

MEMBERS' RIGHTS OF ACCESS TO INFORMATION

INTRODUCTION

The purpose of this protocol is:

- a) To set out the rights of access to London Councils information that Members have; and
- b) To provide guidance to Members and officers on the approach to be adopted in the exercise of these rights in respect of availability of reports from any London Councils Member Body¹ and to information held by London Councils generally.

This protocol does not deal with the rights of access of the public and the press which are set out in the Access to Information Rules.

GENERAL PRINCIPLES

The London Councils Agreement² provides that:

- a) All Members of any London Councils Member Body shall be entitled to receive from officers such information as they may require in order to enable them to carry out their duties as members of such London Councils Member Body; and
- b) The leading members on London Councils of each political party shall be entitled to receive briefings and briefing papers from officers on the same basis as the Chair.

In addition to the rights granted by the London Councils Agreement, Members have both statutory and common law rights to inspect London Councils documents.

Statutory rights

Members have a statutory right³ to inspect any document that:

- a) Is in the possession or under the control of London Councils; and
- b) Contains material relating to any business to be transacted at a meeting of any London Councils' Member Body, except where it appears to the Chief Executive that a document discloses exempt information⁴.

Common law rights

¹ "London Councils Member Body" includes all London Councils Member groupings, committees, steering groups, forums, etc.

² Paragraph 23 of Schedule 6 (Standing Orders) of the London Councils Agreement.

³ Section 100F of The Local Government Act 1972.

⁴ "Exempt information" is information of a description which falls within any of paragraphs 1 to 6, 9, 11, 12 and 14 of Part I of Schedule 12A to The Local Government Act 1972.

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At common law a Member has a right to inspect documents which are addressed to London Councils. This right exists because Members are under a duty to keep themselves informed of London Councils business which relates to their role as Members and which they have 'a need to know'. However, if their motive for seeing documents is indirect, improper or ulterior this may be raised by London Councils as a bar to their entitlement. Members are not, therefore, allowed a 'roving commission' through London Councils' documents.

If a Member is a member of a London Councils Member Body, then they have the right to inspect documents relating to the business of that London Councils Member Body. If not a member of the specific London Councils Member Body, the Member has to show cause why sight of them is necessary to perform their duties.⁵

The entitlement of a member of a London Councils Member Body to inspect documents of that London Councils Member Body is a very strong one and certainly stronger than that of the non-member. But the rights of the former are not absolute as it would be open to the London Councils Member Body to raise a bar to the exercise of such a right on the grounds of the Member's motives being improper, indirect or ulterior.

Confidentiality

A Member must not disclose information given to them in confidence by anyone, or information acquired which they believe is of a confidential nature, unless they:

- a) Have received the consent of a person authorised to give it; or
- b) Are required by law to do so.⁶

APPLICATION OF PRINCIPLES

In practice, Members are free to approach officers of appropriate seniority to provide them with such information, explanation and advice as they may reasonably need in order to assist them in discharging their role as a member of London Councils or a London Councils' Member Body. Such approaches should normally be directed to the Director or another senior officer of the directorate concerned.

Any difficulty as to whether a Member is entitled to particular information should be referred by the relevant Member or officer for advice from the Chief Executive who may, depending upon the circumstances, then seek legal advice. The final decision is a matter for the respective London Councils' Member Body.

All Directors must ensure that relevant information within their areas of responsibility is supplied to particular Members according to their legitimate individual needs and requests. This may be by way of London Councils Member Body reports, letters or any other appropriate means. In fulfilling this obligation, Directors must have

⁵ *R. v Southwold Corp., ex p. Wrightson* (1907) 97 L.T. 431; *R. v Hampstead Borough Council, ex p. Woodward* (1917) 116 L.T. 213; *R. v. Barnes Borough Council, ex p. Conlan* [1938] 3 All E.R. 226; *R. v. Clerk to Lancashire Police Committee, ex pl Hook* [1980] Q.B. 603; *R. v. Birmingham City District Council, ex p. O.* [1983] 1 A.C. 578.

⁶ Paragraph 3(a) of the Local Authorities Model Code of Conduct for Members.

particular regard to the information needs of Members as borough representatives, including:

- a) Information on significant matters which particularly affect a Member's borough; and
- b) Information on local (borough) matters in which the Member may have expressed a specific interest.

If a Director thinks that meeting a request for information would involve an unreasonable commitment of resources, the Member making the request shall be so advised. If that Member persists in requesting the information then the Director may refer that matter initially to the Chair of the appropriate London Councils Member Body and then on to the appropriate London Councils Member Body.