

- **PROTOCOL ON CONSULTATION, ACCESS TO INFORMATION AND COUNCILLOR INVOLVEMENT IN COUNCIL BUSINESS BETWEEN COUNCILLORS AND OFFICERS IN MORAY COUNCIL**

## 1.0 Introduction

- 1.1 The Councillors Code of Conduct includes a protocol at ANNEX C governing the relations between councillors and employees in Scottish councils. The protocol refers to Council rules concerning consultation and member involvement, which, in the case of the Moray Council, have not been committed to paper. This protocol summarises the Council's position
- 1.2 The purpose of the protocol is to assist Councillors and officers of the Council in relation to a Councillor's representative role. While the protocol is to a large extent no more than a written statement of current practice and convention, in some respects, it seeks to promote greater clarity and certainty.
- 1.3 This protocol also seeks to reflect the principles underlying the respective Codes of Conduct, which apply to Councillors and officers. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government and they therefore demand very high standards of personal conduct.
- 1.4 **No written information can provide for all circumstances and if Councillors and officers are uncertain about how the protocol applies they should seek advice from senior Council employees.**

## 2.0 Councillors' access to information and to council documents

- 2.1 Councillors are free to approach any Council Directorate/Department to provide them with such information, explanation and advice (about that Directorate's/ Department's functions) as they may reasonably need in order to assist them in discharging their role as members of the Council. This can range from a request for general information about some aspect of a Directorate/ Department's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Chief Officer or another senior officer of the Directorate/ Department concerned.
- 2.2 As regards the legal rights of Councillors to inspect Council documents, these are covered partly by statute and partly by the common law.
- 2.3 Councillors 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 Councillor 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 to any relevant background papers. This right does not however apply to documents relating to items, which may appear in the confidential section of the agenda for meetings. The items in question are those which contain exempt information relating to Councillors, employees, occupiers of Council property, applicants for grants and other services, the care of children, contract and industrial relations negotiations, advice from Counsel and criminal investigations (**See the Appendix attached**).
- 2.4 The common law right of Councillors is much broader and is based on the principle that any Councillor has a prima facie right to inspect Council documents so far as his/her access to the document is reasonably necessary to enable the member properly to perform his/her duties as a member of the Council. This principle is commonly referred to as the "need to know" principle.
- 2.5 The exercise of this common law right depends therefore upon the Councillor's ability to demonstrate that he/she has the necessary "need to know". In this respect a Councillor has no right to "a roving commission" to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the "need to know." This question must initially be determined by the particular Chief Officer whose Department holds the document in question (with advice from the Chief Legal Officer). In the event of dispute, the question falls to be determined by the relevant Committee — i.e. the Committee in connection with whose functions the document is held.
- 2.6 In some circumstances (e.g. a Committee member wishing to inspect documents relating to the functions of that Committee) a Councillor's "need to know" will normally be presumed. In other circumstances (e.g. a Councillor wishing to inspect documents which contain personal information about third parties) a Councillor will normally be expected to justify the request in specific terms.
- 2.7 Whilst the term "Council document" is very broad and includes for example, any document produced with Council resources, it is accepted by convention that a member of one party group will not have a "need to know", and therefore a right to inspect, a document which forms part of the internal workings of another party group.
- 2.8 Further and more detailed advice regarding Councillors' rights to inspect Council documents may be obtained from the Chief Legal officer as Monitoring Officer.
- 2.9 Finally, any Council information provided to a Councillor must only be used by the Councillor for the purpose for which it was provided e.g. in connection with the proper performance of the Councillor's duties as a member of the Council or in the exercise of a statutory right. This point is emphasised in the Councillor's Code of Conduct in the following terms:

As a councillor, "you will often receive information of a private nature which is not yet public or which perhaps would not be intended to be public..... Such information is, however, for your own personal use as a Councillor and must not be disclosed or in any way used for personal or party political advantage or in such a way as to discredit the Council. This will also apply in instances where you hold the personal view that such information should be publicly available."  
(Para 3.16 of the Code)

- 2.10** Instances of apparent abuse of the process of Councillors obtaining access to information and to Council documents shall, in the first instance, be dealt with informally by early discussions between the Convener, the Chief Executive, the Monitoring Officer and the Councillor(s) concerned to try to settle the matter informally by every means available.

### 3.0 Confidentiality of reports

- 3.1** All Chief Officers have a duty to satisfy themselves that Committee reports to which they are signatories are only classified as 'exempt information' when the statutory criteria for confidentiality are met. The Chief Executive and the Chief Legal Officer have an overriding responsibility to determine this compliance. Proper training on the criteria for confidentiality will be provided for appropriate officers and for all members of the Council.
- 3.2** Once a report has been issued within the confidential section of the agenda for a meeting and until a Committee decides that it should not be discussed in the absence of the press and public a Councillor must respect the confidentiality of the report and not disclose it to a third party.
- 3.3** Councillors will often receive information of a private nature, which is not yet, public or which perhaps would not be intended to be public. There are provisions in legislation on the categories of confidential and exempt information (see 2.0 above) and Councillors must always respect and comply with the requirement to keep such information private. Legislation gives Councillors certain rights to obtain information not otherwise available to the public and Councillors are entitled to exercise these rights where the information is necessary to carry out Council duties (see 2.0 above). Such information is, however, for a Councillor's individual use as a Councillor and must not be disclosed or in any way used for personal or party political advantage or in such a way as to discredit the Council. This will also apply in instances where a Councillor holds the personal view that such information should be publicly available.
- 3.4** It does not however follow that all the contents of the report must be regarded as secret. It may only be certain items of information or terms of negotiations that justify the inclusion of that report within the confidential section: other aspects may already be within the public domain or otherwise outside the definition of 'exempt'. A member may accordingly refer to these aspects in discussions with third parties but must exercise proper care and judgement not to reveal those elements of the paper which are protected but it will always be prudent for that member to consult the Chief Legal Officer before doing so.
- 3.5** Information as to the proceedings at any meeting from which the public and press are excluded by reason of the confidentiality of the report(s) discussed at the meeting shall not be given to representatives of the press or to any other person except by the Chair of the meeting or by a person authorised by the Chair so to do. Upon information being given in this way other members of the Council are entitled to speak on the matter but only to the extent that information has been provided by the Chair or person so authorised.

### 4.0 Officer/Chairman relationships

- 4.1** It is clearly important that there should be a close working relationship between a Chairman of a Committee, a Vice Chairman appointed by a Committee and a Chief Officer or other senior officer(s) of any Directorate/Department who report to that Committee or Councillors. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the officers' ability to deal impartially with other Councillors and other party groups.
- 4.2** Whilst the Chairman of a Committee may be consulted in drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations a Chief Officer will be under a duty to submit a report on a particular matter. Similarly, a Chief Officer will always be fully responsible for the contents of any report submitted in his/her name. Any issues arising between a Chairman and a Chief Officer in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.
- 4.3** Finally, it must be remembered that officers within a Directorate/Department are accountable to their Chief Officer and that whilst officers should always seek to assist a Chairman (or indeed any member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Chief Officer.

## 5.0 Correspondence

- 5.1 The protocol for relations between councillors and employees in Scottish councils specifies that correspondence between an individual Councillor and an officer should not normally be copied (by the officer) to any other Councillor. Where exceptionally it is necessary to copy the correspondence to another Councillor, this should be made clear to the original Councillor. In other words, a system of "silent copies" must not be employed.
- 5.2 Official letters on behalf of the Council should normally be sent out over the name of the appropriate officer, rather than over the name of a Councillor. It may be appropriate in certain circumstances (e.g. representations to a Scottish Executive Minister) for a letter to appear over the name of a Councillor, but this should be the exception rather than the norm. Letters, which for example, create obligations or give instructions on behalf of the Council, should never be sent out over the name of a Councillor.

## 6.0 Involvement of local Councillors

- 6.1 Whenever a public meeting is organised by the Council to consider a local issue, all the Councillors representing the Ward or Wards affected should as a matter of course be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the local Councillor(s) should be notified at the outset of the exercise.
- 6.2 Officers must at all times keep Councillors informed about issues which affect their wards or bodies on which they represent the Authority. Officers must also be alert to advise Councillors at the earliest possible stage of relevant developments or proposals. Over and above this general responsibility a Chief Officer will:
  - notify a Councillor that a report on any such matter is being tabled or discussed as soon as the decision to place that item on the agenda of a Committee is taken;
  - ensure that this report is sent to the Councillor as soon as it is published.
- 6.3 In using authority delegated to them, officers must consult local members if they consider that a proposed decision or action is of a non-routine nature and is likely to significantly affect directly the ward interests of a local member(s). This does not apply to proposed decisions or actions that have a general affect throughout Moray, or are of a routine nature covered by the Council's Scheme of Delegation.

## 7.0 Attendance by Councillors at meetings arranged by officers

- 7.1 Within the Council, Councillors are free at any time to meet officers to discuss all aspects of the Authority's business and to ask officers to set up local meetings to resolve specific issues arising in their divisions.
- 7.2 From time to time Committees will also resolve that Councillor level meetings will take place with other local authorities or outside bodies. Once convened the appropriate officers will be in attendance. Conversely, members of the public or representatives of external organisations will occasionally ask to meet the Chairman and members of a Committee. One or more suitably briefed officers will normally be present but if the Chairman decides that the meeting should take place without officers in attendance he/she should explain the reasons for that decision to the relevant Chief Officer in advance of the meeting.
- 7.3 Additionally, the officers will arrange many meetings with colleagues or third parties to discharge the routine business of the Council or to action its decisions. The convention is that Councillors will not be present at these meetings but will be advised either informally or through reports to committees, of any relevant discussions and/or outcome.

## 8.0 Breaches of the guidance

- 8.1 Specific breaches of this guidance may ultimately be the subject of either grievance or disciplinary procedures and the deliberations of the Standards Commission but potential problems may be resolved by early discussion between a Councillor and a Chief Officer or, if necessary, between a Leader of a Party Group and the Chief Executive. More general concerns about relationships between Councillors and Officers or perceived breaches of this guidance or the principles embodied in the Councillor's Code of Conduct can be discussed with the Independent Chairman of the Council's Standards Committee or the Monitoring Officer.