

Local Authorities must comply with LGOIMA intent when setting rules

Legislation	Ombudsmen Act 1975, Local Government Official Information and Meetings Act 1987
Agency	Local authority
Ombudsman	Sir Brian Elwood
Case number(s)	W42091
Date	1999

A Deed of Confidentiality was distributed to Councillors for signature, with the aim to protect information relating to the Council’s business and affairs—Councillor was concerned that signing the document would conflict with the intentions under the Local Government Official Information and Meetings Act 1987 (LGOIMA) and also that Councillors who don’t sign would have restrictions on information they received—Ombudsman ruled that under LGOIMA, a Council may not put rules in place which are inconsistent with the Act and Councils cannot withhold information from Councillors who have not signed that confidentiality agreement

The complainant was a Councillor, who became concerned when a ‘Deed of Confidentiality’ was distributed to Councillors at a meeting of a City Council for their signature. Signatories to the Deed undertook to keep confidential what was described as ‘*Project Information and other commercially sensitive information*’. The Deed also required each signatory to indemnify the Council for any losses incurred by the Council as a result of a breach of the Deed by that individual, limited to \$100,000 for each breach.

The complainant suggested that the Deed might conflict with the requirements of LGOIMA and that elected representatives who chose not to sign might see the flow of information to them restricted. She contended that those Councillors might thus be prevented from carrying out their role effectively.

The legal principle concerning the disclosure of information to a Councillor by a local authority is well established: a member is entitled by virtue of the office to have access to all information for which there is good reason for such access. This principle is known as the ‘need to know

test', with the onus upon the Councillor to show that access to the information is necessary to enable proper discharge of his or her duties.

Local authorities are subject to the provisions of the LGOIMA. They therefore may not put rules in place which are inconsistent with that Act, and their responses to requests for official information must be in accord with that Act. Therefore local authorities may not withhold official information from Councillors when requested, solely on the basis that a Councillor has not signed a document called a 'Deed of Confidentiality'.

This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.