

HOW TO DEAL WITH CONFIDENTIAL INFORMATION Factsheet

The [Member] Code of Conduct states 'You must be as open as possible about your decisions and actions and the decisions and actions of the Council and should be prepared to give reasons for those decisions and actions. You should have regard to the guidance in the Council's Protocol on the Release of Confidential Information'.

A. What is 'information'? Information is a broad term. It includes facts, advice and opinions. It also covers written materials, including tapes, videos, CDs, DVDs and other electronic media.

B. What is 'confidential information'?

1. if the nature of the information is sensitive or personal, for example it is a business secret;
2. if it is information that you would expect people would want to be private;
3. if it was divulged in a way which implied it should be kept confidential;
4. if disclosing the information would be detrimental to the person who wishes to keep it confidential;
5. If the Council, Cabinet or a Committee/Sub-committee/Board/Panel has agreed to treat the information as exempt.

C. When can confidential information be disclosed? When:

1. the person authorised to give it has given you consent to disclose it;
2. you are required by law to do so;
3. the disclosure is made to a third party in order to obtain professional advice, for example a lawyer;
4. the disclosure is in the public interest.

D. What does 'in the public interest' mean? Described as something that is of serious concern or benefit to the public, not merely of individual interest. The public interest does not mean 'of interest to the public' but 'in the interest of the public'. The term is not defined in law, so you will need to make a subjective judgment, in which policy and legal interpretations are both involved to some degree.

E. When can I 'disclose confidential information in the public interest? You must exercise caution before releasing information. Subject to you being able to justify the disclosure in the public interest (see FAQ F below), information may be disclosed where:

1. a criminal offence is committed;
2. the Council fails to comply with its legal obligations;
3. a miscarriage of justice occurs;
4. the health and safety of an individual is in danger;
5. the environment is likely to be damaged;
6. information about any of the issues above is deliberately concealed.

F. Must I justify disclosure of confidential information in the public interest? Yes – disclosure will be justified when *all* of the following points are met:

1. the disclosure must be reasonable – this is a matter of judgment. However, when making this decision, you should consider carefully why you want to disclose the information, whether it is true, how serious the issue is and who to tell; and
1. the disclosure must be in the public interest; and
2. the disclosure must be made in good faith – the disclosure will not be justified if it is being made to promote your interests or is for political gain; and
3. the disclosure must first be made through the Council's whistleblowing procedure or by challenging the requirement for confidentiality by submitting a request under the Freedom of Information Act 2000 or Environmental Information Regulations 2004.

G. When would a public interest disclosure not be justified? If the disclosure would amount to a criminal offence or when information is protected by legal professional privilege, it is unlikely that its release could be justified as being in the public interest.

H. Find out more - The Protocol on the Release of Confidential Information offers further guidance. Advice or clarification can be sought from the Monitoring Officer or the Head of Legal Services.