



# **Members' Rights of Access to Information**

**June 2019**

## MEMBERS' RIGHTS OF ACCESS TO INFORMATION

### Introduction

The purpose of this protocol is to set out members' rights of access to information held by London Councils in the form of reports to member bodies<sup>1</sup> and to information held 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

A member's right of access to information derives from three sources:

- London Councils Standing Orders
- Statutory rights peculiar to members of London Councils' member bodies
- Statutory rights enjoyed by all ordinary citizens

### Standing Orders

London Councils Standing Order 23 provides that:

*23.1: Members of London Councils, its associated joint committees, sectoral joint committees or sub-committee thereof and any Forums of London Councils, 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 committee or sub-committee.*

*23.2: In addition, the leading members on London Councils of each political party or group shall be entitled to receive briefings and briefing papers from officers on the same basis as the Chair.*

Standing Order 23.1 enshrines the long-standing right of members to be given access to material to enable them to fulfil their functions as members. This has been referred to as a 'common law right'<sup>2</sup>.

Standing Order 23.2 reflects the understanding set out elsewhere<sup>3</sup> that political party groups will receive equal treatment.

### Statutory rights

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<sup>1</sup> Leaders' Committee, Transport and Environment Committee (TEC), Grants Committee and their Executives and sub-committees including Audit Committee, Capital Ambition Board (CAB) and any other member body that may be set up from time to time. The same rights are enjoyed by designated Lead Members.

<sup>2</sup> Deborah Upton *Knowles on Local Authority Meetings* Seventh edition, 2014, 73

<sup>3</sup> For example in the Member/Officer Relations protocol.

## Rights of members

This 'common law right' referred to above was formally written into local government law in 1972 and 1985<sup>4</sup> - a right to inspect any document that 'is in the possession or under the control of a principal council<sup>5</sup> and contains material relating to any business to be transacted at a meeting of the council or a committee or sub-committee'. So, the right of access to information derives from the conditions put in place so that a member can be fully informed and make proper decisions at meetings. However, the information accessible by members is narrowly defined to that 'relating to any business to be transacted at a meeting' and this gives rise to the notion of a 'need to know'. This notion has been refined by case-law and judgements have made clear:

- There is no right to 'a roving commission to go and examine the books or documents of a corporation'
- 'Mere curiosity or desire to see and inspect documents is not sufficient' and
- 'Nor can a councillor properly exercise the right for some indirect motive'<sup>6</sup>

The relevant Director will determine whether an application made by a member to be given access to particular information meets the definition of a 'need to know' or falls outside of any reasonable definition of the term. They may take legal advice in arriving at a decision.

## Rights of citizens

A member enjoys the same right of access to information afforded to an ordinary citizen through the Freedom of Information Act 2000.

## **Confidentiality**

A member must respect the confidentiality of material, particularly that conferred by exemption from the access to information regulations<sup>7</sup>. Advice should be sought if a member is unsure of the confidentiality of any particular document.

## **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 a London Councils member body. Such approaches should normally be directed to the relevant Director or another senior officer of the directorate concerned.

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 the member persists in requesting the information then the Director will refer the request to the Chief Executive.

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<sup>4</sup> S. 100F of the Local Government Act 1972 and the Local Government (Access to Information) Act 1985

<sup>5</sup> That is London Councils

<sup>6</sup> Ibid in note 2, 74

<sup>7</sup> "Exempt information" is described in Schedule 12A to the Local Government Act 1972 (as amended), subject to the qualifications in section 100F.