

## Disclosing confidential information

**Relevant Code paragraphs:** 4(a)

**Summary:** This fact sheet provides a summary of key points and frequently asked questions about disclosing confidential information under the 2007 revised Code of Conduct for members.

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### Key facts

- Confidential information can only be disclosed when at least **one** of the following circumstances applies:
  - 1) You have to disclose the information by law.
  - 2) An authorised person says that you can disclose it.
  - 3) You need professional advice from a third party, for example your lawyer, and that person agrees not to pass the information to anyone else.
  - 4) The disclosure is in the public interest. This is only justified in limited circumstances (see below).
- Disclosure of confidential information, or information which you believe to be confidential for any other reason, is likely to be a breach of the Code.
- Disclosure of confidential information in the public interest can only be justified when **all** of the following requirements are met:
  - a) The disclosure must be reasonable.
  - b) The disclosure must be in the public interest.
  - c) The disclosure must be made in good faith.
  - d) The disclosure must be made in compliance with any reasonable requirements of your authority.

## Frequently asked questions

### Q1 When is a public interest disclosure “reasonable”?

This depends on the facts of the case and is a matter of judgement. However, you will need to consider issues such as:

- Whether you believe that the information disclosed, and any allegation contained in it, is true. If you do not believe it is true, then 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 you make the disclosure. It may be reasonable to disclose information to the police but not to the world at large through the media.
- The extent of information disclosed. The inclusion of unnecessary detail is unlikely to be reasonable.
- The seriousness of the matter. The more serious it is, 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, then the disclosure may be less likely to be reasonable than if the matter is continuing or is likely to reoccur.
- Whether the disclosure involves your authority failing in a duty of confidence to another person.

### Q2 When is a disclosure “in the public interest”?

For a disclosure to be in the public interest it needs to involve at least one 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 criminal offence is committed.
- Your authority or some other person fails to comply with any legal obligation to which they are subject.
- A miscarriage of justice occurs.
- The health or safety of any individual is in danger.
- The environment is likely to be damaged.
- Information showing any of the above is deliberately concealed.

### **Q3 When is a public interest disclosure “made in good faith”?**

To make a disclosure in good faith you must not act with an ulterior motive, for example to achieve political advantage.

### **Q4 How do I comply with the “reasonable requirements of my authority”?**

Before considering releasing confidential information you must ensure that you comply with your authority’s policies or protocols on matters such as whistle-blowing or member-officer relationships and confidential information, in addition to considering requirements (a)-(c) in the key facts above.

If your authority does not make any requirements to cover the possibility of a member considering a release of information, then the test for disclosing confidential information is a three-stage one – namely it must satisfy the requirements (a)-(c) as above.

However, the Standards Board recommends that authorities ensure they have policies on matters such as whistle-blowing in place and that they take steps to ensure that all members are familiar with the provisions.

Appropriate and robust authority protocols can assist in ensuring the protection of confidential information where appropriate, and in promoting and upholding high ethical standards more generally.

### **Q5 When is a public interest disclosure not capable of being justified?**

When a disclosure amounts to a criminal offence or when information is protected by legal professional privilege, it is extremely unlikely its release could be justified in the public interest.

## Additional information

- *The Code of Conduct: Guide for members May 2007* offers more guidance on the Code and can be downloaded from our website - [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk).
- A full range of factsheets and frequently asked questions is available from the Code of Conduct section of our website.
- View our occasional paper on bias and predetermination, available online.
- Call our enquiries line on **0845 078 8181**.
- Email us at [enquiries@standardsboard.gov.uk](mailto:enquiries@standardsboard.gov.uk).