

## **Access to Information and the Constitutional Provisions**

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### **1. Summary**

- 1.1. This report summarises progress with the review of the contents of the Constitution in relation to members and the rules around ‘access to information’. In addition this preparatory work has revealed some issues where the views of the Committee would be appreciated at this stage as this will inform both the approach to be taken as well as the detailed content. The intention beyond this meeting would be to bring revised constitutional content to your next meeting for consideration.

### **2. Recommendations**

- 2.1. **The Committee is invited to comment on the issues set out in paragraphs 3.6.1 to 3.6.5 below.**

### **3. Background**

- 3.1 Rights of access for members to information held by the Council comprise a complex interaction of various pieces of legislation, regulations and the common law. All Members have rights of access to information held by the Council under the Freedom of Information Act, the Data Protection Act, the Environmental Information Regulations and the Local Government Act 1972. Latterly, the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 added to the requirements with rules in respect of ‘executive’ (Cabinet) business with the focus on the decision making arrangements.
- 3.2 It is important for transparency and understanding that the relevant provisions are set out in the Council’s Constitution and published. Currently the relevant content is in two places:

Part 1: Section 8 – Decision Making: This is summary content setting out the main requirements and processes behind the formal decision making process. This document can be accessed via the link below and the relevant pages are 74 to 82.

<http://www.somerset.gov.uk/organisation/key-documents/the-councils-constitution/>

Part 2: Appendix F – Protocol on Members’ Access to Information and other Confidential Issues. This includes more detail than Part 1 Section 8 in respect of member entitlements to information as part of the decision making process as well as more general provisions in relation to members and access to information. This document can also be accessed via the link set out above.

**3.3** An assessment of the current contents of each has revealed:

- Some duplication of content between the two documents
- Some inconsistencies between the content.
- In some cases the content doesn't always necessarily reflect our current practice (eg access provided to members to confidential and exempt information).

These issues will be addressed in amendments to be presented to the Committee's next meeting but the main issues are set out below under paragraph 3.6.

**3.4** The good news is that in all aspects we are meeting the requirements of the legislation and in some respects, in particular members access to confidential and exempt information, we go beyond the legal requirements with our current practice.

**3.5** My conclusion following discussion with the County Solicitor is that the Council would benefit from having one set of rules within Part 1 of the Constitution giving greater clarity to members, officers and the public alike. I hope that the Committee would support this intention. As stated above the intention would be to bring the single set of provisions to your next meeting for consideration following the discussion today.

**3.6** Developing the comments made in para 3.3 above, there are some specific issues that need inclusion and/or discussion and these are set out below in paragraphs 3.6.1 to 3.6.5. We are happy to expand on these points at the meeting.

**3.6.1** The need to know principle. The content would benefit from a more detailed explanation of the 'need to know' principle which is the common law right of members to inspect council documents. This important principle gives any member a prima facie right to inspect Council documents to enable him/her to properly perform their Council duties. The member must demonstrate a 'need to know' and this does not give a member a "roving commission" to examine Council documents. In many circumstances the member's need to know will be presumed and access provided but in others (e.g. a member wishing to inspect documents which contain personal information about third parties) a member would be expected to justify the request in writing in specific terms. The Monitoring Officer will arbitrate if there is disagreement.

**3.6.2** Use of Council information by members: The content needs to make explicit the fact that any County Council information provided to a member must only be used by the member for the purpose for which it was provided i.e. in connection with the proper performance of Council duties.

- 3.6.3** Requests for information: We consider that the content needs to make clear that members are entitled to request information and advice from any service area to enable them to discharge their role as a member. This can range from a request for general information about some aspect of a service's activities to a request for specific information on behalf of a constituent. Such approaches should however normally be directed to the Director for the service area. If a member is unsure who to approach then a Community Governance Officer will be able to advise. Members must not put undue pressure on officers (particularly junior officers) to release information and documents to which they are not entitled to have access.
- 3.6.4** Passing on confidential information: The content picks up the point that members must not pass on confidential information to anyone unless they have the authority to do so. The content would benefit from additional guidance where members are unsure as to information is confidential or not. If a member is unsure as to the status of information coming into their possession, they should always clarify its status with the source before passing it to anyone else. The content should also be strengthened to make it essential that a member consults the Monitoring Officer or the County Solicitor before releasing confidential information to another party.
- 3.6.5** Members access to confidential or exempt papers: The current content doesn't consistently detail the Council's current practice about making available cabinet or committee papers containing confidential or exempt information to non-members of the decision making body. **The Council currently goes beyond the legal requirements in giving access, particularly in relation to cabinet business.** Currently, confidential papers are generally made available to all members on request whether or not they are a member of the decision making body concerned. There will be occasions where access is restricted where personal information about a third party is the subject matter or if the matter is highly commercially sensitive. The restrictions are practical ones, eg, individually named copies handed out at the start of the meeting and collected in before members leave the room or in some cases members may be required to sign a non-disclosure agreement before being given access. On the assumption that members are content with these arrangements which support transparency then the relevant content will be brought into line with this approach.

## 4. Implications

- 4.1.** Legal & Risk: It is important that the Constitution is up to date, meets legal requirements and reflects the practice of the Council. This revision and updating process will assist in meeting these requirements.
- 4.2.** Impact Assessment: No implications.
- 4.3.** Financial: None
- 4.4.** HR: Not applicable.

## **5. Background papers**

**5.1.** None

**Note:** For sight of individual background papers please contact the report author.