

Part 5.6

Protocol for Members on Confidentiality (with particular reference to the General Data Protection Regulations and Data Protection Act 2018)

- 1 Under the Council’s Constitution, you have such rights of access to such documents and information in the Council’s possession as are necessary for the proper discharge of your functions and in accordance with the law. However, you are under an obligation not to make certain categories of information public or divulge such information to anyone other than a Councillor or Officer entitled to know it, unless you are required by law to do so. *(Article 2.03 (c) (i) and (ii) of the Constitution).*
- 2 The categories of information are as follows:-
 - (a) “confidential” information within the meaning of Part 4:2 (Paragraph 10.1) of the Constitution - i.e. information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.
 - (b) “exempt” information within the meaning of Part 4.2 (Paragraph 10.24) of the Constitution – i.e. information which falls under any one of 10 categories specified in Paragraph 10.3
 - (c) personal data within the meaning of the Data Protection Act 2018
 - (d) other information given in confidence (covered by paragraph 4 3c of the Members’ Code of Conduct – Part 5.1 of the Constitution).
- 3 Information disclosed to you under the above categories will usually be contained within exempt **pink papers** attached to Committee agenda or other papers. But some information may be revealed orally during the discussion of items following the exclusion of the public from a meeting. Other information of a confidential nature may be disclosed to you on a ‘need to know basis’ during meetings with the Chief Executive, Executive Directors, Monitoring Officer or Chief Finance Officer or, occasionally, Heads of Service.

Personal data under the Data Protection Act 2018

- 4 Personal data is information that relates to a **living individual who can be identified from that data**. Such data can only be processed (including being collected) or disclosed if at least one condition defined by legislation has been met.
- 5 There are two main reasons under which the council will process personal data for specified and lawful purposes, to carrying out public functions tasks which legislation says the council must do or where processing is necessary to deliver public services. The conditions which provides that personal data can be processed include **carrying tasks which legislation says the council must do**. Another is where processing is necessary to deliver public services. Therefore it is likely that you will, as a Councillor, be given personal data to enable decisions to be taken on various issues; or to receive such information for monitoring purposes; or to assist you in dealing with specific

enquiries from your constituents. In some cases, another condition will apply: it is likely that the data subject (i.e. your constituent) will give you **consent** to process personal data. Unless the data is special category i.e. sensitive (see 11 and 12 below), or the data subject is not your constituent (i.e. in another ward), you can normally presume the consent of the data subject if you are acting on their behalf, but you should draw attention to your Privacy Notice as a Data Controller. Please note that all councillors are required to be registered, separately to ENC, with the Information Commissioners Officer, as Data controllers to cover their data processing activity as ward councillors.

- 6 It should be remembered that you do not, as a Councillor, have general access rights to personal data held by the Council. Your rights are limited to the above circumstances.

- 7 Examples of personal data which might be disclosed to Councillors:-

Data relating to Staff - salary levels, additional remuneration, pension, sickness levels. (Not details of reasons for individual absences), details of training. The minutes of meetings will always refer to the holder of a specific post number and not the named employee.

Grants approved for home repairs, housing improvements, or disabled facilities – details of amounts and properties affected may be supplied.

Rate relief applications – personal data is disclosed in reports to the Personnel Sub Committee, Finance & Performance Sub Committee or the Policy and Resources Committee.

Housing applications – although the Council has transferred its housing stock, it still has certain statutory responsibilities, and you may have personal data disclosed to you by officers if you are dealing with cases on behalf of your constituents.

Housing Benefit/Community Tax Benefit – you may be asked by a constituent to assist and officers will need to be satisfied that the data subject has consented to the disclosure of personal data before revealing it.

- 8 The Council is required by law to supply, on request, copies of the Electoral Register to ward councillors and political parties. Councillors should bear in mind that the information contained in the Register is personal data within the meaning of the Data Protection Act and as such, cannot be passed on to third parties for any other purpose without the consent of data subjects. Disclosure of information on the Electoral Roll is covered by other legislation.

- 9 Personal data has to be *processed* fairly and lawfully. The word “processed” covers the collection, use, sharing, storage and destruction of the data. Personal data must be kept for no longer than is necessary, and it must also be kept secure. Always ensure that any personal data supplied to you in any format is not accessible to third parties. Once decisions have been taken, or information has been read and noted, **you must return any paper pink**

papers to the Council Offices or otherwise ensure their secure disposal by other means.

- 10 If you receive personal data from Council officers **by electronic means**, the same considerations apply. Any council provide or personal laptop or other electronic device used must have appropriate security measures in place, including up to date anti-virus protection. The data should be deleted as soon as it is no longer required to be held.
- 11 The Data Protection Act also refers to “special categories” of sensitive personal data which covers issues such as racial/ethnic origin, political opinions, religious or similar beliefs, union membership, physical or mental health, sexual life, biometric data. In your role as a Councillor, you will occasionally be provided with such data, usually by residents asking you to act on their behalf but also sometimes as part of the information provided in a matter to be considered by a Committee or Panel. From time to time, you will need to decide whether to take legal proceedings, or to issue a licence where such information may be relevant. Additional care should be taken over the processing of this information to ensure that it is not shared with any third party and is only processed for the reasons it was given to you.
- 12 If you are not determining an issue before a Committee or Panel but consider that you have a need to know sensitive personal data to enable you to act effectively on behalf of a constituent, the officers will need to be satisfied that the **explicit consent** of the data subject in writing (including an email from a known email address has been given).
13. In order to assist councillors in understanding their responsibilities in relation to the processing of personal data processed by the council and by as a ward councillor, all councillors will attend mandatory data processing training when appointed for each term of office.

Amended by Council 15 October 2018 – minute 241, Amended by Council 22 July 2019 – minute 111;
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