

Access to Information and the Constitutional Provisions

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1. Summary

- 1.1. This report sets out revised Access to Information rules for the Constitution. It follows the report considered by the Committee in October 2017 which introduced the intention to review and revise the rules.
- 1.2. The recommendations if agreed will result in revised content for the Constitution but the changes also impact on the Council's 'executive arrangements' which come under the authority of the Leader to approve. The final decisions from today are subject to the Leader's approval of the changes which impact on the Council's 'executive arrangements'.

2. Recommendations

- 2.1. **The Committee is recommended to agree the revised Access to Information rules attached as the Appendix to this report for inclusion in the Constitution and to replace the existing contents of Part 1 – Section 8 (relevant paragraphs) and Part 2 - Appendix F – Protocol on Members' Access to Information and other Confidential Issues.**

3. Background

- 3.1 The October report outlined the background to rights of access for members to information held by the Council which comprise a complex interaction of various pieces of legislation, regulations and the common law. All Members have the normal 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. Section 100F of the Local Government Act 1972 provides that any document which contains material relating to the business to be transacted at a meeting should be open to inspection by elected members (unless it contains confidential or exempt information. Additionally, the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 provided additional rights to access information for 'executive' (Cabinet) business with the focus on the decision making arrangements for both members and the public.
- 3.2 Detailed provisions and guidance on access to information are set out in the Constitution for reasons of transparency and understanding and are important for the day to day process of decision making and running of the Council. Currently the relevant content is in two places in the Constitution:

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/>

and

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 As stated in the October report an assessment of the current contents of each has revealed:

- Some duplication of content
- Some inconsistencies between the content.
- The content doesn’t necessarily reflect our current practice (eg access provided to members to confidential and exempt information)
- That the contents comply with the requirements of the legislation and in some respect go beyond the legal minimum as a matter of local choice.

3.4 The intention in October was to produce a single set of rules within Part 1 of the Constitution giving greater clarity to members, officers and the public alike. The Committee supported this intention.

3.5 The October report raised some specific issues which it was intended to address and this intention was supported by the Committee. These issues are summarised in the following paragraph. In addition to this the content has been rewritten in places and rationalised in terms of the order of the content. New or heavily revised content is shown in bold italic print.

3.6 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 and is often quoted by members seeking access to confidential information.

Use of Council information by members: Making it explicit that Council information can only be used by the member in connection with the proper performance of Council duties.

Requests for information: Clarifying the process for members to request information from services.

Passing on confidential information: To include some additional content about clarifying the status of information where it is unclear if it is confidential or not.

Members’ access to confidential or exempt information: As stated in the previous report the Council’s current policy of providing access to confidential

and exempt information to members goes beyond what is required by statute. The content therefore needs to outline the statutory position as well as our current practice.

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.