

Subject: Managing Confidential Information
Date of Meeting: 22 January 2013
Report of: Monitoring Officer
Contact Officer: Name: Abraham Ghebre-Ghiorghis Tel: 291500
E-mail: abraham.ghebre-ghiorghis@brighton-hove.gov.uk
Wards Affected: All

Note: The special circumstances for non-compliance with Council Procedure Rule 23, Access to Information Procedure Rule 5 and Section 100B (4) of the Local Government Act 1972 (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that consultation and consideration of implementation was not complete at the time of publication.

By reason of the following special circumstances, which shall be recorded in the minutes, the Chair of the meeting is of the opinion that this item should be considered at the meeting as a matter of urgency as the work on preparation of the implementation of the proposals needs to start urgently and cannot wait until the next meeting of the Committee.

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

The purpose of this report is to inform Audit & Standards Committee of:
(i) the outcome of the investigation into incidents of unauthorised disclosure of confidential information; and (ii) the proposed actions to address the identified shortcomings.

2. RECOMMENDATIONS:

That the Committee –

- 2.1 Notes, and agrees in principle, the proposed actions and implementation schedule as set out in this report and the appendix.
- 2.2 Notes that further reports will be submitted to the Committee with proposed revisions to the various codes and protocols that fall within the remit of the committee, especially many of those covered under Action 3 in paragraph 3.3 of the report.

3. RELEVANT BACKGROUND INFORMATION:

- 3.1 Following a series of incidents of unauthorised disclosure of confidential information, the Monitoring Officer was instructed by the Leader of the

Council and the then Acting Chief Executive to undertake an investigation. This was done with the help of senior officers from Legal Services and the Internal Audit Service.

- 3.2 The investigation, supplemented by an informal peer review from Southampton City Council, identified a number of practical concerns. Although a number of our processes and procedures could be improved, the more fundamental issue concerns organisational culture which in turn shapes or influences Member and Officer expectations and behaviour. The recommendations focus on this aspect. There are nevertheless a number of policies, procedures and ways of working which need to be looked at and these are addressed in the list of recommendations in paragraph 3.4 below; and in the implementation schedule at Appendix 1.
- 3.3 Having regard to the information collected during the investigation and the recommendations from external review, it is proposed that the Council agrees a set of 5 main action areas or themes set out below. These would all be subject to the overarching principle of respecting confidentiality within the context of openness and transparency.

Action 1. Increase Openness and transparency

Respect for confidentiality is most effective in the context of an organisation that is committed to openness and transparency as a default position. Although the Council has implemented a number of initiatives over the last few years, the opportunity should be taken to review these and ensure we have maximum openness and transparency that is compatible with good governance practices. It is therefore proposed to do the following:

- Include openness and transparency as one of the Council's organisational values.
- Review the Council's Publication scheme to ensure it is as comprehensive as is reasonably practicable. This should be benchmarked and, to the extent it is measurable, to ensure is in the upper quartile of local authorities for clarity and comprehensiveness.
- Publicise the open government licence more prominently and review visibility and accessibility of information covered by the licence.
- Ensure practice in FOI cases is based on practical presumption of disclosure rather than limited to what the Council is legally obliged to disclose.

Action 2. Change the way the Council deals with Exempt and Confidential reports and meetings to reflect best practice

The Council's current practice complies with the law. However, there is a tendency to put more items and significantly more contents in part II (exempt agenda) than is consistent with best practice. The wide

circulation of part II papers and the regular attendance of Members and Officers in part II meetings when there is no need to be there needs changing. It is therefore proposed that:

- The current report writing protocol be revised to put more emphasis on restricting the number of items that go into part II.
- Where there is a need for part II reports, ensure that as much of the information as is not exempt is put into the part 1 agenda and that any part II reports include only strictly exempt information (preferably in the form of appendices rather than full reports.)
- Provide training for lawyers, committee administrators and report originators about criteria for exemption and apply a more robust test of what is in the public interest (where possible, always erring in favour of disclosure.)
- Ensure fuller reasons are given for exemption, not just a reference to the relevant paragraph number in the Local Government Act 1972 Act.
- Encourage Chairs of Committees to challenge the need for exemption.
- Ensure that the overall quality of reports presented to Members is high and readily intelligible to a person with no specialist knowledge of the subject.
- Review circulation of Part II papers and limit them to Members of the Committee and Officers/ other Members with a genuine need to know.
- Consider better use of Modern Gov facility to reduce paperwork and help reduce the risk of mistakes in the circulation of part II papers.
- Review attendance at part II meetings (Members, Political Assistants, Other Officers) so that it is limited to those with a genuine need to attend.

Action 3. Review, Update and modernise Council Codes and Protocols

Many of the Council's existing codes or practice, guidance notes and protocols have been in place for a long time and have not been updated to reflect current reality and the state of technology, especially around social media. There is also a need to incorporate in our codes the need to co-operate with investigations. It is therefore proposed that the following steps/actions be taken:

- Amend the existing Code of Conduct for Members to require co-operation with investigation regarding leaks, including access to all

relevant material. Failure to co-operate would therefore become a breach of the code.

- Amend the ICT and Use of Council Facilities protocol and consider including a power to withdraw facilities from a member or officer as a last resort. This has to be done on a case by case basis having regard to proportionality and the law.
- Adopt a social media protocol for Members and Officers (we currently have guidance for Officers only, which is not widely publicised.)
- Review and re-launch the Member and Officer guidance on confidentiality.
- Review the Officer Code of Conduct and the Member/Officer Code to ensure they reflect best practice regarding confidentiality.
- Review current practices to ensure that confidential and exempt information, whatever the context and whatever the medium of communication, is easy to identify by colour coding, labelling, awareness raising etc.

Action 4. Media Protocol

Although we have existing protocols and strategies agreed by Members, there is a need to revisit and renew some of these to get maximum cross-party support. It is therefore proposed:

- A revised and updated protocol be presented to the Leaders Group.
- Ensure that, where practicable, Members are informed about press releases before, or at least at the same time, as the media. This should be done by copying Group Leaders into all press releases as they go out if not before.

Action 5. Get Commitment from Key Players in the Organisation

An essential prerequisite to the success in ensuring openness and transparency as well as respecting confidentiality is to get agreement or “buy in” from all parts of the organisation. It is therefore proposed:

- To seek the agreement of Leaders’ Group to this action plan and support to its principles.
- Take a high level report to Audit and Standards Committee on confidentiality and the proposed actions.
- Seek appropriate Committee/full Council agreement to changes to the relevant codes and practices (some of these are reserved to full Council, others can be dealt with by the Audit & Standards Committee and others can be done by the Monitoring Officer.)

- Get SLT and CMT agreement to the new way of working.
- Ensure there is Corporate message from Chief Executive and or Leader/Group Leaders reinforcing corporate commitment to openness and transparency as well as respecting confidentiality.

4. CONSULTATION / ENGAGEMENT

The outcome of the investigation and recommended actions were taken to Leaders Group on 7 January 2013 for consideration. The actions and implementation schedule were agreed.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The actions set out in the investigation involve changes to working practices, codes, protocols and culture, all of which are expected to be achieved within existing departmental revenue budgets and proposed budgets for 2013/14. No discrete provision need be made for this tranche of work.

Finance Officer Consulted: Anne Silley

Date: 10 January 2013

Legal Implications:

- 5.2 Some of the proposed actions arising from the investigation, particularly those involving reviews of codes and protocols, will require changes to the council's constitution. A report on this, together with a list of constitutional amendments to be made, is due for consideration by the Policy & Resources Committee in February 2013.

Lawyer Consulted: Oliver Dixon

Date: 10 January 2013

Equalities Implications:

- 5.3 There are no equalities implications arising from the report

Sustainability Implications:

- 5.4 There are no sustainability implications arising from the report

Crime & Disorder Implications:

- 5.5 There are no crime and disorder implications arising from the report

Risk and Opportunity Management Implications:

- 5.6 Implementing the actions flowing from the investigation will improve the council's corporate governance and lessen the risk of unauthorised disclosure of confidential information.

Corporate / Citywide Implications:

- 5.7 Increasing the council's openness and transparency (Action 1) is a cultural change intended to create a shift in how members and senior officers interact within the council and with external bodies.

SUPPORTING DOCUMENTATION

Appendix 1: Implementation Schedule

Documents In Members' Rooms

None

Background Documents

None