

Council, 16 November 2006

## **ACCESS TO INFORMATION PROCEDURE RULES**

### **Report of the Monitoring Officer**

**Statutory Powers:-** Local Government Acts 1972 and 2000  
Local Government (Access to Information)  
(Variation) Order 2006  
The Relevant Authorities (Standards Committee)  
(Amendment) Regulations 2006  
Local Authorities (Executive Arrangements)  
(Access to Information) (Amendment) (England)  
Regulations 2006

**Financial Implications:-** None

### **Purpose of report**

1. To seek Member approval for changes to the Access to Information Procedure Rules within the Constitution.

## **RECOMMENDED**

**That the Council RESOLVES that:-**

1. **the Access to Information Procedure Rules be revised to ensure compliance with the Local Government (Access to Information) (Variation) Order 2006, the Relevant Authorities (Standards Committee) (Amendment) Regulations 2006, and Local Authorities (Executive Arrangements) (Access to Information) (Amendment) (England) Regulations 2006; and**
2. **the Monitoring Officer be authorised to the make the necessary textual amendments to the Constitution.**

### **Background**

2. In January 2006, the Government introduced three new Statutory Instruments which made changes to legislation governing access to meetings and documents of local authorities. These came into effect on 1 March 2006 and ensured that the categories of exempt information are in line with freedom of information legislation.

### **Exempt Information**

3. Schedule 12A to the Local Government Act 1972 sets out descriptions of information which are exempt from disclosure to the public. This

means that local authorities are not required to make such information accessible to the public, whom also can be excluded from parts of meetings where such information will be discussed.

4. The categories of exempt information previously numbered 15. The Local Government (Access to Information) (Variation) Order 2006 reduced these to 7 as follows:-
  - i. Information relating to any individual.
  - ii. Information which is likely to reveal the identity of an individual.
  - iii. Information relating the financial or business affairs of any particular person (including the authority holding that information). Note that "person" may include a corporate body.
  - iv. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
  - v. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
  - vi. Information which reveals that the authority proposes -
    - a. to give under any enactment a Notice under or by virtue of which requirements are imposed on a person; or
    - b. to make an Order or Direction under any enactment.
  - vii. Information relating to any action taken or to be taken in connection with the prevention, investigation, or prosecution of crime.
5. These exemptions are subject to certain qualifications:
  - Information relating to the financial or business affairs of any particular person is not exempt if it is required to be registered under: the Companies Act 1985; the Friendly Societies Act 1974; the Friendly Societies Act 1992; the Industrial and Provident Societies Acts 1965 to 1978; the Building Societies Act 1986; or the Charities Act 1993; and
  - Information relating to proposed development for which the local planning authority may grant itself planning permission under regulation 3 of the Town and Country Planning General Regulations 1992 is not exempt.

## **The Public Interest Test**

6. Information in one of the 7 categories of exempt information which is not prevented from being exempt by either of the 2 qualifications described above is exempt if the public interest in maintaining the exemption outweighs the public interest in disclosing it.
7. The Information Commissioner's Office has published guidance on the public interest test under the Freedom of Information Act 2000. Whilst not giving an explicit definition, the guidance says that something is "in the public interest" if it serves the interest of the public. It offers the following examples of factors where disclosure should be encouraged:
  - furthering the understanding and participation in the public debate of issues of the day;
  - promoting accountability and transparency by public authorities for their decisions;
  - promoting accountability and transparency in the spending of public money;
  - allowing individuals and companies to understand decisions made by public authorities affecting their lives and in some cases assisting individuals in challenging such decisions; and
  - bringing to light information affecting public health and safety.

## **Inspection of Document by Members**

8. The Local Government (Access to Information) (Variation) Order 2006 also makes amendments to s100F of the Local Government Act 1972, to specify rights of access to documents for Members of Council even if those documents are exempt from public access. Documents are required to be open to inspection by Members of Council if they are exempt where they relate to the financial or business affairs of any particular person, except to the extent that the information relates to terms proposed to or by the authority in the course of contract negotiations, or if they are exempt because they reveal that the authority proposes to give a notice under any enactment or to make an order or direction under any enactment.
9. The rights which Members have under s100F of the Local Government Act 1972 regarding access to local authority documents is additional to their common law rights. At common law, Members have a right to access information to the extent that they "need to know" in order to carry out their role as a councillor. The amendments to s100F do not impact on this common law right.

## Standards Committees

10. The Relevant Authorities (Standards Committee) (Amendment) Regulations 2006 amends the Relevant Authorities (Standards Committee) Regulations 2001 which contained additional descriptions of exempt information which apply when a Standards Committee considers matters referred under s60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Local Government Act 2000 which relate to investigations into breaches of the code of conduct and subsequent reports. The new description are:
1. Information which is subject to any obligation of confidentiality;
  2. Information which relates in any way to matters concerning national security; and
  3. The deliberations of a Standards Committee or a sub-committees reaching any finding on a matter referred under the provisions of s60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Local Government Act 2000.

## Executive Arrangements

11. The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 make provision for access to meetings and documents of local authority Executives, including, at Regulation 17, rights for local authority Members to have access to documents in the possession or control of the Executive.
12. The Local Authorities (Executive Arrangements) (Access to Information) (Amendment) (England) Regulations 2006 make amendments to the 2000 Regulations to the effect that the descriptions of exempt information in Schedule 12A of the Local Government Act 1972 (shown in para 4 above) apply and local authority Members do not have a right under Regulation 17 to have access to information in those categories. The exceptions to this rule are:
- Information relating to the financial or business affairs of any person, except that it relates to terms proposed by or to the authority in the course of negotiations for a contract; and
  - Information which reveals that the authority proposes to give a notice or make an order or direction under any enactment.

## Risk Assessment

Risk	Mitigation
Information is inappropriately withheld or disclosed to members of the public or Members of Council	Updating the Access to Information Procedure Rules ensures that the Council will be able to act in

	accordance with the new statutory instruments
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## Conclusion

13. The new Statutory Instruments are intended to give local authorities a shorter and clearer idea of what information should be treated as exempt information. It is necessary for these provisions to be reflected in the Access to Information Procedure Rules of the Constitution.

Kevin Williams  
Monitoring Officer

Council  
16 November 2006

## **Background Papers:**

South Hams District Council Constitution