

Elected Members' Right of Access to Information held by the Council

As a councillor, you have a right of access to information held by the council, including a legal right, under statute and common law to inspect council documentation. There are, however, some exemptions to this.

Under the Local Government (Scotland) Act 1973, elected members have a statutory right to inspect any council document which contains material relating to any business which is to be transacted at a council, committee or sub-committee meeting. This right applies irrespective of whether the elected member is a member of the committee or sub-committee concerned and extends not only to reports which are to be submitted to the meeting, but also any other relevant papers.

This right does not, however, apply to 'exempt information' considered in private at committee or sub-committee meetings. The items in question are those which contain exempt information relating to employees, occupiers of council property, applicants for grants and other services, the care of children, contract and industrial relations negotiations, legal advice (including any from internal and external solicitors, and counsel) and criminal investigations.

The common law right of elected members is much broader and is based on the principle that as an elected member you have a *prima facie* (on the face of it) right to inspect council documents so far as your access to the document is reasonably necessary to enable you to perform your duties properly as a member of the council. This principle is commonly referred to as the 'need to know' principle.

In other words, in common law, you are entitled to view (inspect) copies of all documentation held by the council, provided that you can show you have 'a need to know' in connection with your duties as an elected member and that you have no ulterior or improper motive. In this respect, you do not have a right to undertake 'a roving commission' to examine documents of the council – mere curiosity is not sufficient. You need to be able to demonstrate you have a 'need to know'. You may find it helpful to explain why you need certain information, when requesting it. You should also refer to your council's officer/councillor protocols and role description to help you understand what information and documents you may be entitled to receive. Doing so may help both you and an officer understand why you have a 'need to know'. It should be noted that you may be required to seek a mandate from the data subject to access personal data.

The provision of information comes at a cost, and you should ensure, where possible, that you are not used by members of the public as a channel for access to information that is properly available through normal Freedom of Information procedures.

Elected members also have a right under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (in the same way as any other individual) to use Freedom of Information procedures to access information held by a Council, for example, in support of your constituency or campaign activities.

Any council information provided to you must only be used by you for the purpose for which it was provided – i.e., in connection with the proper performance of your duties as a member of the council or in the exercise of a statutory right. You should remember that information and documents you

acquire through your additional rights as elected members may be subject to the Code's rules about confidentiality.

Application of the Councillors' Code of Conduct

You should be aware that some of the provisions in the Councillors' Code may apply and should be considered when you are exercising your right to access information.

The Code requires you to behave with courtesy and respect towards council officers. As such, you should always consider what you are expressing, and the way you are expressing it, when asking officers for information. You should be mindful of the way your conduct may be perceived. You should be able to seek the information you require in a constructive, respectful, courteous and appropriate manner, without resorting to personal attacks, being offensive, abusive and / or unduly disruptive.

The Code states that councillors and officers should work in an atmosphere of mutual trust and respect, with neither party seeking to take unfair advantage of their position or influence. You should remember that you have, or may be perceived as having, a position of power over officers. You should not take advantage of your position and potential influence, as an elected member, to seek information from officers to which you are not entitled. This is particularly the case with junior employees, who may not be used to dealing directly with councillors.

You should remember that you have an inherent position of power and influence over officers, especially junior members of staff. This means that officers may feel pressured into taking a particular action or decision or to focus on the matter you are concerned with over other work, even if they have tasks that should be completed as a higher priority. You should, therefore, refrain from making unreasonable demands or demanding that information be produced in an unrealistic timeframe. You should also be aware that making persistent demands for information, particularly in circumstances where you have already been provided with reasons as to why it cannot be provided, can be disruptive and can prevent officers from undertaking their roles effectively.

You have a right to receive good quality and relevant information from officers on which to base your decisions and undertake your scrutiny role. This information should be proportionate, balanced, comprehensive and understandable. If you do not consider you are understanding or receiving the information you require to assure yourself that you are able to make informed decisions, you should raise the issue with an appropriate senior officer (such as the relevant Head of Service).

The Code requires councillors to refrain from becoming involved in operational matters, however, as that is the responsibility of officers. Becoming inappropriately involved in operational management and / or operational decision-making will be a breach of the Code. It can also damage your relationship with officers and have a detrimental effect on how they perform their duties. As such, you should not seek information for the purpose of becoming involved in, or directing, decisions on matters that are operational in nature.

Under the UK's data protection legislation councillors are also data controllers in their own right when processing personal data for ward and constituency casework and political campaigning. If you come into possession of personal data relating to any individuals in this capacity, you must have a lawful basis for sharing it. While this will be for you to determine, it may be that personal data received from constituents can be shared for the purposes of carrying out a task in the public interest.

You should also ensure you comply with the provisions in the Code concerning confidentiality. You must not disclose confidential information or information which should reasonably be regarded as

being of a confidential or private nature, without the express consent of a person or body authorised to give such consent.

You must only use confidential information provided to you to undertake your duties as a councillor. You must not use it in any way for personal or party-political advantage or to discredit the council by, for example, sharing it with your party or disclosing it to the media.

The Councillors' Code of Conduct and the Standards Commission's Guidance and Advice Notes for Councillors on how it should be interpreted and applied can be found on the Standards Commission's website at <https://www.standardscommissionscotland.org.uk/>.