

## **THE CODE OF CONDUCT FOR MEMBERS – LANCASTER CITY COUNCIL'S REQUIREMENTS WITH REGARD TO THE DISCLOSURE OF INFORMATION**

### Background

Paragraph 4 of the Code of Conduct requires as follows:

You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

### Guidance from the Standards Board for England

Guidance issued by the Standards Board states as follows:

“In relation to the disclosure of confidential information in the public interest, the four requirements to be met are outlined below.

1. The first requirement, that the disclosure must be reasonable, requires you to consider matters such as:

- Whether you believe that the information disclosed, and any allegation contained in it, is substantially true. If you do not believe this, the disclosure is unlikely to be reasonable.

- Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.

- The identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for you to disclose the information to the world at large through the media.

- The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.
  - The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.
  - The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing or is likely to re-occur.
  - Whether the disclosure involves your authority failing in a duty of confidence owed to another person.
2. The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future.
    - (a) A criminal act is committed.
    - (b) Your authority or some other person fails to comply with any legal obligation to which they are subject.
    - (c) A miscarriage of justice occurs.
    - (d) The health or safety of any individual is in danger.
    - (e) The environment is likely to be damaged
    - (f) That information tending to show any matter falling within (a) to (e) is deliberately concealed.
  3. The third requirement, that the disclosure is made in good faith, will not be met if you act with an ulterior motive, for example, to achieve a party political advantage or to settle a score with a political opponent.
  4. The fourth requirement, that you comply with the reasonable requirements of your authority, means that before making the disclosure, you must comply with your authority's protocols on matters such as whistle-blowing and confidential information. You must raise your concerns through the appropriate channels set out in such policies or protocols.

In summary, to decide whether the disclosure is reasonable and in the public interest, you may need to conduct a balancing exercise weighing up the public interest in maintaining confidentiality against any countervailing public interest favouring disclosure. This will require a careful focus on how confidential the information is, on any potentially harmful consequences of its disclosure, and on any factors which may justify its disclosure despite these potential consequences.

In some situations, it is extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, or where the information disclosed is protected by legal professional privilege.”

## The Council's Requirements with regard to Confidential Information

The fourth requirement referred to above is that you comply with the reasonable requirements of the Council. The Council's requirements are as follows:

1. Some confidential information will relate to personal data. The Council has a Data Protection Policy, and it is a requirement that you should comply with this Policy.
2. With regard to reports to elected member body meetings, eg full Council, Cabinet, and Committees, where the report writer considers that the report contains exempt information, the report and any background papers will be marked as restricted and printed on orange paper. The Council's requirements are that any information contained in these documents should not be disclosed to any person who has not legitimately received a copy from Democratic Services.

At the relevant meeting, the member body will consider whether the information should continue to be treated as exempt, and the press and public excluded. If the information remains exempt, then you should not disclose it to any other person. The information will remain exempt, and should not therefore be disclosed, unless and until the member body considers the matter again and resolves that the report and background papers or any part thereof are no longer required to be treated as exempt. Only then, would you be permitted to disclose the information. If you wish a member body to consider lifting an "exemption", you should contact the Head of Democratic Services.

3. There will be other information, whether written or otherwise, held by the Council and of which you may become aware in the course of exercising your functions as a member, which will not form part of a report or background papers, but which may be confidential. If you are informed by any officer that such information is of a confidential nature, or if you otherwise have reason to believe that the information may be of a confidential nature, then the Council's requirements are that you should not disclose the information to any other person without first seeking advice from the Council's Monitoring Officer, or in her absence, the Deputy Monitoring Officer. The Council further requires that you should follow any such advice given to you.

You should be aware that a failure to follow these requirements may constitute a breach of the Code of Conduct.