

WYRE FOREST DISTRICT COUNCIL
ETHICS AND STANDARDS COMMITTEE
27TH JANUARY 2010

Review of Protocol on the Disclosure of Confidential Information

OPEN	
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APPENDICES	Appendix 1 Protocol on the Disclosure of Confidential Information

1. PURPOSE OF REPORT

- 1.1 To review the Council's Protocol on the Disclosure of Confidential Information and if necessary, to make any amendments.

2. RECOMMENDATION

- 2.1 **The Committee is asked to DECIDE that: the importance of the Protocol be reiterated to all Members of the Council.**
- 2.2 **RECOMMENDED TO COUNCIL: any suggested changes to the Protocol on the Disclosure of Confidential Information be recommended to Council if it is considered that the Council's Protocol should be strengthened.**

3. BACKGROUND

- 3.1 On 31st July 2007 the Ethics and Standards Committee agreed a protocol on the Disclosure of Confidential Information which was endorsed by Council on 19th September 2009.

4. KEY ISSUES

- 4.1 Since the Protocol was endorsed by Council there have been two allegations of breach of the Protocol.
- 4.2 At the last meeting of the Ethics and Standards Committee on 17th November 2009 it was agreed that the Protocol be revisited in the light of the allegations of breaches and that the importance of the protocol be reiterated to all Members.

5. FINANCIAL IMPLICATIONS

- 5.1 Any amendments made to the Protocol can be accommodated within existing budgets.

6. LEGAL AND POLICY IMPLICATIONS

6.1 The Local Government Act 1972 requires the press and public to be excluded from a Council meeting during consideration of certain items of business on the grounds it involves the likely disclosure of 'exempt information' as defined in the relevant paragraph of Part 1 of Schedule 12A to the Act. This is reinforced in the Council's Constitution in the Section relating to the Members' Code of Conduct.

6.2 When a Member joins the Council they are required to sign up to the Code of Conduct which requires under Paragraph 4 that:

You must not:

- (a) Disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is
 - (a) reasonable and in the public interest; and
 - (b) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

6.3 The unauthorised disclosure of confidential information by a Member would be considered to be a breach of the Code of Conduct and the Ethics and Standards Committee under the Standards for England (2008) Regulations would be required to investigate such a breach.

7. EQUALITY IMPACT NEEDS ASSESSMENT

7.1 Any changes to the Protocol would affect all Members so there are no issues arising from the Equality Impact Assessment.

8. RISK MANAGEMENT

8.1 The disclosure of confidential information can potentially damage the Council's business activities and reputation.

9. CONCLUSION

- 9.1 The Council endorsed unanimously the Protocol on the Disclosure of Confidential Information to reflect the Model Code of Conduct and reiterate the need for Members to ensure the business affairs of the Council remain confidential. It is considered that if any changes are suggested by the Committee they would serve to strengthen the Protocol.

10. BACKGROUND PAPERS

- 10.1 Report to Ethics and Standards 31st July 2009 Protocol on the Disclosure of Confidential Information.
10.2 Report to Council 19th September 2007 Disclosure of Confidential Information.
10.3. Council Minute C.54 19th September 2007.
10.4 Code of Conduct adopted by Council 2007.

Protocol on the Disclosure of Confidential Information

The first requirement, that the disclosure must be reasonable, requires a Member to consider matters such as:

- Whether the Member believes that the information disclosed, and any allegation contained in it, is substantially true. If the member does not believe this, then the disclosure is unlikely to be reasonable.
- If the disclosure is made for personal gain e.g. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.
- The identity of the person to whom the disclosure is made: it may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for a Member to disclose the information to the world at large through the media.
- The extent of the information disclosed: the inclusion of unnecessary detail, and in particular private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.
- The seriousness of the matter - the more serious the matter disclosed the more likely it is that the disclosure will be reasonable.
- The timing of the disclosure - if the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure is less likely to be reasonable than if the matter is continuing or is likely to re-occur.
- Whether the disclosure involves your authority failing in a duty of confidence owed to another person.

The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness that has either happened in the past is currently happening, or is likely to happen in the future:

- (a) A criminal offence is committed.
- (b) Your authority or some other person fails to comply with any legal obligation to which they are subject.
- (c) A miscarriage of justice occurs.
- (d) The health or safety of any individual is in danger.
- (e) The environment is likely to be damaged.
- (f) That information tending to show any matter falling within (a) to (e) is deliberately concealed.

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The third requirement, that disclosure is made in good faith, will not be met if you act with an ulterior motive, for example to achieve a party political advantage or to settle a score with a political opponent.

The fourth requirement, that you comply with the reasonable requirements of your authority, means that before making the disclosure you must comply with your authority's policies or protocols on matters such as whistle-blowing and confidential information. You must first raise your concerns through the appropriate channels set out in such policies or protocols.

Members should contact the Monitoring Officer in order to decide whether a disclosure is reasonable and in the public interest.