, Officers can take advice from the Head of Legal, Governance and Commercial Services. If a Member is unhappy with any refusal of information on these grounds, this should be raised with the Head of Legal, Governance and Commercial Services who will explain the position and answer any questions.

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3. The 'Need to Know'

3.1 The right a Member has in common law to request and receive information is based on the principle that any Member has a right to inspect council documents if this is reasonably necessary in order to perform his or her duties as a Member. This principle is commonly known as the 'need to know principle'.

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3.2 A Member can have information or see documents if it can be shown that there is a 'need to know'. Although the Council has a general policy of openness relating to information, the Council's information is held for the purpose of performing its functions, and there is no right for anyone to examine documents out of curiosity. If a Member wishes to have information it must be needed to carry out the Member's public duties.

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3.3 In some circumstances (for example, if a Member is a Member of a cabinet or committee and wishes to see documents relating to that cabinet or committee's work), it is assumed that there is a 'need to know'. In other circumstances, particularly if information is confidential, the Member will have to show a good reason for the request.

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3.4 The term 'council document' is very broad and includes a document produced with council resources. However a Member from one political group will have no right to see a document which forms part of the internal working of another political group.

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Appendix 1

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3.5 The Council has to keep to the rules in the Data Protection Act, which prescribe how information is handled. For example, Members cannot receive personal information that would usually breach the Act unless the person the information relates to has given their written permission for the information to be released.

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3.6 Similarly, if a Member wishes access to confidential information about a constituent's circumstances, that constituent must give his or her permission in writing before that information can be provided. [The Customer and Members Liaison Office Services](#) can provide a model letter to use when asking for permission from a constituent.

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3.7 An Officer should not, without reference to the appropriate Head of Service, provide information to a Member which is not available to the public and which the Member does not need to know in order to carry out their duties as a Member.

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3.8 However, there may be circumstances where, despite being able to establish a need to know, the resources it would take to provide the information in the form required would make it unreasonable to expect the Council to provide it. An example of this would be a request for a hard copy of every record of highway maintenance undertaken over a period of two years. The Chief Executive, with the advice of the Monitoring Officer, will resolve any disagreement on this and if no agreement can be reached and the information requested by a Member is not provided, the Chief Executive will give a written explanation of the reasons. The referral will be acknowledged within 48 hours with a final decision being made within 5 working days.

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4. Freedom of Information Requests

4.1 In addition to the above the Freedom of Information Act 2000 provides a general right of access to recorded information held by the Council to members of the public including Members. The general right of access to information under the Act is subject to exemptions. There are 23 categories of exemptions, some of which are absolute and others that are not.

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4.2 If an absolute exemption applies then the Council need not disclose the information. Most of the absolute exemptions are designed to carve out from disclosure under the Act information whose availability is governed by some more specialised set of rules, and that may be accessible to the applicant by some other means. For example, personal data of which the applicant is the data subject will be dealt with under the Data Protection Act 1998, disclosure of information that is subject to a duty of confidence at common law will be governed by common law principles, and disclosure of information in court documents is a matter for the rules of the Court concerned. In these cases, the exemption is made absolute not to place it beyond the public gaze, but to prevent a potentially uncomfortable interaction between two specialised and potentially incompatible regimes for its disclosure.

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4.3 If a non-absolute exemption applies, then information is only exempt from disclosure if in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Examples of

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Appendix 1

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such exemptions are law enforcement, audit functions or where the Council considers that disclosure would prejudice the effective conduct of public affairs.

4.4 Applications for information to be released under the Freedom of Information Act 2000 should be made to the Freedom of Information Officer.

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4.5 It is not anticipated that Members would usually need to use the Freedom of Information Act 2000 to access information held by the Council as any information Members would usually seek access to would be available to Members through the other mechanisms detailed above.

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