

<p>Non-Executive Report of the:</p> <p>Standards Advisory Committee</p> <p>Thursday, 15 October 2020</p>	 <p>TOWER HAMLETS</p>
<p>Report of: Corporate Director, Governance and Monitoring Officer</p>	<p>Classification: Open (Unrestricted)</p>
<p>Members Rights to Access to Information</p>	

Originating Officer(s)	<p>Janet Fasan, Divisional Director, Legal Services and Deputy Monitoring Officer Ruth Dowden, Head of Information Governance Matthew Mannion, Head of Democratic Services Joel West, Democratic Services Team Leader (Committees)</p>
Wards affected	All

Executive Summary

Further to a request of the Advisory Committee, this report provides a summary of the rights of councillors to access information held by the council.

Recommendations:

The Standards Advisory Committee is recommended to:

1. Note and comment on the report.

1. **REASONS FOR THE DECISIONS**

- 1.1 The Advisory Committee has requested a report setting out rights of members to access information.

2. **ALTERNATIVE OPTIONS**

- 2.1 None as this is a noting report.

3. **DETAILS OF THE REPORT**

- 3.1 This report provides an overview of the different rights councillors have to access information held by the council. It is based in large part on the various

provisions in the constitution, namely the Access to Information Procedure Rules (Appendix 1) and the Member/Officer Relations Protocol (Appendix 2). The report summarises and condenses those provisions for ease of reading, but should not be read as re-interpreting them. In case of any perceived discrepancy, the constitution provisions should be considered the definitive guide to the rights to access information for councillors and the public.

Public rights of access to information relating to meetings and decision making

- 3.2 Councillors have all the ordinary rights of access to information relating to decision making and council meetings (including executive meetings and decision) as are enjoyed by the general public¹, including.
- Rights to attend meetings.
 - Access to notices of meetings.
 - Access to agenda and reports before meetings.
 - Access to minutes and decision records.
 - Access to background Papers.
- 3.3 However, members of the public do not have the right to access information that the council deems to fall within one of the seven categories of exempt information and where it also deems that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.²
- 3.4 There are several other reasons why members of the public may not have the right to access documents relating to meetings and decision making, such as where information is confidential (the meaning of which is distinct from 'exempt' in this context) or includes advice of a political adviser.³

Additional rights of councillors to access information relating to meetings and decision making

- 3.5 Councillors enjoy several additional rights, beyond those enjoyed by members of the public:
- Councillors will usually have a right to access all exempt information for the meetings, bodies etc of which they are members as on the basis of the "Need to Know" principle (see below).
 - Councillors also have the right to access information that has been exempted under the following categories:
 - category 3 (information that reveals certain financial affairs - as long as it does not relate to contract negotiations); and
 - category 6 (information that reveals that the Council proposes to serve a statutory notice or make a statutory order or direction).⁴

¹ See Access to Information Procedure Rules, particularly rules 1-10.

² See Access to Information Procedure Rules 11 and 12

³ See Access to Information Procedure Rule 24.2.

⁴ This is explained in Access to Information Rule 25 (when read together with Rule 11.5).

Additional rights of scrutiny members to access information relating to executive meetings and decision making

- 3.6 Scrutiny members (those who are members of the Overview and Scrutiny Committee or of a scrutiny sub committee or panel) have the right to access any document (including those exempt from publication) relating to executive meetings or decision making, if it is relevant to an action or decision that they are reviewing or scrutinising or intend to review or scrutinise or is relevant to any review contained in any scrutiny work plan.
- 3.7 The above provision relates to matters that the Overview and Scrutiny Committee, or a scrutiny sub committee, has formally agreed to review or scrutinise. Individual members of scrutiny bodies cannot rely on it to access documents that they might wish to review or scrutinise outside the context of scrutiny meetings.
- 3.8 Scrutiny members do not have right to access information that is in draft form or includes advice of a political adviser.⁵

Councillors' access to other documents/information

- 3.9 In summary then, councillors have the same ordinary rights of access to information relating to council meetings and decision making as is enjoyed by the general public, albeit with additional rights to access information that is exempt from publication if they serve on certain bodies, or if the information falls within quite limited specified categories. However, they also have the right to access any other information held by the council provided that it is reasonably necessary to enable them to properly perform their duties as a councillor. This is known as the "need to know" principle.
- 3.10 Usually, a councillor will be able to show that they have a 'need to know' if the information involves that councillor's official council duties (for example, information relating to responsibilities of cabinet members⁶). It is less likely that a councillor can prove a 'need to know' in relation to their activities as part of a political group or party. Generally speaking a need to know will arise where the information sought relates to a committee upon which the councillor sits; where a resident has authorised the councillor to act as an advocate for them on that specific issue; or where it is reasonably required in order to deal with a ward matter.
- 3.11 The use of the 'need to know' principle is well established at LBTH and is explained in the Members Enquiries (ME) Protocol; an acknowledgement that, for many members, the ME system will be the easiest mechanism to pursue requests for information. The protocol states:

⁵ See Access to Information Rule 24.

⁶ As listed on the council's website in accordance with the Executive Scheme of Delegation

It is acknowledged that a Member is likely to have a prima facie “Need to Know” where s/he has a legitimate Ward problem and needs access to the documents that are relevant to that specific problem.

3.12 The councils Member/Officer Relations’ Protocol (see Appendix 2) sets out more details about the ‘need to know’, including guidance on when ‘need to know’ requests may and may not be considered legitimate, and additional obligations on councillors exercising requests.⁷

3.13 If a ‘need to know’ cannot be legitimately demonstrated, councillors can make a request for information under the Freedom of Information Act 2000.

Confidentiality

3.14 Councillors in possession of information that is exempt from publication, or otherwise obtained through their demonstrating a ‘need to know’ have obligations to treat that information as confidential. Officers involved in processing such requests similarly have confidentiality obligations.⁸

Data Protection and handling personal data.

3.15 Requests for information may result in councillors acquiring personal data. There are three different roles that members may occupy with respect to personal data and each will require an awareness of its parameters for data handling:

- As a member of the council, for example, as a member of a committee.
- As a representative of residents of their ward, for example, in dealing with enquiries / complaints.
- And for some -representing a political party, particularly at election time

3.16 The General Data Protection Regulation and Data Protection Act 2018 set out principles for handling personal data. The principles of data handling stipulate that its processing must be:

1. Fair, Lawful and Transparent
2. Purpose Limitation
3. Data Minimisation
4. Accuracy
5. Storage Limitation
6. Availability and Integrity.

3.17 It is essential that these legal duties are promoted through training and in the approach to an election, and for new members, awareness Data Protection, Freedom of Information and Confidentiality will be key areas for training.

⁷ See Member/Officer Relations’ Protocol, Rule 10.

⁸ See Member/Officer Relations’ Protocol rule 10.

Process for requests for information

- 3.18 Where a councillor wishes to have access to Council information or documents, a request may be made either:
- To the Democratic Services (Committee) Team – for requests for information relating to decision making or council meetings committee.services@towerhamlets.gov.uk; or
 - via the Member Enquiries portal – for all other requests for information for which a ‘need to know’ can be demonstrated <https://towerhamletsportal.icasework.com> ; or
 - via the council’s [Freedom of Information request form](#) or by email to freedomof.information@towerhamlets.gov.uk

More information

- 3.19 As referred to above, there is additional guidance for members on accessing and requesting information on the Members Hub, which is managed by the Democratic Services Team. <http://membershub.towerhamlets.gov.uk>.

4. EQUALITIES IMPLICATIONS

- 4.1 None.

5. OTHER STATUTORY IMPLICATIONS

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:

- Best Value Implications,
- Consultations,
- Environmental (including air quality),
- Risk Management,
- Crime Reduction,
- Safeguarding.
- Data Protection / Privacy Impact Assessment.

- 5.2 The Council’s approved protocols and guidance documents, as referred to throughout this report, are designed to ensure that its data protection duties are upheld.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 There are no direct financial implications arising from this report.

7. COMMENTS OF LEGAL SERVICES

- 7.1 This is a noting report. The contents reflect the council's constitution and the relevant statutory provisions. .
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Linked Reports, Appendices and Background Documents

Linked Report

- None.

Appendices

- Appendix 1 – Access to Information Procedure Rules
- Appendix 2 – Member Officer Relations Protocol

Local Government Act, 1972 Section 100D (As amended) List of “Background Papers” used in the preparation of this report

- None.

Officer contact details for documents:

Or state N/A