

**South Ayrshire Council**

**Report by Head of Legal, HR and Regulatory Services  
to South Ayrshire Council (Special)  
of 28 April 2021**

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**Subject: Disclosure of Confidential Information**

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**1. Purpose**

- 1.1 The purpose of this report is to update Members on the outcome of an investigation into the disclosure of confidential and personal information.

**2. Recommendation**

**2.1 It is recommended that the Council:**

**2.1.1 notes the outcome of the investigation; and**

**2.1.2 agrees the further steps being proposed in paragraph 4.1 to improve the confidentiality of papers that are designated confidential/exempt.**

**3. Background**

- 3.1 At its meeting on 18 February 2020, the Council considered a report relating to the Disclosure of Confidential Information, and agreed that:

3.1.1 the appearance of personal and confidential information in the Ayrshire Post be reported to Police Scotland with a request that they investigate this to confirm whether this was a breach of the Data Protection Act 2018 ('the 2018 Act') and, if so, they would proceed with an investigation; and

3.1.2 where Police Scotland decided that this was not a matter suitable for them to investigate, an investigation be undertaken by an external party into the disclosure of the confidential and personal information.

- 3.2 The police were asked by the Monitoring Officer, by letter of 2 March 2020, to investigate the appearance of personal information in the Ayrshire Post. The police confirmed on 15 April 2020 that, in the absence of evidence that there had been a criminal act, they could not pursue a criminal investigation. They recommended instead that an investigation be conducted to establish that there had been a deliberate act to disclose the information to the Ayrshire Post.

- 3.3 Mr Ian MacKay, a previous monitoring officer and investigator for the Standards Commission, was therefore requested, in accordance with the decision of Council on 18 February 2020, to conduct the investigation. As a result of the COVID19 Pandemic, the interviews with staff and Councillors were conducted remotely by telephone. Initial findings were discussed with Members followed by further discussions with Members and with the Newspaper editor as to the source of the article in the newspaper. The findings and conclusions of the investigation are outlined in the Addendum (confidential) to this report.
- 3.4 In terms of para 10.1 of the Council's Scheme of Delegation, determination of any issues relating to the maintenance of standards and conduct of Councillors and officers all in line with any legislative provisions is reserved to Council.

#### **4. Proposals**

- 4.1 Having considered the report, the further steps to assist with keeping the confidential papers confidential are set out below for Members' approval:
- The Microsoft 365 implementation will introduce new security measures that will permit closer tracking of incoming and outgoing e-mails.
  - Additional communications will be sent out to staff and Councillors reminding them of their obligations under the respective Codes of Conduct and under the General Data Protection Regulation (GDPR).
  - Staff are joining a Scottish Government Scheme to develop a Document Data Classification Process that aims to roll out a common scheme across all public authorities. The aim will be to implement this across the Council as part of the Microsoft 365 implementation.
  - The migration to Microsoft 365 will also allow the Council to introduce Information Rights Management (IRM) to the documents and libraries it stores on SharePoint. IRM improves the protection afforded to key documents by encrypting the files so that only authorised people can view them.
  - The format of reports has recently been updated whereby exempt reports are divided, where possible, to allow confidential information which is not for publication but can be shared with Members to appear in a covering report and the remainder is limited to appearing in an Addendum.

#### **5. Legal and Procurement Implications**

- 5.1 Where a Councillor or officer had been found to have intentionally disclosed information to the Ayrshire Post, then this would have been a breach of section 170 of the 2018 Act. Section 196 of the 2018 Act provides that, in Scotland, a person who commits an offence under section 170 is liable on summary conviction to a fine up to the statutory maximum. This is currently £10,000.
- 5.2 There are no procurement implications arising from this report.

## **6. Financial Implications**

6.1 Not applicable.

## **7. Human Resources Implications**

7.1 Not applicable.

## **8. Risk**

### **8.1 *Risk Implications of Adopting the Recommendations***

8.1.1 There are no risks associated with adopting the recommendations.

### **8.2 *Risk Implications of Rejecting the Recommendations***

8.2.1 Rejecting the recommendations may impact on the reputation of the Council.

## **9. Equalities**

9.1 The proposals in this report have been assessed through the Equality Impact Assessment Scoping process. There are no significant potential positive or negative equality impacts of agreeing the recommendations and therefore an Equalities Impact Assessment is not required. A copy of the Equalities Scoping Assessment is attached as [Appendix 1](#).

## **10. Sustainable Development Implications**

10.1 ***Considering Strategic Environmental Assessment (SEA)*** - This report does not propose or seek approval for a plan, policy, programme or strategy or document otherwise described which could be considered to constitute a plan, programme, policy or strategy.

## **11. Options Appraisal**

11.1 An options appraisal has not been carried out in relation to the subject matter of this report.

## **12. Link to Council Plan**

12.1 The matters referred to in this report contribute to Commitment 1 of the Council Plan: Fair and Effective Leadership/ Leadership that promotes fairness.

## **13. Results of Consultation**

13.1 There has been no public consultation on the contents of this report.

13.2 Consultation has taken place with Councillor Peter Henderson, Portfolio Holder for Corporate, and the contents of this report reflect any feedback provided.

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## 14. Next Steps for Decision Tracking Purposes

- 14.1 If the recommendations above are approved by Members, the Head of Legal, HR and Regulatory Services will ensure that all necessary steps are taken to ensure full implementation of the decision within the following timescales, with the completion status reported to the Leadership Panel in the 'Council and Leadership Panel Decision Log' at each of its meetings until such time as the decision is fully implemented:

<b><i>Implementation</i></b>	<b><i>Due date</i></b>	<b><i>Managed by</i></b>
Reminder to be issued to staff and Councillors regarding obligations under respective Codes of Conduct and GDPR	4 May 2021	Head of Legal, HR and Regulatory Services

**Background Papers**     **Report to South Ayrshire Council (Special) of 18 February 2020 – Disclosure of Confidential Information (Members only)**

**[Scheme of Delegation](#)**

**Person to Contact**     **Catriona Caves, Head of Legal, HR and Regulatory Services  
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**Date:** 19 April 2021

## 1. Proposal details

Proposal Title <b>Disclosure of Confidential Information</b>	Lead Officer <b>Catriona Caves</b>
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2. Which communities, groups of people, employees or thematic groups do you think will be, or potentially could be, impacted upon by the implementation of this proposal? Please indicate whether these would be positive or negative impacts

Community, Groups of People or Themes	Negative Impacts	Positive impacts
The whole community of South Ayrshire	-	-
People from different racial groups, ethnic or national origin.	-	-
Women and/ or men (boys and girls)	-	-
People with disabilities	-	-
People from particular age groups for example Older people, children and young people	-	-
Lesbian, gay, bisexual and heterosexual people	-	-
People who are proposing to undergo, are undergoing or have undergone a process to change sex	-	-
Pregnant women and new mothers	-	-
People who are married or in a civil partnership	-	-
People who share a particular religion or belief	-	-
Thematic Groups: Health, Human Rights, Rurality and Deprivation	-	-

3. Do you have evidence or reason to believe that the proposal will support the Council to:

General Duty and other Equality Themes	Level of Negative and/ or Positive Impact (high, medium or low)
Eliminate discrimination and harassment faced by particular communities or groups	Low impact
Promote equality of opportunity between particular communities or groups	Low impact
Foster good relations between particular communities or groups	Low impact
Promote positive attitudes towards different communities or groups	Low impact
Increase participation of particular communities or groups in public life	Low impact
Improve the health and wellbeing of particular communities or groups	Low impact
Promote the human rights of particular communities or groups	Low impact
Tackle deprivation faced by particular communities or groups	Low impact

## 4. Summary Assessment

Is a full Equality Impact Assessment (EQIA) required? (A full EQIA must be carried out on all high and medium impact proposals)		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Rationale for decision:  <b>This report provides an update on an investigation into the disclosure of confidential information. The Council's decision on this has no specific equality implications.</b>			
Signed :	<b>Catriona Caves</b>	Head of Service	
Date:	<b>23 February 2021</b>	Copy to <a href="mailto:equalities@south-ayrshire.gov.uk">equalities@south-ayrshire.gov.uk</a>	