

## **TOPIC NOTE 6 – HANDLING INFORMATION**

### **Freedom of Information**

The Freedom of Information Act 2000 allows the public access to certain types of information held by the Council. It does this in two ways:

- Public authorities are obliged to publish certain information about their activities; and
- Members of the public are entitled to request information from public authorities.

Requests must be in writing and contain the requester's name and address; email is acceptable and the Council must respond promptly and normally within 20 working days. The Council is entitled to make a charge, the details of which are set out in the Publication Scheme which also sets out the type of information published and the manner in which it is published.

The Council does not have to respond to repeated or 'vexatious' requests if it has already responded to an identical or substantially similar request from the same person. There are other exemptions which fall into the category of 'absolute exemptions' such as court proceedings or personal information that would breach the Data Protection Act. The Council then has a duty to consider whether disclosure is required in the public interest. ***If you receive a Freedom of Information request please pass it to the Clerk in a timely manner – the Clerk has the authority to deal with such requests.***

### **Data Protection**

The Council holds a range of information and are required to notify the Information Commissioner of personal data it holds subject to certain exemptions. Personal data may be as simple as holding someone's name and address but in addition includes amongst other things details of complaints, list of contacts, employee records and information provided for the purpose of placing a contract to which the data subject is a party. Councillors are covered by the Council's notification and have the same responsibilities with regard to data protection as the Clerk. Personal data is exempt from the Publication Scheme.

### **General Data Protection Regulations**

The GDPR came into effect on 25 May 2018. This forms part of UK law under the [European Union \(Withdrawal\) Act 2018](#). Data protection is the fair and proper use of information about people. It's part of the fundamental right to privacy – but on a more practical level, it's really about building trust between people and organisations. It's about treating people fairly and openly, recognising their right to have control over their own identity and their interactions with others, and striking a balance with the wider interests of society.

*There are seven key principles:*

- *Lawfulness, fairness and transparency*
- *Purpose limitation*
- *Data minimisation*
- *Accuracy*
- *Storage limitation*
- *Integrity and confidentiality (security)*
- *Accountability*

### **Need to Know**

Councillors do not have an automatic 'need to know' for all council business and cannot claim an automatic right to see all council documentation and information. However, the council adheres to the requirement to be open and transparent thus if any information is withheld there will be a specific reason for doing so.

This is the NALC guidance for establishing whether a Councillor has a 'need to know':

- If you are a member of a committee, you have the right to inspect documents or to obtain information relating to the business of the committee;
- If not a committee member you need to demonstrate why sight of the information in questions is necessary to enable you to perform your duties as a Councillor;
- The document/information will be withheld if a Councillor's motives are indirect, improper or ulterior;
- Councillors may not go on a fishing expedition in respect of council documents but should specify precisely what they require.

### **Confidential Information**

Councils are expected to be open about all their decisions and actions; you have been entrusted with public funds and the council should be transparent in how those funds are spent. However, there will be occasions when disclosure of certain information would be contrary to the public good. It is lawful for the council to discuss certain matters such as those relating to members of staff and to legal disputes in confidential session, ie following a resolution to exclude members of the public from the meeting. Discussions relating to the placing of contracts need not be held in confidence but the 'commercial interest' elements of the contract should be treated as confidential.

The Council's Standing Orders and Code of Conduct require Members and Officers to maintain confidentiality. When a Councillor is acting, or gives the impression of acting, as a representative of the council a Councillor is obliged not to disclose information which is confidential or where disclosure may be prohibited by law. There are some exceptions, for instance if you are required to do so by law, where you have a person's consent or disclosure is in the public interest (justified in only very limited circumstances). Improper disclosure of confidential information constitutes a breach of the Code of Conduct.

### **Defamation and Privilege**

When making statements in council and committee meetings Councillors should be aware that they are subject to the general principles of law relating to defamation. As a general defence a councillor should show that any such alleged statement was made on a 'qualified' privileged occasion, when the Councillor who makes the statement must show that the statement was made without malice and in pursuit of public duty. If, upon investigation, the statement is found to be true then it is not defamatory at all, but if it is found to be untrue then privilege can be claimed if the Councillor acted without malice.

### **Press and Media**

Dealing with the Press and Media:

- Seek help from the Clerk
- Learn how to explain your views on issues and do not talk 'off the record' some things are best left unsaid
- When approached in person or on the phone think carefully before you speak and ask for time to consider your response if necessary
- Think carefully about anything you say. Remember that it may well be reported and it will be your voice that said it.
- Do your research and learn the facts before you respond to questions
- If you don't know the answer to a particular question, better to say so than evade the question or hesitate