

CARDIFF COUNCIL
CYNGOR CAERDYDD

CONSTITUTION COMMITTEE: 11 June 2007

ACCESS TO INFORMATION PROCEDURE RULES

REPORT OF THE MONITORING OFFICER AGENDA ITEM:

Reason for this Report

- 1 To consider and recommend changes to the Access to Information Procedure Rules

Background

- 2 The law relating to access to formal meetings and documents of the Council is contained in section 100 of the Local Government Act 1972. In its present form it was added to that statute by the Local Government (Access to Information) Act 1985 and will be familiar to all Councillors, having been essentially unchanged since 1st April 1986.
- 3 Section 100 of the 1972 Act is the basis of the Access to Information Procedure Rules in the Council's constitution. In essence the law, and the rules provide for open access to meetings and papers unless :
 - The business is **confidential** – in which case access **must** be denied
 - The business is **exempt** – in which case access **may** be denied
- 4 For the second category – exempt business – there are 15 possible categories of exempt information. These are set out in Schedule 12A of the 1972 Act and reproduced in the Access to Information Procedure Rules. Only information which falls properly within one of those categories can be exempted. Councillors and Officers are well familiar with the practice of printing such information, whether in report or background papers, on yellow paper to clearly indicate that it is exempt from publication to the wider public.
- 5 On 1st January 2005 the Freedom of Information Act 2000 came into force. This gave a general right of public access to all information held by the Council subject to certain exemptions. These exemptions are considerably different from those in Schedule 12A of the 1972 Act and in particular many of the Freedom of Information Act exemptions are subject to a public interest test – which does not exist in Schedule 12A. From that date there

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has been the potential for conflict between the two regimes. Information could be properly certified as exempt under the Access to Information Procedure Rules, but the Council could still be obliged to release it on request under the Freedom of Information Act, even before the relevant Council meeting, either because there was no equivalent exemption, or because on proper application of the public interest test, the public interest in disclosure overrode the theoretical exemption.

- 6 By a series of measures, complicated by the devolution of local government powers in Wales, this conflict will be rectified with effect from 21 April 2007 when the *Local Authorities (Access to Information) (Variation) (Wales) Order 2007* will come into effect. This will amend Schedule 12A of the 1972 Act and replace the long standing 15 possible categories of exempt information with 7 new, simpler categories, which effectively correspond with the exemptions available under the Freedom of Information Act. Significantly, with the exception of legal professional privilege, these new exemptions will be subject to a public interest test. The option to exclude the public from meetings and access to documents will only be available if *“the public interest in maintaining the exemption outweighs the public interest in disclosing the information”*.
- 7 It should however be noted that the mandatory exclusion for confidential information is not changed.

Issues

- 8 As a result of these changes to the law, it will be necessary to change the Access to Information Procedure Rules in the Council’s constitution with immediate effect to incorporate the new access regime. A draft of the proposed new Rules is annexed as Appendix 1. At the same time the opportunity has been taken to reflect other recent changes to the constitution in relation to forward planning.
- 9 The Order referred to in Paragraph 5 above applies only to meetings of the Council and its committees. A separate Order will come into force from the same date to apply an identical access to information regime to The Executive and the Standards Committee : *The Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) and the Standards Committees (Wales) (Amendment) Regulations 2007*. Fortunately the existing Rules in the constitution govern all relevant meetings and only one set of changes is required by the Council.
- 10 On reviewing the Constitution in the light of these changes several minor consequential amendments, detailed in Appendix 2 are recommended.
- 11 The rights of Members to information are rather complex, involving interaction between several regimes, and there is often confusion between these regimes, and the related right to ask questions at Council Meetings. Opportunity has therefore been taken, since the Rules require to be changed, to bring forward a clear protocol to assist the smooth running of business in this area. This is set out in Appendix 3 and if approved will be supported by Guidance issued by the Monitoring Officer – Appendix 4.

Reasons for Recommendations

- 12 To ensure that the Council's Constitution is updated to reflect changes to Schedule 12A to the Local Government Act 1972 and the Local Government (Access to Information) (Variation)(Wales) Order 2007

Legal Implications

- 13 Any changes or alterations made to our existing arrangements must be fully compliant with the Local Government Act 1972 and the Regulations governing access to information under that Act

Financial Implications

- 14 There are none arising directly out of this Report.

RECOMMENDATIONS

The Committee recommends to Council that:-

- 1 The Access to Information Procedure Rules be replaced by the new set of rules set out in Appendix 1
- 2 The consequential amendments set out in Appendix 2 be approved
- 3 The Protocol relating to Members' rights to access documents and information set out in Appendix 3 be approved and added to the Constitution
- 4 The Guidance issued by the Monitoring Officer set out in Appendix 4 be noted.

KATE BERRY

Monitoring Officer

29 May 2007

The following Background Papers have been taken into account:

The Local Government (Access to Information) (Variation)(Wales) Order 2007

The Standards Committee (Wales) (Amendments) Regulations 2007.

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DRAFT ACCESS TO INFORMATION PROCEDURE RULES

1 Summary of Rights

These rules are a written summary of the rights of the public to attend meetings and the rights of the public and Members of the Council to inspect and copy documents. A copy of these rules will be kept at County Hall and the public shall have the right to inspect them at any reasonable time and to take a copy on payment of a reasonable fee.

2 Scope

These rules apply to all meetings of the Council, Scrutiny committees, the Standards & Ethics Committee and Regulatory Committees (including Planning Committee) and public meetings of the Executive (together called meetings).

Each Corporate Director shall be the Proper Officer for the purposes of all statutory and regulatory provisions relating to the identification listing and availability of background papers for any report where such report is within the scope of these Rules and that Corporate Director is the responsible or contributing author.

Each Corporate Director shall be responsible for securing compliance with the requirements of the Data Protection Act 1998 and of the Freedom of Information Act 2000 in relation to the data and information within the purview of those Acts held in his Department and shall make all necessary arrangements for that purpose.

3 Openness Policy

The Authority wishes to be as open as possible in terms of sharing access to information both with Councillors and with the public, as permitted within the law and with respect to the rights of others. These rules seek to complement and supplement and not detract from any statutory rights to information (for example within the Data Protection Acts and the Freedom of Information Act) which Councillors and the public are afforded from time to time. These rules do not affect any more specific rights to information contained elsewhere in this Constitution. In the case of any omission or conflict between these rules or the Constitution and statutory rights, statutory rights will always prevail.

4 Rights of the Public to attend Meetings

Members of the public may attend all meetings subject only to the exceptions in these rules. The right to attend meetings does not extend to taking photographs or the making of video or audio transmissions or recordings without consent. The right to attend meetings is subject to the Council's right to exclude persons if their conduct is disorderly or if they misbehave at the meeting. The Press may attend that part of any meeting open to the public.

5 Notices of Meetings

- (a) The Authority will give at least three clear days notice of any meeting by posting details of the meeting on the public notice board at County Hall, Atlantic Wharf, Cardiff and on the Council's Website (www.cardiff.gov.uk).

- (b) Special Urgency – If a matter is considered by the Monitoring Officer to be so significantly urgent and unexpected that a decision must be taken and that it is not possible to provide 3 clear days notice of the date of the meeting at which the decision must be taken, then with the agreement of the Chair of the body concerned, the Monitoring Officer is authorised to call such a meeting, subject to the agenda and reports being available to the public at the time at which the meeting is convened.

6 Access to Agenda and Reports before a Meeting

The Council will make copies of the agenda and reports open to the public available for inspection on the Council's Website (www.cardiff.gov.uk) and at the designated office at least three clear days before a meeting. If an item is added to the agenda later the designated officer shall make each such report available to the public as soon as the report is completed and sent to councillors.

7 Supply of Copies

The Council will supply to any person, on payment of a charge for postage and other justified costs, copies of:

- (a) any agenda and reports that are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) if the Monitoring Officer thinks fit, copies of any other documents supplied to councillors in connection with an item.

8 Access to Minutes after a Meeting

The Council will make available copies of the following for six years after a meeting:

- (a) the minutes of the meeting (or record of decisions taken together with reasons, for all meetings of the Executive) excluding any part of the minutes or proceedings which disclose exempt or confidential information;
- (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

9 Background Papers

9.1 List of background papers

The Proper Officer will set out in every report, or part of a report, which is open to public inspection under Rule 6 or 8 above a list of those documents (called "background papers") relating to the subject matter of the report, or that part of the report, which in his/her opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and

(b) that have been relied on to a material extent in preparing the report.

but not including published works or those that disclose exempt or confidential information (as defined in Rule 10) (and in respect of Executive reports, the advice of any political advisor).

9.2 Public Inspection of Background papers

The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

10 Confidential and Exempt Information

10.1 Confidential Information – Requirement to Exclude Public

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

10.2 Exempt Information – Discretion to Exclude Public

The public may be excluded from a meeting whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed. Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6. Due regard will be had to the wishes of the individual should they elect that the hearing be held in private where the law so permits.

10.3 Meaning of Confidential Information

Confidential information means information given to the Council by a Government Department (including the Welsh Assembly Government) on terms which forbid its public disclosure or information which cannot be publicly disclosed by virtue of any enactment or Court Order.

10.4 Meaning of Exempt Information

Exempt information means information falling within the following 10 categories (subject to any qualification):

CATEGORY	QUALIFICATION
1. Information relating to any individual	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
2. Information which is likely to reveal the identity of an individual	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

CATEGORY	QUALIFICATION
<p>3. Information relating to the financial or business affairs of any particular person (including the Council)</p> <p><i>Note : 'financial or business affairs' includes contemplated, as well as past or current, activities</i></p>	<p>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.</p> <p>Information falling within paragraph 3 is not exempt information by virtue of that paragraph 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 (f) the Charities Act 1993
<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> <p><i>Note : 'Labour relations matters' are as specified in paragraphs (a) to (g) of Section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 i.e. matters which may be the subject of a trade dispute</i></p>	<p>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</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> <ul style="list-style-type: none"> (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 	<p>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</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>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</p>
<p>In addition to the categories referred to above, the following categories will apply to the proceedings of the Standards and Ethics Committee and its Sub- Committee only in connection</p>	

CATEGORY	QUALIFICATION
with the investigation and consideration of an allegation(s) of a breach of the Council's Member Code of Conduct	
8. Information which is subject to any obligations of confidentiality.	Information is exempt only where a meeting of a Standards and Ethics Committee is convened to consider a matter referred under the provisions of sections 60(2) or (3), 64(2), 70(4) or (5), or 71(2) of the Local Government Act 2000
9. Information which relates in any way to matters concerning national security.	Information is exempt only where a meeting of a Standards and Ethics Committee is convened to consider a matter referred under the provisions of sections 60(2) or (3), 64(2), 70(4) or (5), or 71(2) of the Local Government Act 2000
10. The deliberations of the Standards and Ethics Committee or of a Sub-Committee of the Standards and Ethics Committee in reaching any finding on a matter referred under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred to it.	

Information falling within any of paragraphs 1 to 7 is not exempt if it relates to proposed development for which the Council may grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

10.5 Disclosure by Members

Members will not make public Confidential or Exempt Information without the consent of the Authority or divulge information given in confidence to anyone other than a Member or Officer entitled to know it unless otherwise authorised by law.

10.6 Public Interest

Information within Categories 1 to 4, 6 and 7 set out in Rule 10.4 may only be treated as exempt if an assessment of the public interest has been made.

The public interest will be assessed on a case by case basis having regard to all relevant factors including but not limited to the following, to ensure a proper balance is achieved between the right to know, the right to personal privacy and the delivery of effective government.

In making such an assessment the proper officer shall have regard to any relevant prejudice which may be caused to the Council or any other party if the information were disclosed, having regard to the full context of any disclosure. Account may be taken of

whether disclosure would breach any obligation of confidence not within Rule 10.3, or the rights of any individual under the Data Protection Act 1998 or the Human Rights Act 1998.

Account will be taken of the fact that the public interest test may be served by allowing access to information which would :

- (a) further the understanding of and participation in debating issues of the day;
- (b) facilitate transparency and accountability in and enhance scrutiny of decisions taken by the Council;
- (c) facilitate transparency and accountability in the spending of public money;
- (d) help individuals understand the decisions made by the Council affecting their lives;
- (e) bring to light information affecting public safety or danger to the environment;
- (f) contribute to the administration of justice and enforcement of the law or the prevention or detection of crime or the apprehension or prosecution of offenders;
- (g) protect the public from unsafe products or rogue traders or practices.

In making such an assessment the following factors shall be regarded as irrelevant :

- (a) possible embarrassment to the Council or its Officers;
- (b) possible loss of confidence in the Council or another public body;
- (c) the seniority of persons involved in the subject matter;
- (d) the risk of the public misinterpreting the information.

10.7 Exclusion of the Public

A decision to exclude the public from a meeting under this Rule shall be made in accordance with the Council Procedure Rules, the Committee Procedure Rules, or the Executive Procedure Rules as appropriate.

11 Exclusion of Access by the Public to Reports

Prior to a meeting, if the Proper Officer thinks fit, the Council may exclude access by the public to the whole or any part of a report which in his or her opinion relate to items of business during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports or parts of reports will be marked "Not for Publication" together with the category of information likely to be disclosed. After the meeting access to the Report is subject to Rule 8.

Where the decision to exclude access has required a determination of the public interest the Proper Officer shall keep a note of his or her reasons for the decision.

12 Application of Rules to the Executive

- (a) Rules 12 – 18 apply to the Executive.

- (b) The Executive will not conduct any formal business or take any Executive Decision in private except as permitted under Rule 10 or the law.
- (c) If the Executive meets to take an Executive Decision then it must also comply with Rules 1 – 11. For the avoidance of doubt Rules 1 -11 do not apply to meetings of the Executive where no Executive Decision is to be taken and the sole purpose of which is:-
 - (i) for employees to brief Councillors, or
 - (ii) for informal deliberations to take place which fall short of formal business or the taking of an Executive Decision, or
 - (iii) to meet with representatives of other bodies to discuss the approach to a particular subject

13 Record of Decisions

After any meeting of the Executive, whether held in public or private, the Monitoring Officer, the Monitoring Officer's representative or, where no officer was present, the person presiding at the meeting, will produce a written record of every decision taken at that meeting as soon as reasonably practicable. The record will include a statement of the date, the reasons for each Executive Decision, details of any alternative options considered and rejected at the meeting either directly or by reference to the report, details of any declaration of interest and details of any consultation that was taken and generally comply with legal requirements as to the recording of the Executive Decision.

A record of a decision to exclude the public in accordance with Rule 10 shall identify the category of exempt or confidential information and, where appropriate, any relevant determination of the public interest.

A record of the decision will be published in the Executive Decision Register and will be circulated to all Members by the Executive Business Office. The Register will be available for public inspection at County Hall and on the Council's internet site.

14 Executive Meetings relating to matters which are not Executive Decisions

The Executive will decide whether meetings where no Executive Decisions are to be made will be held in public or private. Members of the Executive or its committees will be entitled to receive three clear working days notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.

15 The Forward Plan

15.1 Period of Forward Plan

To promote openness and efficiency in decision-making, the Council maintains a Forward Plan of anticipated Executive decisions . The Forward Plan covers a 12 month period from the date of publication and is updated monthly on a rolling basis.

15.2 Contents of Forward Plan

The Forward Plan seeks to anticipate all decisions to be made by the Executive, and by the Chief Executive, Assistant Chief Executive and Corporate Directors under delegated

powers. Each corporate director, and/or chief officer in partnership with the relevant Executive Member is responsible for identifying future decision-making needs and for informing the Executive Business Office. The Head of Executive Business maintains the Forward Plan which is available for public inspection at County Hall and on the Council's internet site.

It will describe the following particulars in so far as the information is available or might reasonably be obtained:

- (a) the matter in respect of which a decision is to be made;
- (b) the identity of the decision maker;
- (c) a brief summary of the issues;
- (d) a brief summary of the reasons for any recommendation;
- (e) a draft of the proposed recommendation
- (f) the date on which, or the period within which, the decision will be taken;
- (g) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
- (h) the responsible lead officer
- (i) a contact officer; and
- (j) the status of the decision where:
 - (i) Green = Decisions of a non-contentious, day to day nature, unlikely to be the subject of call-in.
 - (ii) Amber = Decisions of a more sensitive nature, which could be potentially contentious or not of a routine nature. These would generally flow through to the Executive for decision, without prior scrutiny, although a judgement will be made in each case regarding scrutiny consideration before decision, and the possibility of call-in.
 - (iii) Red = Decisions relating to high level functions primarily relating to policy formulation within the Policy and Budgetary Framework where the Executive would usually make a proposal to Council. For such decisions, the engagement of scrutiny is required before the Executive recommendation is made.

Exempt information need not be included in the Forward Plan and confidential information cannot be included.

15.3 Additional Information Relating to Forward Plan Items

Any person who wishes to

- (a) make representations to the Executive or decision taker about a matter in respect of which a decision is to be made,

- (b) request additional information or documents relating to a proposed decision (if any) as they become available

should contact the nominated contact officer. Inclusion of a matter in the Forward Plan does not create any right of access to information which is confidential or exempt as defined in Rule 10.

16 Executive Decisions by individual Members of the Executive

Delegated powers may not be exercised by individual Members of the Executive in accordance with the Scheme of Delegations.

16.1 Record of individual Decision by employee

Where a decision is taken by an employee under delegated powers, that employee is responsible for retaining a record of such decision and the reason for such decision sufficient for audit and evidential purposes and for ensuring that all those that need to know are informed promptly of the decision and that the decision and the record of it accords with the requirements of the relevant scheme of delegations under which it is made, and any guidance on decision making issued by the Monitoring Officer. Decisions made by the Chief Executive, Assistant Chief Executive or a Corporate Director will be included in the published Executive Decision Register. (see Rule 13).

17 Additional Rights of Access by Members of Scrutiny Committees

17.1 Rights to copies

Subject to Rule 17.2 below, a member of a Scrutiny Committee (including their Sub-Committees and Task groups) will be entitled to copies of any document which is in the possession or control of the Executive, or its committees and which contains material relating to :

- (a) any business transacted at a public or private meeting of the Executive, or its committees; or
- (b) any decision taken by an individual member of the Executive.

17.2 Limit on Rights

No member of a scrutiny committee shall be entitled to any part of a document that contains exempt or confidential information, unless that information is relevant to :

- (a) an action or decision that is being reviewed or scrutinised or is intended to be scrutinised by that committee or a sub-committee of that committee or ;
- (b) is relevant to any review contained in any programme of work of the scrutiny committee or a sub-committee of that committee.

In case of doubt the Monitoring Officer shall determine whether condition (a) or (b) applies.

17.3 Disclosure

Exempt or confidential information supplied to a Member in accordance with Rule 17.1 remains exempt or confidential and is subject to Rule 10.5.

18 Additional Rights of Access for Members

18.1 Material relating to Council and Executive Business

All Councillors will be entitled to inspect any document which is in the possession or under the control of :

- (i) the Council relating to business transacted or to be transacted at a meeting of the council, or a committee or a sub-committee
- (ii) the Executive (or its committees) relating to any business transacted at a decision making meeting following the conclusion of that meeting immediately after the decision has been made

unless either (a) below applies:-

- (a) it contains exempt information falling within paragraphs 1, 2, 4, 5 or 7 of the categories of exempt information in Rule 10 or it contains exempt information falling within paragraph 6 of those categories relating to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract; or

18.2 Nature of rights

The rights of a Member under Rule 18 are additional to any other right he/she may have, including:

- (a) the common law right to inspect documents where this is necessary for a Member to perform his or her duties. Any Member asserting a 'need to know' in relation to documents not otherwise available under these rules should make application to the Monitoring Officer
- (b) the statutory rights available to any person under the Freedom of Information Act 2000 and the Environmental Information Regulations 2005.
- (c) Members' right, under Section 228 of the Local Government Act 1972, to inspect the accounts of the Council and of any proper officer of the Council.

In exercising rights of access to information Members shall have regard to any guidance issued by the Monitoring Officer and the Member / Officer and Member Access to Information protocols.

19 Register of Executive Members

An up to date register that will be open to the public will be kept at County Hall and published on the Council's website stating:-

- (a) the name and address of every Councillor who is a member of the Executive and the ward the Councillor represents;
- (b) the name and address of every member of each committee of the Executive;
- (c) the functions of the Executive which for the time being are exercised by individual members of the Executive; and

(d) as respects each function, the name of the member of the Executive by whom it is exercisable.

Appendix 2

Consequential Amendments

- 1 Paragraph 21 of the Protocol on Member/Officer Relations be amended by addition of the words in italics :

The Council promotes openness and access to information by all its councillors. However, the law prevents the release of confidential *or exempt* information in certain circumstances, and both officers and members will abide by the Council's rules on access to information set out in Part 4 of this Constitution. Confidential *or exempt* information provided must be used properly, for the purposes for which it has been released.

- 2 Thirteen references within the constitution to the "Access to Information Rules" be amended to read "*Access to Information Procedure Rules*"
- 3 The following words be added at the end of paragraph 4 of the Scrutiny Procedure Rules :

Scrutiny Committee meetings will generally be held in public in accordance with the provisions of the Access to Information Procedure Rules.

- 4 In the Code of Conduct for Employees "*Cardiff Council*" be substituted for "relevant authorities" wherever the latter phrase appears.
- 5 Paragraph 10 of the Code of Conduct for Employees be amended to read as follows :

Openness in the dissemination of information and decision making should be the norm in Cardiff Council. However, certain information may be confidential, or exempt in accordance with the Access to Information Procedure Rules and therefore not appropriate for a wide audience. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a Member, Cardiff Council employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions. Nothing in this Code can be taken as overriding existing statutory and common law obligations to keep certain information confidential, or to disclose information in accordance with the Freedom of Information legislation. Where employees are uncertain about obligations to disclose or withhold information they must seek appropriate advice from Legal or Information Management officers.

- 6 Paragraph 21 of the Protocol on Member / Officer Relations be amended to read as follows :

The Council promotes openness and access to information by all its councillors. However, the law prevents the release of confidential or exempt information in certain circumstances, and both officers and members will abide by the Council's Access to Information Procedure Rules set out in Part 4 of this Constitution. Confidential information or exempt information provided to Councillors must be used properly, and only for the purposes for which it has been released.

- 7 Paragraph 1.5(d) of the Executive Procedure Rules be deleted. In so far as this paragraph relates to access to information the rights are set out fully in the proposed revised Access to Information Procedure Rules. In so far as this paragraph relates to attending and speaking at meetings the rights are already covered in 1.5(e) and 2.2(c) of the Executive Procedure Rules.
- 8 In consequence paragraph 1.5(e) of the Executive Procedure Rules be renumbered 1.5(d).
- 9 The following sub-paragraph be added to paragraph 2.3 of the Executive Procedure Rules
 - (f) *To exclude the public for the consideration of any item in accordance with the Access to Information Procedure Rules*
- 10 In consequence paragraph 2.3(f) of the Executive Procedure Rules be renumbered 2.3(g)

PROTOCOL ON MEMBERS RIGHTS OF ACCESS TO INFORMATION AND DOCUMENTS

Introduction

- 1 Members may ask any Council Service to provide them with information, explanation and advice so that they can carry out their role as councillors. 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.
- 2 In addition to general information, explanation and advice Members may also seek access to specific documentation held by the Council, its Officers or Executive and have a number of common law, statutory and constitutional rights for that purpose.
- 3 Any consideration of Member's rights of access to information and documents must take into account the general rights available to any person under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

The Purpose of the Protocol

- 4 The purpose of the protocol in paragraph 10 is to help clarify for members what they are entitled to see, and how to go about seeing it, and to give officers clear guidelines about the members rights particularly in the light of the constitutional arrangements, and the role of scrutiny. Whilst not in any way seeking to limit member's rights, it also seeks to avoid any unnecessary cost and use of Council resources in dealing with every request for information under the Freedom of Information Act.
- 5 The Council will continue to monitor arrangements to make sure that members get to know information in a timely and appropriate manner.

The Legal Position - Statutory Provisions

- 6 These are set out below:-
 - 6.1 Any member can see documents which contain information relating to the public and private meetings of the Executive, meetings of the Council and its Committees, and any key decision made by an Officer. This statutory right does not extend to certain categories of exempt and confidential information.
 - 6.2 All members of a Scrutiny Committee have a right to copies of documents which contain information relating to the public and private meetings of the Executive, and any key decision made by an Officer. They are also entitled to a copy of a document containing exempt and confidential information where the information is relevant to an action or decision which the member is reviewing or scrutinising or which is relevant to any review contained in a work programme of the Committee or Review Panel.

- 6.3 Members have rights in relation to the accounts of the Council under section 228 of the Local Government Act 1972
- 6.4 Members have the same rights to information as any member of the public under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 subject to the exemptions and exceptions in that legislation.

The Legal Position - The Common Law Position

- 7 At common law any member has a prima facie right to inspect any Council documents if access to the documents is reasonably necessary to enable the member properly to perform their duties as a member of the Council. This principle is commonly referred to as the "need to know" principle.
- 8 The exercise of this common law right depends upon the member's ability to demonstrate a "need to know". In this respect, a member does not have "a roving commission" to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is whether there is a "need to know".

Data Protection

- 9 Data protection legislation restricts the processing of information relating to individuals. As a result, any such information cannot be shared without the agreement of that individual or unless one of the legal exemptions applies.

Protocol for Access to Documents

- 10 Against this background the Council has agreed the following protocol:-
 - 10.1 Where a Member has a clear right of access, as available to any member of the public, to the documents required under Rule 6, Rule 8 or Rule 9.2 of the Access to Information Procedure Rules the documents will be supplied.
 - 10.2 If the documents are not available under paragraph 10.1 the Member shall if appropriate request the material under Rule 18 of the Access to Information Procedure Rules. This rule gives a right to inspect documents relating to business transacted or to be transacted at a meeting of the Council or committee, and to inspect documents relating to business transacted at a decision making meeting of the Cabinet after that meeting.
 - 10.3 If the documents are not available under paragraph 10.2 the Member shall if appropriate request the material under Rule 17 of the Access to Information Procedure Rules. This rule gives a member of a scrutiny committee a right to inspect documents relevant to the work of that committee.
 - 10.4 If none of the foregoing routes are available a formal request should be made to a relevant Senior Officer and in this the Member should:-
 - 10.4.1 identify what they wish to see;
 - 10.4.2 indicate whether they are asserting a 'need to know' (see paragraphs 7 and 8

above) and if so state the reason(s) that they need to see the material (members should carefully consider the guidance before doing so); and

10.4.3 make it clear whether they have a personal interest in the matter (as defined in the Members' Code of Conduct) and if so what it is.

10.4.4 If asserting a need to know, whether they wish the request to be formally considered under the Freedom of Information Act in the event that the 'need to know' is not accepted. Members are encouraged not to invoke Freedom of Information unnecessarily in circumstances where the material is unlikely to be suitable for general publication e.g. because of commercial confidentiality

10.5 The Officer is entitled to ask the member to make this request in writing if they are in any doubt about any of these matters, and may at any time seek further clarification.

10.6 The Officer receiving the request should make an initial assessment where appropriate as to whether the request should be considered initially under Freedom of Information or the 'need to know'. The Officer may consult the Monitoring Officer or Information Management Services for advice. The purpose of this stage is to ensure that :

10.6.1 Where it is likely that material can be made available under the 'need to know' basis restricted disclosure may be offered to the Member without incurring the cost of a full Freedom of Information assessment

10.6.2 Where it is likely that the material would not be exempt under Freedom of Information full disclosure may be given without incurring the cost of deciding whether 'need to know' has been established

10.7 Where the 'need to know' is being considered an officer who is in any reasonable doubt regarding the release of the information will consult the Monitoring Officer for advice.

10.8 If, after receiving this advice, it is not considered appropriate to release the information either because:-

- the member has not established a need to see it or
- because the Officer has other concerns (for example the Councillor has personal interest in the matter, the information is commercially or otherwise sensitive, or the amount of work involved in identifying and producing the information is considered to be excessive) and the member takes a different view, the matter will be referred to the Monitoring Officer, who may consult the relevant Group Leader before making a decision.

10.9 Any information provided under the 'need to know' must be only used in connection with the members' duties as a Councillor, e.g. speaking at a relevant Committee or at full Council. Information not already in the public domain should not be divulged to third parties (including the press) nor should information be used improperly.

- 10.10 If it is decided that a 'need to know' has not been established the Member will retain the right (notwithstanding paragraph 10.6 above) to invoke the Freedom of Information Act. The time for answering the request under the Act will start to run from the date of refusal under 'right to know'.
- 10.11 Where Freedom of Information is being considered this will be done in accordance with the Council's normal Freedom of Information procedures since under Freedom of Information Members have no special status
- 10.12 If disclosure under Freedom of Information is refused the Member will retain the right (notwithstanding paragraph 10.6 above) to invoke the 'need to know'.
- 10.13 Finally, the effect of the Data Protection legislation is that information relating to an individual should not be provided unless either the individual has agreed to its release or one of the legal exemptions applies. As a result, any member wishing to obtain access to personal information should first seek that persons consent. If that consent is not given, or there is a difficulty with requesting it, then legal advice should be sought.

Protocol for Access to Other Information

- 11 The protocol in the previous section relates to Members' legal rights of access to documents. Many Member enquiries may not require consideration of these rights at all or in part. The enquiry may be for general information, explanation and advice about Council activities. Members need to be aware when making such requests that the legal rights referred to above do not strictly apply to such requests. Nevertheless all parties accept that the effective and efficient governance of the Council requires that such enquiries require appropriate and timely response.
- 12 The mechanics of responding to requests from Members is dealt with in a separate correspondence protocol.
- 13 Subject to the following paragraph the appropriate officer will respond to such requests in such a manner that the Member has sufficient information to be able to take an informed view and so as to be able to carry out their duties as a Councillor. Technical or professional advice will be given on an impartial basis.
- 14 Responding to requests for information from Members will be subject to the following limitations :
- 14.1 No information or advice will be given which contains information which would not have been disclosed as part of an existing record under the protocol in paragraph 10 above
- 14.2 Where the amount of work, research or consultation required to provide an answer to a Member would be disproportionate having regard to the nature of the enquiry the appropriate officer may decline to give a full and complete response. In the event of any dispute as to the amount of work which may be reasonable the matter will be referred to the Monitoring Officer for a decision as to whether the work required is disproportionate.

Comment [PB1]: An option here would be to include a costs presumption. For Parliamentary questions, for example, "Any written PQ where the marginal cost of preparing the answer is considered likely to exceed the threshold may be refused in whole or in part on the grounds of disproportionate cost." the threshold is £600. We could have a similar rule.

APPENDIX

Summary of Statutory provisions on Access to Documents

- 1 There is a right to inspect the accounts of the Council and of any of its Proper Officers under Section 228 of the Local Government Act 1972
- 2 Section 100F of the Local Government 1972 Act and The Local Government (Access to Information) (Variation) (Wales) Order 2007 provide rights of access to documents for members of the Council. These rights are reflected in the Access to Information Procedure Rules in the Council's constitution. There is a general right of access to documents forming part of the formal business of the Council, including minutes, agendas, reports and background papers, subject to certain restrictions for exempt and confidential information.
- 3 The Local Government Act 2000 and The Local Authorities (Executive Arrangements) (Decisions Documents and Meetings) (Wales) Regulations 2001 provides similar rights in relation to documents forming part of the formal business of the Executive, and Part III of the same regulations gives an extended right to members of overview and scrutiny committees relating to documents relevant to the work of the committee
- 4 The Freedom of Information Act 2000 and the Environmental Information Regulations give general rights of access to all recorded information held by the Council subject to certain exemptions and exceptions
- 5 Guidance on the extent of these rights is available in a separate guidance document.

GUIDANCE ON MEMBERS RIGHTS OF ACCESS TO INFORMATION AND DOCUMENTS

Note: This is general guidance only and is not a substitute for legal advice. It may not be relied on as a statement of the law and specific legal advice must be sought where appropriate.

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Introduction

- 1 This Guidance supplements the Access to Information Procedure Rules and the Protocol on Members Rights of Access to Information and Documents, both of which are part of the Council’s formal constitution. It provides guidance on the operation of the Rules and Protocol and a more detailed explanation of the applicable law.
- 2 The Council receives, generates and processes information in relation to a wide range of matters in the course of carrying out its functions. How the Council manages the information is governed by law which is specific to local authorities, law which applies generally to public bodies and law of general application.
- 3 There are two key aspects in considering the management of information. The first is the right of access to information. The second is the protection of privacy and confidentiality.
- 4 This guidance considers the rights and responsibilities of elected members and the things that impact upon the exercise of these rights. It also considers the rights elected members may have as members of the public where these interact with the more specific rights. It looks at the following aspects:
 - 4.1 The common law rights of elected members of local authorities to have access to documents and information held by the Council;
 - 4.2 The statutory rights of access to information applicable to elected members authorities to have access to documents and information held by the Council;
 - 4.3 The common law constraints on the use and disclosure of information held by the Council
 - 4.4 The statutory controls on the use and disclosure of information held by the Council

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- 4.5 The responsibilities of members in relation to information held by the Council
- 4.6 The statutory rights of access to information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004
- 4.7 The operation of the Protocol on Members Rights of Access to Information and Documents

Common law rights of elected members

- 5 At common law, elected members have wide-ranging but not absolute rights of access to documents in the possession of the local Council. These rights of access have been further extended by statute as set out later in this guidance. The statutory provisions in the main extend rather than qualify members' common law rights of access.
- 6 In general, at common law a councillor has a right to inspect all documents in possession of the Council so far as his access to the documents is reasonably necessary to enable him properly to perform his duties as a member of the Council. This is the principle of "the need to know". This does not mean that an elected member has an absolute right to see all documents in the possession of the Council. Members should in particular note that this principle, sometimes also referred to as the "right to know" is in fact strictly about access to documents. There is no general "right to know" in the wider sense of a right to know everything about every part of the Council's business. A Member of course retains rights to ask questions at Council and in other meetings as set out in the Council Meeting Procedure Rules.
- 7 A committee member has a strong claim to see documents that relate to the business of that committee, and may also be able to establish a right to see documents that relate to the business of a sub-committee of that committee.
- 8 Even a member of a particular committee does not have an absolute right to see all documents that relate to the business of that committee. Thus in one case¹ a police committee was entitled to take the view that a newly appointed member of the committee should not see the unabridged version of a report into the conduct of a former chief constable, in circumstances where the chief constable had already been dismissed at the time that the request was made. The decision had been made here and so the member could not show that he needed to know the information.
- 9 The fact that a document relates to a Councillor's ward or has been raised at a surgery meeting does not of itself give rise to a need to know unless, for example, the elected member is also required to make a decision on behalf of the Council relating to that matter.
- 10 Where there is doubt as to whether or not it is reasonably necessary for a member to see a particular document, then in deciding whether or not the

¹ R v Lancashire County Council, ex p Hook [1980] QB 603

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member should be allowed to see the document, the Council may take into account the possible effect on third parties of allowing the document to be inspected.

- 11 A member has no common law right of access to a document where he has an ulterior motive rather than having a bona fide need to access to the document. For this reason Members may be asked under the protocol for their reasons for requesting access to documents under the need to know principle.
- 12 The “need to know” principle, although it evolved in earlier times, will apply in relation to the current executive arrangements under the Local Government Act 2000. A councillor would be entitled to access to documents in the control of the Executive if he could show that access was reasonably necessary in order for him to perform his duties.
- 13 Applying the “the need to know” principle in practice is not always easy – there may be conflicting rights to be balanced. Some examples are given below of how the principle could be applied in certain circumstances:
 - A member wishes for copies of internal records to assist a member of the public in court proceedings against the Council. Request is likely to be refused as there is an ulterior motive and the information is not required to perform his duties as a councillor.
 - A member wishes to see a report to the Executive containing exempt information and to which he does not have a statutory right of access. He wishes to consider whether to exercise a right of call in. Request may be agreed to enable him to make an informed decision whether to call in. (Note member may not make any other use of the information and may not disclose it to any other person)
 - A member wishes to see a report to the Executive containing exempt information and to which he did not have a statutory right of access. The member wishes to see if he should ask someone else to exercise their right of call in. Request may be refused as the information is not necessary to enable the member to perform his duties as a member. (Note similarity to previous example. Member must be scrupulous in giving his reasons for seeking access or be in breach of the Member’s Code of Practice)
 - A member of the Executive whose area of responsibility includes housing wants to see the housing register to ascertain the names of all those who are on the waiting list in their ward. Members are not allowed at law to make individual decisions on the allocation of housing within their ward. Request may be refused as the member cannot demonstrate a need to know for any function which they are required to perform.
 - Executive member for traffic/transportation (in the run up to budget preparation) wishes to see the record of invoices paid to the contractors for the maintenance of certain highways and the maintenance schedules. Request may be agreed to enable him to make an informed decision on the budget requirements and service provision in the coming year.

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- A member has been asked by a constituent to make representations on their child's arrangements to address special needs. The member asks to see the child's plan. Request would be refused on the basis of an application of the principle of need to know but the information may be supplied with the agreement of the parent/child following the data subject disclosure principles under the Data Protection Act.

Statutory Rights of Access to Documents

- 14 In addition to the common rights discussed above, elected members have certain statutory rights under the Local Government Act 1972 and the Local Government Act 2000. These statutory rights supplement the common law.

Rights under the Local Government Act 1972

- 15 The key provision in the Local Government Act 1972 is section 100F. This section confers rights of access to documents on members of the Council over and above the rights given to members of the public in other parts of section 100. The general rule is that any document which is in the possession or under the control of the Council and contains material relating to any business to be transacted at a meeting of the Council or a committee or sub-committee of the Council shall be open to inspection by any member of the Council. The statutory right is a right to inspect the document, not a right to be provided with a copy of it. However under section 100H as the document is open to inspection, the member may make copies or extract or require a photocopy or extracts upon payment of such fee as the Council may require. A copy cannot be taken or required if it would result in the infringement of a third party copyright. It is important to note that that statutory right relates to documents not to information: if information is not recorded in a document there is no statutory right of access to it.

- 16 This general right of access to Council documents is subject to an important exception. In **most** cases there is no right of access to information which is classed as exempt. The classes of exempt information are set out in Schedule 12A, Part 4 of the 1972 Act and are reproduced in the Appendix to this Guidance Note. In most respects therefore the rights of a Member under this section are no wider than the rights of a Member of the public under sections 100B, 100C, and 100D of the 1972 Act. The additional rights of the Member may be summarised :

- 16.1 The Member is given a right of access, which is not available to the general public to the following :

- Exempt information relating to the financial or business affairs of any particular person (including the authority holding that information) - except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract
- Exempt information which reveals that the authority proposes to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or to make an order or direction under any enactment

- 16.2 An Elected Member may exercise his rights of access under section 100F at an

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earlier time than a member of the public as section 100F relates to "... any business to be transacted..." whereas the public rights do not arise in law until five clear days before the meeting (or less for meetings convened at short notice)

- 17 Note that an elected member may still have a right of access to exempt documents at common law under the principle of 'need to know' discussed above.
- 18 It should be noted that when considering whether a document is exempt under the Local Government Act 1972 (whether for public access or elected member access under section 100F) , except in respect of legal advice subject to legal professional privilege, the public interest must always be considered and exemption applies only 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. In this respect the Local Government Act 1972 was brought into line with the Freedom of Information Act in April 2007.
- 19 Overview and scrutiny committees, or their sub-committees, are treated as a committee or sub-committee of a principal council for the purpose of the Local Government Act 1972. Hence documents that relate to the business of those committees are subject to the rights of access conferred on all elected members by section 100F. Members of the specific committees may have additional rights as set out in the next section.
- 20 The same principles are applied to the work of the Standards Committee by The Standards Committees (Wales) Regulations 2001, as amended.

Rights under the Local Government Act 2000 and Regulations

- 21 The rights in the previous section refer to non-Executive Council business. Access by members relating to business of the Executive is governed by the Local Authorities (Decisions, Documents and Meetings) (Wales) Regulations 2001² ('the 2001 Regulations') made by the National Assembly for Wales under section 22 of the Local Government Act 2000.
- 22 The additional rights of inspection given to any elected member in respect of Executive business are effectively the same as in relation to Council business, with the same exemptions, as discussed in the previous section but with one important difference. For Council business the right arises in respect of "... any business to be transacted..." , but for Executive business the right only arises at the conclusion of the meeting of the Executive or, where a decision is made by an individual member of the executive, immediately after the decision is made. It should also be noted that this is a right of inspection only. The member may make copies or extract or require a photocopy or extracts upon payment of such fee as the Council may require. A copy cannot be taken or required if it would result in the infringement of a third party copyright.

² As amended by the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) and the Standards Committees (Wales) (Amendment) Regulations 2007

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- 23 There is a specific exemption for any advice given to the Executive by a political adviser or assistant.
- 24 In addition to the right of all elected members set out in the previous 2 paragraphs there are additional rights given specifically to members of overview and scrutiny committees:
- 24.1 They are also entitled to **copies** of any documents which they may inspect i.e. without payment of a fee
- 24.2 They are entitled to inspect, and have copies of, any document which would not be available to an ordinary member (whether because it was confidential, exempt or contained advice given by a political adviser or assistant) providing it is relevant to an action or decision being reviewed or scrutinised by the committee, or relevant to any review or programme of work being conducted by the committee. Issues of relevance, if disputed, are resolved by the Monitoring Officer.
- 24.3 Any additional information obtained by a member of an overview or scrutiny committees under this right remains confidential and may not be disclosed to other parties

Common law constraints on the use and disclosure of information

- 25 Information in the hands of the Council may be subject to a common law obligation of confidence. Obligations of confidence may be derived from contract, tort, equity, property or bailment or may be imposed by statute such as the Health and Safety at Work etc Act 1974. In order to be protected, the information or other material must not only possess the attributes of limited availability and specific character, but must also have been communicated to, obtained by or become known to the recipient in circumstances imposing an obligation of confidence. Express terms must be such as to maintain the restricted availability and specific character essential to protected confidence. In both equity and contract an obligation of confidence will be impliedly constituted when material is imparted in circumstances which make it clear that it is being communicated subject to restrictions of confidentiality, as in the professional employment of a doctor or banker. However, an obligation of confidence may be specifically constituted without any such special relationship. Pre-contractual negotiations may give rise to an obligation if the requirements of protected confidence are present.
- 26 An obligation of confidence will bind the Authority whether or not the information covered by it would be to the credit of the creator, and whether or not it is of current economic value in commercial matters. Breach of confidence may be constituted by the unjustified disclosure or use, or by the unjustified putting at risk of such disclosure or use, of the information imparted or, in the case of third parties, by the improper obtaining of confidential material or, if the material was initially obtained innocently, by the improper retention or use of the confidential material when the recipient knew or ought to have known that it was confidential. The Authority, where it is the initial recipient of protected confidential information, will be liable in the event of the making of an unauthorised disclosure or use of

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the material or putting the material at risk of unauthorised disclosure or use.

- 27 Where the Authority discloses material to an elected member, under the common law or statutory rights of access, which is the subject of an obligation of confidence it will impose restrictions to ensure that the Authority does not breach that obligation.

Statutory controls on the use and disclosure of information

- 28 The Data Protection Act 1998 imposes wide-ranging controls on the way in which personal data can be processed and used.
- 29 The Authority is a data controller for the purposes of The Data Protection Act 1998. Personal data means information which relates to, or can be related to, an identifiable living individual. It must however be information that affects a person's privacy, whether in his personal or family life, business or professional capacity. It must be biographical in a significant sense, that is, going beyond the recording of the individual's involvement in a matter or an event which has no personal connotations and must have the individual as its focus rather than some other person with whom he may have been involved or some transaction or event in which he may have figured or have had an interest.
- 30 Where an individual's name appears in information the name will only be 'personal data' where its inclusion in the information affects the named individual's privacy. Simply because an individual's name appears on a document, the information contained in that document will not necessarily be personal data about the named individual.
- 31 All personal data held by the Council is subject to the Act.
- 32 There are eight data protection principles. It is the duty of the Authority as a data controller is to comply with those principles in relation to all personal data. There are certain exemptions but they will not be covered in this general guidance. If those principles are breached, then an individual who suffers damage or distress as a result may be entitled to compensation from the data controller and the Information Commissioner may serve an enforcement notice on the data controller requiring future compliance.
- 33 The eight principles are set out in the Data Protection Act 1998, Schedule 1, Part 1. The most important ones in everyday use are :
- Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 of the Act is met; and in the case of sensitive personal data, at least one of the conditions in Schedule 3 of the Act is also met.
 - Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
 - Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

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- Personal data shall be accurate and, where necessary, kept up to date.
 - Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
- 34 The principles affect the form and extent of the personal data which is disclosed to elected members and the manner in which it is provided.
- 35 The Information Commissioner has issued written guidance for elected members.³ The guidance identified the three roles played by elected members: as members of the Council (for instance, of a committee of the council or as a member of the Cabinet); as ward representatives; and as representatives of a political party. The guidance indicated that disclosure of personal data to enable an elected member to carry out duties as a member of the Authority is generally acceptable, though the member should only be given as much information as is necessary for the performance of their duties. Disclosure of personal information relating to a particular resident of an elected member's ward may also be acceptable, so long as it is clear that the member is acting on that resident's behalf. In cases of doubt the advice indicates it would be prudent to seek the signed consent of the data subject. In general the Commissioner does not regard it as acceptable to disclose personal data to elected members for political purposes.
- 36 The issue of disclosure of personal data to individual members of the Authority who are not directly involved in the decision making process is a difficult issue. Quite often when members are dealing with a particular constituent's matter (case work), this involves the disclosure of sensitive personal data. Sensitive personal data includes personal data consisting of information as to the racial or ethnic origin of the data subject, his physical or mental health or condition, and the commission or alleged commission by him of any offence. It also includes other matters such as political opinions, religious beliefs etc. In the case of sensitive personal data the requirements of the Data Protection Act are far more rigorous because of the nature of the information involved. More specifically in most cases the explicit consent of the data subject is required to the disclosure of the particular data. Regulations have been made under the 1998 Act which facilitate the disclosure of such information to elected members subject to certain requirements being met. It is important that there is a clear legal basis for the processing of such data (including disclosure) in order to protect not only the individual concerned, but also the member and the Authority from an allegation that an offence has been committed under the 1998 Act.
- 37 The Human Rights Act 1998 imposes an express duty on public authorities, including local authorities, to comply with rights under the European Convention on Human Rights. Of particular relevance here is Article 8 of the Convention which provides a right to respect for private and family life, the home and

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correspondence. There may be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, or for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

38 Certain statutes impose a duty on officers about information collected in accordance with the legislation and the disclosure of that information. For example the legislation relating to air pollution protects the disclosure of commercially confidential information.

39 Certain statutes impose a duty on officers about information collected in accordance with the legislation and the disclosure of that information. For example the legislation relating to air pollution protects the disclosure of commercially confidential information.

The responsibilities of members in relation to information held by the Council

40 The members code of conduct makes two specific provisions about information. They are that members :

40.1 must not disclose information given in confidence, without the express consent of a person authorised to give such consent, or unless required by law to do so;

40.2 must not prevent any person from gaining access to information to which that person is entitled by law⁴

41 The code also contains provisions requiring members to uphold the law⁵.

42 The statutory and common law rights of elected members to have access to documents do not confer on the elected member to disclose that information to another person whether or not that person is also an elected member of the Authority.

Freedom of Information Act 2000

43 Overlying all of the above the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 give general rights of access to any person to all recorded information held by the Council at any time, subject to statutory exemptions and exceptions. Members may exercise these rights in the same way as any member of the public.

44 There will be occasions when an member can obtain more information under Freedom of Information than under the statutory or common law rights referred to

⁴ Code of Conduct for Members & Co-opted Members of the County Council of the City & County of Cardiff : Paragraph 5

⁵ Ibid : Paragraph 6

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above, where the information is not exempt but does not come within the specific rights given to members. This may be for example :

- Where the time for exercising the statutory right has not yet been reached
 - Where the member cannot demonstrate a 'need to know' but the material is not exempt
- 45 There should however be few occasions where material is exempt under one regime but not the other since from April 2007 the exemptions under the two regimes are broadly compatible and both are subject to a public interest test
- 46 Equally there will be occasions where information is exempt from general disclosure under Freedom of Information, but some or all members may be entitled to access e.g.
- Under the need to know principle
 - Because it is within the exception set out in paragraph 16.1 above
 - As members of a relevant scrutiny committee
- 47 To ensure effective use of Council resources and the most appropriate channel of dissemination members should accordingly abide by the protocol discussed in the next section.
- 48 Members should note that even where material is released under Freedom of Information its use may be limited in some circumstances. E.g.
- If it includes material subject to third party copyright it may not be further published without permission of the copyright holder
 - It must not be used in a way which breaches the Members' Code of Conduct e.g. by selectively publishing parts of the material in a way which brings the authority into disrepute

Protocol on Members Rights of Access to Information and Documents

- 49 The issues in this guidance can be complex to operate.
- 50 The Council has accordingly introduced a formal protocol which members should use when requiring access to information. The purposes of the protocol are :
- To ensure that Members obtain information to which they are properly entitled through the most appropriate and effective mechanism
 - To ensure that Council resources are not wasted in deciding complex issues on access to information which do not need to be decided
 - To ensure that where information disclosed to members is properly subject to restrictions on use, appropriate advice on those restrictions is given when the information is released

LOCAL GOVERNMENT ACT 1972 : SCHEDULE 12A PART 4

DESCRIPTIONS OF EXEMPT INFORMATION: WALES

12. Information relating to a particular individual.
13. Information which is likely to reveal the identity of an individual.
14. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
15. 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.
16. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
17. Information which reveals that the authority proposes —
 - (i) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (ii) to make an order or direction under any enactment.
18. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

QUALIFICATIONS: WALES

19. Information falling within paragraph 14 above is not exempt information by virtue of that paragraph if it is required to be registered under —
 - (i) the Companies Act 1985();
 - (ii) the Friendly Societies Act 1974();
 - (iii) the Friendly Societies Act 1992();
 - (iv) the Industrial and Provident Societies Acts 1965 to 1978();
 - (v) the Building Societies Act 1986(); or
 - (vi) the Charities Act 1993().
20. 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().
21. Information which —
 - (i) falls within any of paragraphs 12 to 15, 17 and 18 above; and

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(ii) is not prevented from being exempt by virtue of paragraph 19 or 20 above, is 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.