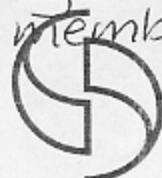


all ACSeS members



the

Standards Board for England

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My ref: CL/JC/04

Your ref: KJ/CR/

21 December 2004

Mrs Kris Johnston
Head of Administration and Legal Services
Blaby District Council
Council Offices
Desford Road
Narborough
Leicestershire
LE19 2EP

Dear Mrs Johnston

Confidential Status

Thank you for your letter of 25 November addressed to Mr Abrahams. I have been asked to respond to your letter.

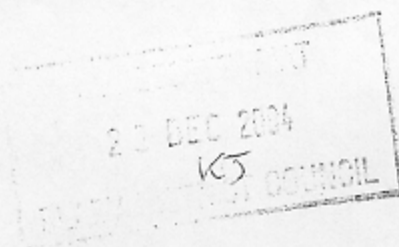
As you will be aware section 63 of the Local Government Act refers to information obtained during the course of an Ethical Standards Officer's investigation must not be disclosed unless the circumstances set out in subsections (1)(a) to (e) apply. Our interpretation of section 63 is that this obligation of confidentiality applies after the conclusion of the investigation. Therefore Ethical Standards Officers' reports, which contain information obtained during the course of an Ethical Standards Officer's investigation, are treated as confidential under section 63 of the Local Government Act 2000. Also the Board's usual procedure is to identify in its correspondence whether or not information contained in the correspondence is confidential and whether it can be disclosed.

We note your comments and it may be helpful for you to be aware that we are seeking advice with regard to Ethical Standards Officer reports and the implications of section 63 of the Local Government Act 2000, as well as our obligations under the Freedom of Information Act 2000 and the Data Protection Act 1998, with a view to being able to wide dissemination of reports.

Thank you for your enquiry and your comments.

Yours sincerely

Claire Lefort
Principal Legal Advisor



Confidence in local democracy

Copy to add ALSe
members

Date: 25 November 2004
My Ref: KJ/CR/
Your Ref:
Contact: Mrs. K. Johnston
Tel No: 0116 272 7586
Fax No: 0116 275 7596
Email: secretariat@blaby.gov.uk

Mr. D Abrahams,
Principal Legal Advisor,
The Standards Board for England,
1st Floor,
Cottons Centre,
Cottons Lane,
London. SE1 2QG

Dear Mr. Abrahams,


Confidential Status

I refer to your letter dated 28th October 2004 which has since been since been discussed by the Leicestershire, Leicester and Rutland Group of the Association of Council Secretaries and Solicitors. The meeting asked me to write to you with the following comments:-

- The Standards Board for England advice is considered not to be well framed and further clarity is needed.
- Agreement is requested that the final report marked 'confidential' is only confidential whilst being investigated and is not confidential after the investigation is concluded (the intention would be to share reports of other authorities with members of Standard Committee as an exempt item).
- The Standard Board for England is requested to identify on all correspondence marked confidential the statutory basis of the confidentiality and also mark on it when it will become non confidential.

I would appreciate your reply within the next fortnight so that it may be reported to the next meeting of the Branch.

Yours sincerely,


Kris Johnston,
Head of Administration and Legal Services

K Johnston, F.Inst.L.Ex., Head of Administration and Legal Services

Blaby District Council

29 OCT 2004

Kris Johnston
Monitoring Officer



the
Standards Board
for England

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28 October 2004

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Dear Ms Johnston,

Thank you for your letters of 27 August and 21 September. Please accept my apologies for the wholly unacceptable delay in replying.

Our advice regarding keeping standards committees informed of investigations was set out in Bulletin 11 (available on our website).

Essentially our position is that it is sensible to let the standards committee know by way of a confidential memo that an investigation is taking place. However, we do not consider it appropriate to inform the committee of the name of the complainant or member under investigation.

Once the investigation has been concluded there is no objection to the standards committee being informed of the outcome and considering the case summary which will appear on our website.

In the case of matters referred to the standards committee for determination a copy of the Ethical Standards Officer's report will be sent to the members of the standards committee under section 64(2)(c) of the Local Government Act 2000.

Yours sincerely

David Abrahams
Principal Legal Advisor

Confidence in local democracy

Bulletin

Bulletin 11 2003



Monitoring Officers could also train members on their responsibilities under the Code of Conduct to try to prevent allegations being made in the first place. Local authorities with parish councils may want to invite parish councillors to attend this training as well.

Train parish clerks

Monitoring Officers should make sure that parish clerks know how to obtain The Standards Board for England's guidance on the Code of Conduct, and could also provide extra training to enable parish clerks to advise parish councillors.

Establish a protocol for making allegations

Some Monitoring Officers have difficulties in deciding whether to make a written allegation to The Standards Board for England where a member may have breached the Code of Conduct.

One authority has produced a protocol explaining when it is acceptable for Monitoring Officers to make an allegation. Monitoring Officers could rely on this kind of protocol to avoid being criticised by members for making an allegation.

Standards Committees and investigations – a clarification

What information should a Monitoring Officer share with a Standards Committee about an Ethical Standards Officer's investigation?

The Standards Board for England has reconsidered its position on this question in the light of feedback from Monitoring Officers.

The Standards Board for England now recommends that when a Monitoring Officer is told that an investigation is taking place, he or she should inform the relevant Standards Committee via a confidential memo.

Contrary to the advice in Bulletin 10, the Monitoring Officer should only outline the nature of the allegation. The Monitoring Officer should not name the complainant or the member that the allegation has been made against, and the allegation should not be included on the agenda of a Standards Committee meeting. This will avoid putting potentially defamatory material into the public domain.

Once the investigation (and any hearing before the Standards Committee or the Adjudication Panel for England) has been completed, a case summary will be published on our website. At this stage it might be appropriate for the Standards Committee to consider if there are any lessons to be learnt from the incident.

For your information

The Case Review/The Code Q&A (Number One, Volume One)

All Monitoring Officers should by now have received a copy of *The Case Review*, which gives The Standards Board for England's views on many questions about the Code of Conduct.

Further copies are available at a cost of £20. Please contact Hayley Armstrong on 020 7378 5161 or at hayley.armstrong@standardsboard.co.uk

Information regarding *The Case Review* is available at http://www.standardsboard.co.uk/publications/legal_digest.php

Telephone: 0845 0788181

E-mail: bulletin@standardsboard.co.uk

Confidence in local democracy

Reports etc.

Reports etc.

64.—(1) Where an ethical standards officer determines in relation to any case that a finding under section 59(4)(a) or (b) is appropriate—

- (a) he may produce a report on the outcome of his investigation,
- (b) he may provide a summary of any such report to any newspapers circulating in the area of the relevant authority concerned,
- (c) he must send to the monitoring officer of the relevant authority concerned a copy of any such report, and
- (d) where he does not produce any such report, he must inform the monitoring officer of the relevant authority concerned of the outcome of the investigation.

(2) Where an ethical standards officer determines in relation to any case that a finding under section 59(4)(c) is appropriate he must—

- (a) produce a report on the outcome of his investigation,
- (b) subject to subsection (4)(b), refer the matters which are the subject of the investigation to the monitoring officer of the relevant authority concerned, and
- (c) send a copy of the report to the monitoring officer, and the standards committee, of the relevant authority concerned.

(3) Where an ethical standards officer determines in relation to any case that a finding under section 59(4)(d) is appropriate he must—

- (a) produce a report on the outcome of his investigation,
- (b) refer the matters which are the subject of the investigation to the president of the Adjudication Panel for England for adjudication by a tribunal falling within section 76(1), and
- (c) send a copy of the report to the monitoring officer of the relevant authority concerned and to the president of the Adjudication Panel for England.

(4) Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in England—

- (a) the references in subsections (1)(b), (c) and (d), (2)(c) and (3)(c) to the relevant authority concerned are to be treated as including references to that other relevant authority, and
- (b) an ethical standards officer who reaches a finding under section 59(4)(c) must refer the matters concerned either to the monitoring officer of the relevant authority concerned or to the monitoring officer of that other relevant authority.

(5) A report under this section may cover more than one investigation under section 59 in relation to any members or co-opted members (or former members or co-opted members) of the same relevant authority.

(6) An ethical standards officer must—

- (a) inform any person who is the subject of an investigation under section 59, and
- (b) take reasonable steps to inform any person who made any allegation which gave rise to the investigation,

of the outcome of the investigation.