

Procedure Note for Elected Members Accessing Information

Where members of the public have rights of access to information held by ACC, councillors also enjoy those same rights.

However, as a councillor, you have additional rights of access to information held by ACC. Please note, though, that these rights are not absolute – certain exceptions and conditions apply. In addition, along with rights come responsibilities and therefore members should be aware of these when requesting information.

You can request information using this [Microsoft Form](#) which will be reviewed by the Directorate PAs after you have submitted it and thereafter allocated to the relevant senior officer for them to respond to you.

Councillors' Statutory Right to Inspect Documents

The Local Government (Scotland) Act 1973 (section 50F) gives councillors a statutory right to inspect any document held by ACC which “*contains material which relates to any business to be transacted or proceedings at a meeting of*” ACC (or a committee or sub-committee of ACC). This right applies whether or not the councillor is a member of the committee or sub-committee in question and covers not only reports to be submitted to the meeting but any other relevant documents too.

Please note:

- this is a right of **inspection** (viewing) – not to receive a copy of the document, nor to take a copy away with you. You should make arrangements with the relevant officers in order to inspect the documents you wish to see. Depending on the information requested, officers may elect to provide electronic copies of the information;
- the reference to **meetings** of Council, committees or sub-committees. For example, this right does not entitle you to inspect correspondence between an officer and a third party about a matter which is not to be, and has not been, considered at a Council, committee or sub-committee meeting;
- this right of inspection does not apply to any document – certain types of “*exempt information*” can be refused – i.e. information relating to particular employees, occupiers of accommodation, applicants or recipients for/of services or financial assistance; the care of particular children; particular persons put on probation or released from prison; contract and industrial relations negotiations; legal advice (from internal or external legal advisers); action regarding the prevention, investigation or prosecution of crime; and
- It is important to note that this additional right only extends to elected members. Therefore, you must not share the information with any external parties.

Councillors' Common Law Right – the “Need to Know”

This common law right of councillors is much broader and is based on the principle that, as a councillor, you have (on the face of it) a right to **inspect** ACC documents so far as your access to the document is reasonably necessary to enable you to perform your duties properly as a member of ACC. This is commonly referred to as the “need to know” principle.

In other words, you are entitled to view copies of any documentation held by ACC - provided you can show you have a “need to know” in connection with your duties as a councillor and that you have no ulterior or improper motive.

You do not have a right to ‘a roving commission’ to go and examine documents of ACC – mere curiosity is not sufficient. You need to be able to demonstrate you genuinely have a “need to know” in order to carry out your duties. As above, this additional right of access only extends to elected members and you must not share any information obtained with any external parties.

How do I request documents?

When making a request under the “need to know” principle, you should explain why you need to see the information or documents in [this form](#). You should also refer to ACC’s Member-Officer Relations Protocol to help you understand what information and documents you may be entitled to see. You may need to seek a mandate from the data subject in order to access personal data.

Again, this is a right of inspection (viewing) – not to receive a copy of the document, nor to take a copy away with you. You should make arrangements with the relevant officers in order to inspect the documents you need to see.

General Points

The provision of information comes at a cost and you should try to ensure that you are not used by members of the public as a channel for access to information that is properly available through normal Freedom of Information procedures.

Any ACC information provided to you in terms of your additional rights of access as a councillor must only be used by you for the purpose for which it was provided – i.e. in connection with the proper performance of your duties as a member of ACC. You should remember that information and documents you acquire through your additional rights of access as a councillor may be subject to the Code of Conduct’s rules about confidentiality.

The Councillor’s Code of Conduct states that you must not request information unreasonably i.e. within short timeframes, without specifying what is being asked for, persistently asking for information which has been refused previously. In other words, it is not fair to put unreasonable demands on officers or to apply pressure on them to meet your request.

The way in which you ask for information is also important. You might be refused information but you should behave respectfully to officers at all times.

Legal Advice

Requests by members for access to legal advice will be considered on a case-by-case basis.

Legal advice is summarised for members in Council and committee reports, to provide reasonable assurance and to allow them to make decisions. External legal opinions, in particular, often contain a lot of technical detail that is not reasonably required for members to make a decision.

It should also be noted that legal advice will often be legally privileged. Legal privilege in Scotland is a rule that keeps certain communications confidential. This means, for example, that some documents need not be disclosed to a court or to other parties.

In simple terms, legal privilege ensures that you can speak openly with your lawyer without worrying that your conversations will be used against you in court. It helps maintain trust and allows for the giving of forthright and comprehensive legal advice.

It is vital to maintain legal privilege, especially in relation to matters that could result in litigation.

It is acknowledged that elected members are collectively 'the client' in relation to legal advice obtained by the Council. However, it should also be recognised that sharing legal advice more widely than is absolutely necessary risks that advice losing the protection of legal privilege. Therefore, it is not advisable to share legally privileged information with all councillors. The more individuals that legal advice is shared with, the greater the risk of the advice accidentally being made public or shared with someone who is not entitled to see it – e.g. by an email being inadvertently forwarded or a paper copy being mislaid.

If legal advice were to get into the wrong hands, this could seriously prejudice the Council's chances of defending itself in the case.

Members are free to disagree with legal advice, but must do so in a respectful manner.

Providing detailed legal advice to members, and providing related explanations and answers to queries, has significant resource implications in terms of staff time. Requesting such detailed advice, when a summary has already been provided, may also tend to undermine the relationship of trust and respect which should exist between elected members and officers – as well as inappropriately involving members in operational matters.

Further Information

[Member Officer Relations Protocol](#)

[Standards Commission Advice Note](#)

Form (MS Form to be submitted to relevant Chief Officer)

1. Please provide details of the information you are requesting. To ensure that officer time is used appropriately, please specify the information you are seeking in as much detail as possible. Please note that unreasonable requests, eg short timescales or large volumes of information, may not be met.
2. For what purpose do you require this information?
 - They are documents which relate business to be transacted at a Committee or Council meeting (*move to Q3 and Q4*)
 - Another reason (*move to Q5*)
3. Please provide details of the Committee or Council meeting to which this information relates -
 - Name of Committee
 - Date of Committee
 - Report on agenda
4. Does the information requested fall into any of the following exempt categories:
 - Relates to particular employees
 - Relates to occupiers of accommodation
 - Relates to applicants or recipients for/of services or financial assistance
 - Relates to the care of particular children;
 - Relates to particular persons put on probation or released from prison;
 - Relates to contract and industrial relations negotiations;
 - Contains legal advice (from internal or external legal advisers);
 - Relates to action regarding the prevention, investigation or prosecution of crime.
 - (*If Yes, move to question 5*)
5. Please explain why you consider that you need this information, bearing in mind that you are not exercising rights under legislation but under common law therefore you need to demonstrate a requirement for why you need the information in order to carry out your duties.