

CONSTITUTION COMMITTEE: 22 January 2014

ACCESS TO INFORMATION RULES

REPORT OF THE COUNTY CLERK AND MONITORING OFFICER

AGENDA ITEM: 6

Reason for the Report

1. This report sets out the current position in relation to the limited circumstances under which Members may access “exempt information” under the Council's Access to Information Procedure Rules. The Committee is asked to consider proposals to amend certain provisions of those rules.
2. The Council's existing Constitution (as, indeed, that of most Councils in Wales) is based on the Model version issued by the (then) Welsh Assembly Government in 2001, with modifications made to deal with issues specific to Cardiff. However, the former Association of Council Secretaries and Solicitors (Wales Branch) (ACSeS), now "Lawyers in Local Government", have commissioned a new "Model Constitution" for local authorities in Wales. The position taken in the new Model Constitution as it relates to exempt information is set out in this report.

Current Position

3. The Access to Information Procedure Rules, as they currently stand in the Constitution are attached at Annex A. In summary, the position is that:
 - a. Information relating to any business to be transacted at a meeting of the Council or any of its committees is generally open to inspection by Members, unless it is “exempted”.
 - b. The meaning of “exempt information” is defined in Schedule 12 of Part 4 of the Local Government Act 1972 (as amended). Broadly speaking there are 10 categories of exempt information. Of these, 3 are only relevant to

particular aspects of the work of the Standards & Ethics Committee and are not considered in this report.

- c. The remaining seven categories of exempt information (with the exception of information that falls within the “legal advice” category) are subject to a public interest test. Generally, that is to say that access to the information is prohibited only if the public benefit in maintaining the prohibition on access to the information is greater than the public benefit of waiving the prohibition.
- d. This report focuses on Member’s rights to access exempted information of Cabinet and Committees, of which they are not members. Currently, the position is:
 - Under Rule 17, Members of Scrutiny Committees may have copies of exempt information relating to Cabinet business or decision of Cabinet Members, provided that it relates to the work of the particular Scrutiny Committee the Member serves on.
 - Under Rule 18, Members may **inspect** documents relating to:
 - Decisions of Council; and/or
 - Decisions of Cabinet (or decisions made by a Cabinet Member where permitted under the scheme of delegations) **after** that decision has been made.

However, the prohibition on access is maintained (under rule 18.1(a) or (b)) if:

- The documents contain category 1, 2, 4, 5 or 7 exempt information (although please refer to rule 4.a below); or
- The documents contain category 6 exempt information and it relates to terms of a contract in the course of negotiations; or
- The documents are Cabinet material and contain the advice of a political advisor.

It is important to note that this access only applies after a Cabinet decision has been made and it is only a right of inspection, not a right to take copies.

Proposed Amendments

4. It is proposed that the Committee consider the Rules generally, and in particular the following points relating to Members’ access to Exempt Information:
 - a. The revised “Model Constitution” adopts a more simple position under which Members are generally not permitted to see Exempt Information, unless:

- they have a “need to know” (these are common law rights (described in more detail in the Legal Implications section of this report) which provide Members with access to information that is reasonably necessary to enable the Member to properly perform their duties as a Councillor); or
- as part of the scrutiny function.

The Committee is asked to consider whether this, simplified approach is preferable to the current rules.

- b. If the position set out in the Model Constitution is rejected, then the Committee needs to consider amendments to Rule 18. As drafted, Rule 18 can be seen as unclearly drafted for the following reasons:
- Rule 18.1(a) is unclear as to whether it is intended that the prohibition on access is maintained under categories 1, 2, 4, 5 or 7 if documents relate to ongoing contractual negotiations (or whether this contractual negotiations requirement only applies to category 6 information).
 - Currently information that is withheld under category 3 is not mentioned in rule 18.1(a) and therefore could be **inspected** by any Member after a Cabinet decision has been made. It is unclear as to why this category of information is not included in rule 18.1(a).

Therefore, if a version of Rule 18 is to remain, Members of the Committee are asked to form a view as to the circumstances under which the prohibition on access to exempt information should be relaxed.

- c. Consideration may be given as to whether certain Members (such as leaders of opposition Political Groups) should be given enhanced access to information. When considering this issue, it should be noted that the Role Description of Opposition Leaders (as recently adopted by this Committee) include “to provide constructive challenge of the Council’s policies” and to “constructively challenge the vision of the Council”. The Committee may form the view that to enable Opposition Leaders to do so, enhanced access to information rights should be granted.
5. Access to information by members of the Scrutiny process is a key mechanism to enable the Cabinet to be held to account. Please note that it is not proposed that any changes are made to the way in which Members of Scrutiny Committees can access information. The current position in relation to Scrutiny members set out in Cardiff’s Constitution reflects that contained in the draft Model Constitution.

The need for Exempt Information

6. The legal framework surrounding Members' access to information generally works on a presumption in favour of transparency to enable the holding of the Council to account. However, it is deemed that certain information should be treated as exempt, and access to it be prohibited, for a variety of reasons. The statutory categories of exempt information vary widely and cover a variety of situations in which it is considered that information should be kept confidential, for example:
 - a. personal information is protected to prevent Members accessing information about particular individuals and to maintain public confidence in the protection of personal data stored by the Council;
 - b. commercially sensitive information is protected, to ensure that parties looking to contract with the Council are not dissuaded from doing so due to concerns over the protection of their confidential information, and to help ensure that the Council obtains best value for money in its dealings; and
 - c. information relating to criminal and/or statutory investigations is protected to ensure that these investigations are not compromised.

As mentioned earlier in this report, the restrictions are generally subject to a public interest test, meaning that if the benefit of disclosing information is for the greater public good than maintain confidentiality, the information will be disclosed.

LEGAL IMPLICATIONS

7. The body of the report refers to "need to know". This refers to a "common law" right that Members have to see such documents as are reasonably necessary to enable them to carry out their duties. This does not mean that Members have a "roving commission to examine all documents" under the control of the Council – the courts have made clear that "a mere curiosity" or wish to see documents is not sufficient. The documents sought need to relate to the actual public role of the Member seeking access to them.
8. Whether a Member has a "need to know" in relation to any particular document should be assessed on a case by case basis. The Constitution contains a "Protocol on Members Rights of Access to Information and Documents" that sets out how a Member should seek to access information under the "need to know" principle.
9. The remaining legal aspects of this report are addressed in the body of this report.

10. There are additional aspects that may impact on the issues addressed in this report, such as abilities to access information under:
 - a. Freedom of Information laws; and
 - b. Data Protection laws.

however, these issues are beyond the scope of this report.

FINANCIAL IMPLICATIONS

11. There are no direct financial implications arising from this report. However, issues relating to commercially sensitive information and value for money are noted in the report.

RECOMMENDATIONS

The Committee is recommended to:

- (i) Consider and provide their comments on the proposed amendments, specifically to bring the position relating to Members access to Exempt Information into line with the Model Constitution; and
- (ii) If the Committee is minded to make any amendments, to delegate authority to the County Clerk and Monitoring Officer (in consultation with the Chair of the Committee) to draft such amendments and to bring a report to Council recommending their adoption on behalf of the Committee.

MARIE ROSENTHAL
County Clerk and Monitoring Officer
16 January 2014

Annex A – Access to Information Procedure Rules

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 Cabinet (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 or her Department and shall make all necessary arrangements within the Department 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

- (a) The Council will make available copies of the following for six years after a meeting:
- (b) the minutes of the meeting (or record of decisions taken together with reasons, for all meetings of the Cabinet) excluding any part of the minutes or proceedings which disclose exempt or confidential information;
- (c) 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;
- (d) the agenda for the meeting; and
- (e) 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 Cabinet 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 is defined in Schedule 12A, Part 4, of the Local Government Act 1972 as information falling within the following 10 categories (subject to any qualification):

CATEGORY	QUALIFICATION	LEGISLATIVE REFERENCE
1. Information relating to a particular 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	Paragraph 12 of Schedule 12A, Part 4 of the Local Government Act 1972
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	Paragraph 13 of Schedule 12A, Part 4 of the Local Government Act 1972

CATEGORY	QUALIFICATION	LEGISLATIVE REFERENCE
	disclosing the information	
<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> <p>(a) the Companies Acts (as defined in Section 2 of the Companies Act 2006)</p> <p>(b) the Friendly Societies Act 1974</p> <p>(c) the Friendly Societies Act 1992</p> <p>(d) the Industrial and Provident Societies Acts 1965 to 1978</p> <p>(e) the Building Societies Act 1986</p> <p>(f) the Charities Act 2011</p>	<p>Paragraph 14 of Schedule 12A, Part 4 of the Local Government Act 1972</p>
<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>Paragraph 15 of Schedule 12A, Part 4 of the Local Government Act 1972</p>
<p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings</p>		<p>Paragraph 16 of Schedule 12A, Part 4 of the Local Government Act 1972</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>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>Paragraph 17 of Schedule 12A, Part 4 of the Local Government Act 1972</p>

CATEGORY	QUALIFICATION	LEGISLATIVE REFERENCE
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	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	Paragraph 18 of Schedule 12A, Part 4 of the Local Government Act 1972
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 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 70(4) or (5), or 71(2) of the Local Government Act 2000	Paragraph 18A of Schedule 12A, Part 4 of the Local Government Act 1972 (inserted by the Standards Committees (Wales)(Amendment) Regulations 2007)
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 70(4) or (5), or 71(2) of the Local Government Act 2000	Paragraph 18B of Schedule 12A, Part 4 of the Local Government Act 1972 (inserted by the Standards Committees (Wales)(Amendment) Regulations 2007)
10. The deliberations of the Standards and Ethics Committee or of a Sub-Committee of the Standards and Ethics Committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred to it.		Paragraph 18C of Schedule 12A, Part 4 of the Local Government Act 1972 (inserted by the Standards Committees (Wales)(Amendment) Regulations 2007)

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 Cabinet 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 Cabinet

- (a) Rules 12 - 18 apply to the Cabinet.
- (b) The Cabinet 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 Cabinet 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 Cabinet 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 Cabinet, 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 Cabinet Business Office. The Register will be available for public inspection at County Hall and on the Council's internet site.

14 Cabinet Meetings relating to matters which are not Executive Decisions

The Cabinet will decide whether meetings where no Executive Decisions are to be made will be held in public or private. Members of the Cabinet 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 Cabinet and by the Chief Executive and Corporate Directors under delegated powers. Each Corporate Director, and/or Chief Officer in partnership with the relevant Cabinet Member is responsible for identifying future decision-making needs and for informing the Cabinet Business Office. The Cabinet Office Manager 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 Cabinet 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 Cabinet would usually make a proposal to Council. For such decisions, the engagement of scrutiny is required before the Cabinet 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 Cabinet 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 Cabinet

Delegated powers may not be exercised by individual Members of the Cabinet 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 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 Cabinet, or its committees and which contains material relating to :

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

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 or the advice of a political advisor or assistant 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 Cabinet 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 Cabinet (or its committees) relating to any business transacted at a decision making meeting following the conclusion of that meeting or relating to any decision made by an individual member of the Cabinet where allowed by the Scheme of delegations immediately after the decision has been made

unless either (a) or (b) 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
- (b) in respect of Cabinet material it contains the advice of a political adviser.

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 Cabinet 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 Cabinet and the ward the Councillor represents;
- (b) the name and address of every member of each committee of the Cabinet;
- (c) the functions of the Cabinet which for the time being are exercised by individual members of the Cabinet; and
- (d) as respects each function, the name of the member of the Cabinet by whom it is exercisable.

