

**BABERGH DISTRICT COUNCIL**

**FROM:** The Monitoring Officer

**REPORT NUMBER:** **H65**

**TO:** STANDARDS COMMITTEE AND COUNCIL

**DATE OF MEETING:** 11 July 2008  
15 July 2008

**CONFIDENTIAL INFORMATION PROTOCOL**

**1. PURPOSE OF REPORT**

- 1.1 To consider adoption of a protocol to assist Members in interpretation of the obligation within paragraph 4 of the Members' Code of Conduct not to disclose confidential information except in prescribed circumstances.

**2. RECOMMENDATIONS TO COUNCIL**

- 2.1 **That the Confidential Information Protocol at Appendix 1 be adopted for inclusion within Part 5 of the Constitution and the Head of Corporate Services be authorised to make any ancillary amendments required to the Constitution in connection therewith.**

The Committee is asked to make a recommendation to Full Council on the above matter.

**3. FINANCIAL IMPLICATIONS**

- 3.1 There are no direct financial implications from adoption of the Protocol.
- 3.2 There are however potential financial implications for the Council if, as a consequence of a disclosure of confidential information comprising personal data relating to an individual, there is a breach of the Data Protection Act 1998. A breach of the Act could give rise to liability on the Council, as data controller, to pay compensation for any damage caused from a breach of the Act.
- 3.3 A Member could also incur criminal liability, punishable by a fine, by knowingly or recklessly disclosing personal data in circumstances that are contrary to the Data Protection Act.

**4. RISK MANAGEMENT**

- 4.1 This report is most closely linked with the Council's Significant Business Risk No. 4 (Governance). Key risks are set out below:

<b>Risk Description</b>	<b>Likelihood</b>	<b>Seriousness or Impact</b>	<b>Mitigation Measures</b>
Confidential information is unlawfully disclosed placing the Member in breach of the Code of Conduct and the Data Protection Act 1998	Low	Critical	Committee reports marked as "confidential", as appropriate.  Availability of advice, guidance and training on the Code and confidentiality

<b>Risk Description</b>	<b>Likelihood</b>	<b>Seriousness or Impact</b>	<b>Mitigation Measures</b>
Confidential information is unlawfully disclosed by a Member placing the Council in breach of the Data Protection Act 1998	Low	Critical	As above  Staff awareness of data protection.

5. **KEY INFORMATION**

- 5.1 At its meeting on 25 January 2008, the Committee considered report G183 which invited members to make recommendation to full Council that a protocol on confidential information be adopted in the form appended to that report. The Committee resolved to defer consideration of the protocol so that a more simplified document could be developed and considered on a County wide basis.
- 5.2 The Suffolk Monitoring Officers have met to discuss the draft protocol and agreed that the most important issue is for members to have guidance on paragraph 4(iv) of the Code of Conduct. This requires members to ensure that the disclosure of information is in compliance with the reasonable requirements of the Council. In the absence of guidance on the Council's reasonable requirements it may be difficult for members, and indeed the Committee, to ascertain whether a disclosure of information amounts to a breach of the Code.
- 5.3 A revised protocol is appended to this report which is in the form to be recommended to Suffolk Councils.

6. **APPENDICES**

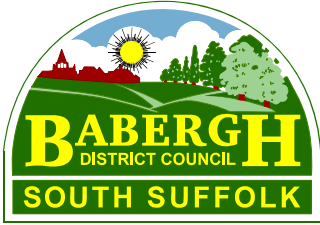
Appendix 1 - Confidential Information Protocol

7. **BACKGROUND PAPERS REFERRED TO:**

None

**CONTACT: Kathryn Seward**

**E-mail: [kathryn.seward@babergh.gov.uk](mailto:kathryn.seward@babergh.gov.uk)**



## **CONFIDENTIAL INFORMATION PROTOCOL**

- 1.1 A Protocol to support Paragraph 4 (iv) of the Members' Code of Conduct which allows for the disclosure of confidential information by a Member where the disclosure is reasonable, in the public interest, made in good faith and complies with the reasonable requirements of the Council.
- 1.2 **This Protocol sets out the reasonable requirements of the Council:**
- (1) That careful consideration is given to the question of whether to make the disclosure and if the disclosure is made, the Member retains a note of the main considerations in reaching that decision.
  - (2) That the content of Committee reports, minutes or appendices that are marked as confidential items will not be disclosed without the prior written agreement of the relevant Head of Service or author of the report who will re-consider the need to retain confidentiality under the provisions relating to exempt information under Schedule 12A of the LGA 1972 and the Freedom of Information Act 2000.
  - (3) That the detail of legal or other professional advice is not disclosed without the prior written agreement of the relevant Head of Service.
  - (4) That the Council's policy on whistle-blowing (found within the Anti-Fraud and Corruption Policy, revised October 2007 and available on the Council's website) together with the guidelines for reporting concerns (also on the website) are considered.
  - (5) That the current Member/Officer Protocol (found in Part V, of the Constitution) is considered.
  - (6) That the Members' Code of Conduct and associated guidance is considered.
  - (7) That the advice of the Monitoring Officer or Deputy Monitoring Officer is sought prior to disclosure of the information unless agreement has already been secured under (2) or (3) above.
- 1.4 Agreement to the disclosure of confidential information may be with or without conditions.
- 1.5 In instances involving particularly sensitive or highly confidential information, a Member may be asked to sign a confidentiality notice before information is released to them. In such cases, it would be the Council's expectation that the information is not disclosed.