

EXEMPT AND CONFIDENTIAL INFORMATION (MIN 327(7)/00)

1 SUMMARY

- 1.1 This report explains the legal position regarding disclosure of exempt and confidential information.

2 INTRODUCTION

- 2.1 Arising from concerns as to the confidentiality afforded to information contained in exempt reports, the Finance and General Purposes Committee at its meeting on 12th October 2000 requested a report to Council on Members' responsibilities regarding the use and disclosure of such information. Further information on the legislation, Code of Conduct and procedures is annexed to this report.

3 BREACH OF CONFIDENTIALITY

- 3.1 In the course of their duties Members will come across a great deal of confidential information. Such information must be treated with care. Disclosure is an abuse of trust and may give rise to both practical and legal sanctions. In some cases it may also result in financial penalty with liability to pay a surcharge, compensation or damages where loss has been suffered.
- 3.2 The common law criminal offence of misconduct in public office applies to local authorities as well as Crown servants (R v Bowden 1996). It arises from the wilful neglect of any statutory or common law duty and is not restricted to corruption or dishonesty. It applies to Members as well as Officers. The scope of the offence is potentially wide although to date there is no record of a Member appearing before the Courts for breach of confidentiality.
- 3.3 Practical sanctions against a Member in breach of a Code of Conduct include the withdrawal of the party whip, removal from the holding of any office on behalf of the Council, and removal from membership of any Committee or Sub-Committee
- 3.4 The restriction on Members' use of confidential information is also provided within the Council's Standing Orders. SO 37(9) provides that where information is given to a Member in the course of transacting any business of the Authority and it is made clear that the information is given in confidence, that person is not entitled to make that information public without the consent of the Authority.

6 LEGAL IMPLICATIONS

- 6.1 The Local Government (Access to Information) Act 1985 lays down clearly which matters can be dealt with in private at meetings and which reports and papers can be kept confidential, see Appendix 1. The Act does not deal with the position where a Member or Officer deliberately discloses information supplied to him or her in confidence. Breach of such confidence is likely to result in a finding of maladministration and, at common law, could be both a tort and a crime. The only circumstance when disclosure is permissible is where there is clear "Public Interest" that the information be disclosed. However, the courts have defined "public interest" very narrowly. *"There is a world of difference between what is in the public interest and what is of interest to the public"* LJ Griffiths - *Lion Laboratories Ltd. v Evans* (1984)

RECOMMENDATION

It is proposed that the Council receives and notes the report. (CD(LP&A))

R J Honey

Corporate Director (Law, Planning & Administration)

Background Papers:

None

For further information please contact on:- John Honey, Corporate Director

Tel:- 01702 546366
E-Mail:- john.honey@rochford.gov.uk

APPENDIX 1

1 The Local Government (Access to Information) Act 1985

- 1.1 The principles of open Government require local Authorities' decision making process to be open and transparent and there is a presumption that meetings and information on which decisions are taken will be accessible to the Public and only as an exception will matters be dealt with in confidential session.
- 1.2 The main statutory provisions are contained in the Local Government (Access to Information) Act 1985, which require public notice to be given of all matters to be considered at any Council meeting, and facilities afforded to the public to inspect reports and documents on which reports are based.
- 1.3 The exception relates to the consideration of matters, which involve "confidential " or "exempt " information when the public may be excluded on specified grounds.
- 1.4 In the case of confidential information, for instance material supplied in confidence by a government agency or where disclosure is prohibited by an Act of Parliament or by the Courts, the exclusion of the Public is automatic.
- 1.5 For exempt information a resolution excluding the public must be passed stating the grounds on which the information is exempt. The categories of exempt information are set out in schedule 12A of the Local Government Act 1972.
- 1.6 These broadly cover such matters as personal information of employees and council tenants, details of contracts and negotiations, financial and business affairs of private individuals, advice in connection with legal proceedings, information concerning the investigation or prosecution of an offence, the identity of a protected informants and similar information which might prejudice the Authority and individuals' privacy or confidentiality.

2. PROCEDURE FOR DEALING WITH EXEMPT INFORMATION

- 2.1 The Corporate Director (Law Planning and Administration) as the designated Proper Officer is required under the provisions of the 1985 Act to identify confidential reports or those which might give rise to the disclosure of exempt information. Reports containing exempt information are not automatically marked as confidential. As much business as possible is conducted in open session. However, the circulation of reports marked and printed on purple paper is restricted to Members and specified officers.

3. NATIONAL CODE OF CONDUCT AND STANDING ORDERS

- 3.1 Information provided to Members is only for use in the proper performance of the Member's duties as a Member of the Council. This is emphasised in the National Code of Local Government Conduct.
- 3.2 The Code represents the standard against which the conduct of Members in carrying out their duties is judged. All Councillors are bound by the code and are required in accepting office to declare that they will have regard to it.
- 3.3 The local Ombudsman will view any breach of the code as incompatible with good administration and is likely to make a finding of maladministration where this occurs.
- 3.4 The guidance in the code as to Members' use of confidential information stipulates that it is a betrayal of trust to breach such confidence and Members should never disclose or use confidential information for personal advantage or to the disadvantage or the discredit of the Council or anyone else.
- 3.5 The restriction on Members' use of confidential information is also provided within the Council's Standing Orders. SO 37((9) stipulates that where information is given to a Member of the Council in the course of transacting any business of the Authority and it is made clear that the information is given in confidence, that person is not entitled to make that information public without the consent of the Authority.