

Audit, Governance & Standards 16th September 2019 Committee

Complaints Received Under the Members' Code of Conduct and Investigation into the Release of Exempt Information Contrary to Part 1 of Schedule 12A to the Local Government Act 1972

Final Decision-Maker	Audit, Governance & Standards Committee
Lead Head of Service/Lead Director	Patricia Narebor – Head of Legal Partnership and Monitoring Officer
Lead Officer and Report Author	Christine Nuttall – Senior Governance Lawyer
Classification	Public
Wards affected	All

Executive Summary

The report provides an update to the Committee on complaints received under the Members' Code of Conduct for the period 15th January 2019 to date. In addition, paragraph 3 of the report sets out the results of an investigation as set out as an Appendix entitled "Investigation into the Release of Exempt Information Contrary to Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (the Report).

This report makes the following recommendations to this Committee:

1. That the contents of the report be noted; and
2. That it be noted that as a result of the investigation into the release of exempt information the following actions to help manage the risks will be taken:
 - i. A training course will be made available to Members on Media training and insight;
 - ii. Officers will be provided with training from Democratic Services on how to structure reports to minimise the information required to be taken in Part II of a meeting
 - iii. Regular meetings with Communications will be offered to all Group Leaders to review, plan and schedule public relations, as appropriate, for Council activities; and
 - iv. Tighter control of exempt information, via named checking in of information after a meeting, will be implemented by Democratic Services.

Timetable

Meeting	Date
Audit, Governance & Standards Committee	16 th September 2019

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1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	High standards of conduct are essential amongst Members in delivering the Council's priorities. The Code of Conduct and complaints procedure supports this.	Senior Governance Lawyer
Cross Cutting Objectives	No impact.	Senior Governance Lawyer
Risk Management	Paragraph 2 of this report is presented for information only and has no risk management implications. An effective Code of Conduct and robust complaints procedure minimises the risk of Member misconduct and is part of an effective system of governance. Paragraph 3 of this report is presented for information only. It is recommended that the outcome of the investigation entitled "Investigation into the Release of Exempt Information Contrary to Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (Report) and actions arising to manage risks be noted.	Senior Governance Lawyer
Financial	There are no direct financial implications; however, should it be necessary to appoint external Independent Investigators the cost of this will be met by the Borough Council.	Senior Governance Lawyer
Staffing	The complaints procedure is dealt within the remit of the Monitoring Officer with input from the Legal Team as	Senior Governance Lawyer

	required. The Investigation into the Release of Exempt Information contrary to Part 1 of Schedule 12A to the Local Government Act 1972 was also dealt within the remit of the Monitoring Officer with the Investigation taking place from within the Legal Team.	
Legal	The requirements of the Localism Act 2011 with regards to the Code of Conduct and complaints procedure are set out within the report. The reporting process ensures that the Committee continues its oversight of the Code of Conduct as required by the Constitution. Exempt information was released contrary to Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972. The Monitoring Officer looked into this matter based on her statutory and constitutional authority.	Senior Governance Lawyer
Privacy and Data Protection	No personal information is provided as part of the report.	Senior Governance Lawyer
Equalities	Any potential to disadvantage or discriminate against different groups within the community should be overcome within the adopted complaints procedures.	Senior Governance Lawyer
Crime and Disorder	None identified in the report.	Senior Governance Lawyer
Procurement	None identified in the report.	Senior Governance Lawyer

2. COMPLAINTS RECEIVED UNDER THE MEMBERS' CODE OF CONDUCT

Introduction and Background

- 2.1 It is a requirement under the Localism Act 2011 that all Councils adopt a Code of Conduct and that the Code adopted must be based upon the Nolan

Principles of Conduct in Public Life. The current Members' Code of Conduct ("the Code") for Maidstone Borough Council is set out in the Constitution.

- 2.2 The Localism Act 2011 requirement to adopt a Code of Conduct also applied to all the Parish Councils. Most Parish Councils in the Maidstone area have adopted a similar Code of Conduct to the Borough Council, based on a Kent wide model. A few Parish Councils have adopted their own particular Code.
- 2.3 Under the Localism Act 2011 Maidstone Borough Council is responsible for dealing with any complaints made under the various Codes of Conduct throughout the Maidstone area.
- 2.4 The Constitution stipulates that oversight of Code of Conduct complaints is part of the remit of the Audit, Governance and Standards Committee.
- 2.5 As part of the Committee's oversight function it is agreed that the Monitoring Officer will provide reports on complaints to the Audit, Governance and Standards Committee. It should be noted that the Localism Act 2011 repealed the requirement to publish decision notices; therefore in providing the update to the Committee the names of the complainant and the Councillor complained about are both kept confidential in accordance with the Data Protection Act 2018.
- 2.6 Since the last report to this Committee on 14th January 2019 there have been 5 new Parish Council complaints as follows:
 - Allegation of inappropriate dealing with the parish planning committee. The complaint failed one or more of the Legal Jurisdiction Criteria Test and the complaint was rejected.
 - Allegation of an aggressive and rude manner in a parish meeting. There was an informal resolution to the complaint and the Subject Member undertook training.
 - Allegation of inappropriate dealings in a planning matter against two Subject Members. The matter was informally resolved which resulted in training taking place.
 - Allegation of verbal assault and aggression. Awaiting outcome of Police inquiries before completing assessment.
 - Allegation of a Data Protection Breach. The complaint failed the Local Assessment Criteria Test and the complaint was rejected, although there was a recommendation that Councillors are given further training on the use of IT systems and reminded of their duty to ensure data is accessed and handled in line with data protection regulations.
- 2.7 There has also been one Borough Councillor complaint, in relation to an allegation of disclosure of confidential information. The matter was resolved through a mediation meeting.

3. EXEMPT INFORMATION LEAKED IN CONTRAVENTION OF PARAGRAPH 3 OF PART 1 OF SCHEDULE 12A TO THE LOCAL GOVERNMENT ACT 1972

Introduction and Background

- 3.1 On the 22nd May 2019 the Policy and Resources Committee elected to go into exempt session in relation to a report that contained exempt information. The exemption was applied by virtue of paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972, as the report had the potential to compromise the financial and business affairs of the Council and third parties. It was deemed to be in the public interest to apply the exemption to avoid the Council breaching its contractual obligations and to avoid the Council compromising its financial position.
- 3.2 Unfortunately, the following day exempt information contained within the exempt report was published by the press in contravention of Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972.
- 3.3 The Monitoring Officer in consultation with the Chief Executive decided that it was necessary to undertake an investigation regarding the release of the exempt information that was provided to members and discussed at the Committee.
- 3.4 As a result the Monitoring Officer appointed an experienced governance lawyer, currently employed internally by the Mid Kent Legal Partnership, to carry out the investigation. The investigator's report entitled "Investigation into the Release of Exempt Information Contrary to Paragraph 3 of Part 1 Schedule 12A to the Local Government Act 1972" is annexed as an appendix to this report.

4 AVAILABLE OPTIONS

- 4.1 That the Committee note the update on complaints received under the Members' Code of Conduct and note the actions arising from the investigation in order to reduce the risks of exempt information being made public.
- 4.2 To not consider the investigation – this would undermine the importance of looking into the matters identified and would send out an inappropriate message regarding the control of exempt information.

5. RISK

- 5.1 Paragraph 2 of this report is presented for information only and has no risk management implications.
- 5.2 The identified actions arising from the investigation, set out in the recommendation, will help manage the risks of exempt information being

made public.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 Members of the Audit, Governance and Standards Committee and the Independent Person in accordance with the relevant complaints procedure will be consulted, on individual complaints as and when necessary.
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7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 Paragraph 2 of the report is for information only and as a result no further action will be taken.
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8. REPORT APPENDIX

“Investigation into the Release of Exempt Information Contrary to Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (Report)”