

**Access to Information Review Report**

<b>Final Decision-Maker</b>	Democracy and General Purposes Committee
<b>Lead Head of Service</b>	Patricia Narebor, Head of Mid Kent Legal Partnership
<b>Lead Officer and Report Author</b>	Patricia Narebor, Head of Mid Kent Legal Partnership
<b>Classification</b>	Public
<b>Wards affected</b>	All wards

**Executive Summary**

The Constitution, Part 3.2 sets out the Access to Information Procedure Rules. This includes the additional rights of access for members on a "need to know" basis for the performance of their duties as a councillor.

Consideration of member requests are to be dealt with on a timely basis taking into account the legal implications. The Constitution provides that the Monitoring Officer or her deputy is to consider these requests.

This paper outlines the arrangement within the Constitution regarding additional rights of access to information for members.

**Purpose of Report**

The report is for noting.

**This report makes the following recommendations to this Committee:**

1. That the update in this report be noted.

**Timetable**

<b>Meeting</b>	<b>Date</b>
Democracy and General Purposes Committee	11 November 2020

## Access to Information Review Report

### 1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Impact on Corporate Priorities</b>	<p><i>The four Strategic Plan objectives are:</i></p> <ul style="list-style-type: none"> <li>• <i>Embracing Growth and Enabling Infrastructure</i></li> <li>• <i>Safe, Clean and Green</i></li> <li>• <i>Homes and Communities</i></li> <li>• <i>A Thriving Place</i></li> </ul> <p>• <i>The decision will have an impact on the governance arrangements of the Council which has an impact on the above priorities.</i></p>	Head of Mid Kent Legal Partnership
<b>Cross Cutting Objectives</b>	<p><i>The decision will have an impact on the governance arrangements of the Council which has an impact on the cross-cutting objectives.</i></p>	Head of Mid Kent Legal Partnership
<b>Risk Management</b>	<p>In determining whether information should be released, the Council is obliged to take into account the legal implications to avoid a risk of challenge and compromising the Council's position.</p>	Head of Mid Kent Legal Partnership
<b>Financial</b>	<p>There are no financial implications other than the potential for a claim for damages should information be released and adverse impacts are demonstrated by a third party together with addressing the cost of defending such claims and/or payment of compensation.</p>	Head of Mid Kent Legal Partnership
<b>Staffing</b>	<p>There are no staffing implications.</p>	Head of Mid Kent Legal Partnership
<b>Legal</b>	<p>The Local Government Act 1972, section 100F enables certain information to be withheld when particular factors are satisfied. Relevant grounds are included under</p>	Head of Mid Kent Legal Partnership

	<p>paragraph 5 of this report.</p> <p>Under section 100F, information can be withheld (but can be available for inspection) where it relates to:</p> <p>(a) Information relating to the financial or business affairs of any particular person (including the authority holding that information) (except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract), or</p> <p>(b) Information which reveals that the authority proposes (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment.</p>	
<b>Privacy and Data Protection</b>	There are no data protection implications arising from this report.	Head of Mid Kent Legal Partnership
<b>Equalities</b>	There are no equality implications arising from this report.	Head of Mid Kent Legal Partnership
<b>Public Health</b>	There are no public health implications arising from this report.	Head of Mid Kent Legal Partnership

<b>Crime and Disorder</b>	There are no crime and disorder implications arising from this report.	Head of Mid Kent Legal Partnership
<b>Procurement</b>	There are no procurement implications arising from this report.	Head of Mid Kent Legal Partnership

## 2. INTRODUCTION

- 2.1 This paper outlines the arrangement within the Constitution regarding additional rights of access to information for members. Following queries raised by members regarding a request for information “on a need to know” basis, the Monitoring Officer advised members that the arrangements within the Constitution would be reviewed and an update provided to members regarding how requests are considered
- 2.2 The Constitution, Part 3.2 sets out the Access to Information Procedure Rules. This includes the additional rights of access for members on a “need to know” basis for the performance of their duties as a councillor.
- 2.3 Consideration of member requests are to be dealt with on a timely basis taking into account the legal implications. The Constitution provides that the Monitoring Officer or her deputy is to consider these requests.

## 3. BACKGROUND

- 3.1 A motion was considered by **Full Council on 25, September 2019**, proposing that all Members should have access to all information held by the Council. In light of possible changes to the Constitution, the motion was referred to Democracy and General Purposes Committee and was considered on **13 November 2019**.

The motion proposed that:

*Members of this Council are elected by the Residents of this Borough to represent their interests. In order for Members to carry out their duties effectively this Council agrees that all committee agendas and reports relating to items on the agenda (including minutes, supporting documentation, and urgent updates and relevant exempt information) will be provided to committee members and made available to any other interested members on request.*

### **Counsel’s Opinion regarding Member Access to all Information**

- 3.2 The advice, in summary, was that the Council needs to operate within the law and decisions made by the Courts which the Council is obliged to comply with. He also noted that a requirement that all Members of the Council have a right to all information pushes the boundaries too far and would go beyond what the law permits. Democracy and General Purposes Committee also

considered whether to have a report back to review the position but concluded that this would be unnecessary as any Member could ask for a further report should there be continuing issues.

3.3 In view of Counsel's opinion, DGPC decided that it would not be appropriate to consider the motion, since adoption of the proposal would be contrary to the legal requirements taking into account Counsel's advice.

#### **4. The Common Law or Court decisions regarding Members' "need to know" requests**

4.1 Members have a right to see documents, or parts of documents, where this is reasonably necessary to enable them to perform their duties as a Councillor or their role within the Council. This is commonly referred to as the 'need to know' principle. The right does not amount to an automatic right to see any and all documents. The basis of the rule is that the member needs the information to carry out their duties.

**4.2 The Constitution** (Part 3.2 - Access to Information Procedure Rules) sets out how a Member's need to know request should be dealt with as follows:

##### **Additional rights of access for Councillors – Part 3.2 The Constitution, para 12:**

All Councillors will be entitled to inspect any document which is in the possession or under the control of the Council or its Committees where they are able to demonstrate a "need to know" to the satisfaction of the Monitoring Officer or his/her Deputy.

4.3 (Minute 12 Council Meeting 16 October 1996)  
In addition to Members' other rights, all documents of the Council should be available and open for inspection and copying by all Members, provided either that the documents do not disclose exempt information as described in Schedule 12A to the Local Government Act 1972, or that the Member has a need to know the information contained in the document and has made a written declaration stating why inspection of the documents is necessary for the performance of their duties as a Councillor, provided that access to the document will not be given if to do so would be a breach of the Data Protection Act or other legislation.

4.4 That all information obtained from an inspection and any copy document received shall be treated as confidential to the Member and shall be for his/her use as a Member of the Council only unless the Chief Executive, Director or duly authorised officer concerned agrees at the time of inspection or supply of copy documents that this restriction can be relaxed; and

4.5 That in the event of the Chief Executive, Director or duly authorised Officer not agreeing that the restriction can be relaxed, the Member concerned shall have the right to require the matter to be referred to the relevant Committee and, if necessary, to the Council for final determination.

#### **5. When can a Member's request for information be declined:**

- (a) Where a Member has not demonstrated that the information is required for the performance of their duties as a Councillor. If a member is not a member of a committee or sub-committee, the member would have to show good cause why sight of the information is necessary to perform their duties.
- (b) Where release of the document to the Member will lead to a breach of the Data Protection Act or other legislation.
- (c) Where the information relates to financial or business terms proposed or to be proposed by or to the authority in the course of negotiations for a contract; or
- (d) Information that reveals that the Council proposes to serve a notice, make an order or direction under any enactment.  
(The Local Government Act 1972, section 100F).

## **6. Who makes the decision whether access can be granted?**

- 6.1 The Constitution provides that Members are required to demonstrate the need to know to the Monitoring Officer and/or her Deputy. The monitoring officer will apply the statutory requirements and decisions made by the Courts when considering a need to know request.
- 6.2 Where a Member's need to know request is agreed and the information is copied or inspected, the Chief Executive, Director or duly authorised officer can require the information to be kept confidential. If the Member requires the information not to be kept confidential and the restriction is not relaxed, the Member can appeal to the relevant Committee.

## **7. Options regarding who determines a Members need to know request?**

Please consider the report of the benchmarking exercise under paragraph 8 below.

### **Recommendation:**

The Council is advised to continue with the current arrangement within the Constitution where the Monitoring Officer and/or her deputy considers the need to know request, taking into account the statutory requirements and conditions outlined under paragraph 5 above.

Members will note from the benchmarking exercise below that the Council's arrangement is in line with the approach adopted by other Councils within the County. Generally, a need to know request is either made by the Chief Executive, Senior Officers or the Monitoring Officer in each of the authorities.

## **8. BENCHMARKING**

Determination of members' request for information on a "need to know" basis.

<b>Authority</b>	<b>Committee Member decision</b>	<b>or</b>	<b>Chief Executive, Director</b>	<b>or</b>	<b>Monitoring Officer</b>
KCC	No		Corporate Director	in consultation with the	Monitoring Officer
Canterbury	No		Senior Officer, Monitoring Officer	to review if the member is dissatisfied (or Chief Executive in the absence of the Monitoring officer),	whose decision shall be final.
Dover	No		Senior officers with Monitoring officer	dealing with disputes.	
Gravesham	Ultimately for full Council to determine what is reasonably necessary for a Member to know		In the event of doubt – the Service Manager Communities to decide (in his/her absence) the Monitoring Officer.		
Maidstone	No		Monitoring Officer		
Sevenoaks	No		Relevant officer - deputy chief executive i.e. Director		
Swale	No		Monitoring Officer with advice from Legal if required		
Thanet	No		Monitoring Officer		
Tunbridge Wells	No		Monitoring Officer		

## **9. AVAILABLE OPTION**

- 9.1 The Council is advised to continue with the current arrangement within the Constitution where the Monitoring Officer and/or her deputy considers the need to know request, taking into account the statutory requirements and conditions outlined under paragraph 5 above.
- 9.2 Members will note from the benchmarking exercise below that the Council's arrangement is in line with the approach adopted by other Councils within the County. Generally, a need to know request is either made by the Chief Executive, Senior Officers or the Monitoring Officer in each of the authorities.

## **10. RISK**

- 10.1 The matters outlined under paragraph 5 entitle the Council to withhold information when it is appropriate to do so. The Council's position and/or that of a third party may be compromised should information not be treated as exempt at a particular stage.
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**11. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

Not applicable

**12. REPORT APPENDICES**

None

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**13. BACKGROUND PAPERS**

None