

CONSTITUTION COMMITTEE – 8 MARCH 2006

AMENDMENTS TO THE CONSTITUTION – ACCESS TO INFORMATION

REPORT OF THE CHIEF EXECUTIVE

Purpose

- 1 The purpose of this report is to recommend changes to the County Council's Constitution to incorporate legislative changes in respect of access to information.

Background

- 2 The Constitution contains the Access to Information Procedure Rules which reflect the requirement of the Local Government Act 1972 to provide the public with papers relating to local authority meetings and access to those meetings and give additional rights of access to documents for members. A schedule attached to the rules sets out the categories of information that may be regarded as exempt, as set out in Schedule 12A of the 1972 Act.
- 3 Following the introduction of the Freedom of Information Act, the Government has issued a Statutory Instrument designed to simplify the exemptions contained in Schedule 12A of the 1972 Act and harmonise them with the provisions of the Data Protection Act and the Freedom of Information Act. Two further Statutory Instruments have been issued incorporating consequential amendments into the provisions relating to the Standards Committee and the rights of access by members to documents held by the Executive.

Proposed Changes

- 4 Rule 10(4) of the Access to Information Procedure Rules contained in Part 4B of the County Council's Constitution sets out what is meant by 'exempt information' and refers to a schedule which describes the statutory categories. The amendments contained in The Local Government (Access to Information) (Variation) Order 2006 are incorporated in the proposed amendment to Rule 10(4) and the schedule referred to therein, which are attached as Appendix A to this report. They are intended to simplify the categories of information. So, for example, the six current categories of information relating to employees, ex-employees, office-holders, occupiers of accommodation provided by the Authority, applicants for services or financial assistance provided by the Authority are now all encompassed in two new categories, "information relating to any individual" and "information which is likely to reveal the identity of an individual". The current category relating to information about the financial or business affairs of any particular person has been amended to include information relating to the County Council's affairs, thus removing the need for three separate categories relating to the Authority's affairs.

- 5 The main change brought about by the Regulations is that the information contained in the various categories is only exempt if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing it. This brings the rules relating to access to information into line with the rules relating to disclosure under the Freedom of Information Act.
- 6 The provisions relating to the Standards Committee and the rights of access for members to documents held by the Executive have also been modified in line with these changes. The former have been incorporated into the schedule contained in Appendix A, and the latter require modifications to Rule 24 of the Access to Information Procedure Rules, which are also set out in Appendix A.
- 7 The term “the public interest” is not defined, but put simply, the test is whether it serves the interests of the public better to maintain the exemption or to disclose the information. There is a presumption running through the Freedom of Information legislation which now applies to the Access to Information Rules, that openness is in itself to be regarded as something which is in the public interest. The Information Commissioner has identified a number of public interest factors which encourage the disclosure of information, including the following:
- furthering the understanding of and participation in the public debate of current issues
 - promoting accountability and transparency by public authorities for decisions taken by them
 - promoting accountability and transparency in the spending of public money
- The above list is not exhaustive, and there may be other factors which will need to be taken into account when considering whether an exemption should be maintained.
- 8 The main factors counting against the disclosure of information are those which are set out in the exemptions themselves. The exemption relating to financial and business information about the County Council is probably the exemption which will be used most often. The public interest will generally favour maintaining the exemption where a report relates to a tendering exercise, the letting of a contract or negotiating the terms of a contract for the acquisition or disposal of property or the supply of goods or services.

Equal Opportunities Implications

None

Recommendation

That the County Council be recommended to approve the proposed changes to the Constitution, as set out in Appendix A to this report.

Background Papers

The Constitution of Leicestershire County Council
The Local Government (Access to Information) (Variation) Order 2006
The Relevant Authorities (Standards Committee) (Amendment) Regulations 2006
The Local Authorities (Executive Arrangements) (Access to Information)
(Amendment) (England) Regulations 2006

Circulation Under Sensitive Issues Procedure

None

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APPENDIX A

PROPOSED AMENDMENTS TO THE CONSTITUTION OF LEICESTERSHIRE COUNTY COUNCIL

MARCH 2006

Access to Information Procedure Rules (Part 4B)

Amend Rule 10(4) to read as follows:

“Exempt information’ means information falling within the statutory categories (subject to any qualification) described in the schedule to these Rules. Information is not exempt if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992. Information is only “exempt information” if and so long as in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Amend Rule 24(1) to read as follows:

“All members of the County Council will be entitled to inspect any document which is in the possession or under the control of the Executive or its committees and contains material relating to any business previously transacted at a private meeting, unless either (a), (b) or (c) below applies:

- (a) It contains exempt information falling within paragraphs 1, 2, 4, 5 and 7 of the categories of exempt information; or
- (b) It contains information falling within paragraph 3 of the categories of exempt information and that information relates to any terms proposed or to be proposed by or to the Authority in the course of negotiations for a contract.
- (c) It contains the advice of a political adviser.”

Amend the schedule to the Rules to read as attached

SCHEDULE

EXEMPT INFORMATION (RULES 10 AND 24)

(NB: Paragraph numbers of the categories mirror those contained in Schedule 12A of the Local Government Act 1972)

**NOTE – All categories are subject to the application of a public interest test
- see note at the end of this Schedule**

CATEGORY	QUALIFICATIONS/DEFINITIONS
1 Information relating to any individual.	
2 Information which is likely to reveal the identity of an individual.	
3 Information relating to the financial or business affairs of any particular person (including the authority holding that information).	<p>Information is not exempt information if it is required to be registered under –</p> <ul style="list-style-type: none">(a) the Companies Act 1985;(b) the Friendly Societies Act 1974;(c) the Friendly Societies Act 1992;(d) the Industrial and Provident Societies Acts 1965 to 1978;(e) the Building Societies Act 1986; or(f) the Charities Act 1993 <p>‘financial or business affairs’ includes contemplated, as well as past or current, activities</p> <p>‘registered’ in relation to information required to be registered under the Building Societies Act 1986 means recorded in the public file of any building society (within the meaning of that Act)</p>
4 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.	<p>‘employee’ means a person employed under a contract of service</p> <p>‘labour relations matter’ means –</p> <ul style="list-style-type: none">(a) any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act); or(b) any dispute about a matter falling within paragraph (a) above;

CATEGORY	QUALIFICATIONS/DEFINITIONS
	<p>and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to employees of the authority;</p> <p>'office-holder', in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority;</p>
<p>5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>	
<p>6 Information which reveals that the authority proposes –</p> <p>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) to make an order or direction under any enactment</p>	
<p>7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>	
<p>7A Information which is subject to any obligation of confidentiality.</p>	<p>Applies to Standards Committee only</p>
<p>7B Information which relates in any way to matters concerning national security.</p>	<p>Applies to Standards Committee only</p>

CATEGORY	QUALIFICATIONS/DEFINITIONS
<p>7C The deliberations of a standards committee or of a sub-committee of a standards committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.</p>	<p>Applies to Standards Committee only</p>

Public Interest Test – Paragraph 10

The above information is only exempt information if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Town and Country Planning

Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.