

Council – 25 September 2019 – Motion on Access to Information Briefing Note

- The provisions covering exempt information and access to information are set out in the Local Government Act 1972 as amended (by the Local Government (Access to Information) Act 1985 and the Local Government (Access to Information) (Variation) Order 2006 amongst others). The Council's constitution sets out, with regard to Members, how those rules are applied locally.
- It is important to understand that there are two types of 'private' information in this context. They are:
 - Exempt – this is information where the proper officer has determined that the information should not be made public. This is only possible where the information falls under one of the exempt categories in Part I of Schedule 12A to the Local Government Act 1972.
 - Confidential – this is information supplied to us confidentially under another mechanism – it may have come from the police, the MoD or some other source and we would be breaking the law if we released it without express permission to do so.
- The Motion on the papers specifies exempt information and does not specify confidential information.
- The exempt paragraphs under Part I of Schedule 12A of the Local Government Act 1972 are:
 - 1 - Information relating to any individual.
 - 2 - Information which is likely to reveal the identity of an individual.
 - 3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information).
 - 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.
 - 5 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
 - 6 - Information which reveals that the authority proposes— (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment
 - 7 - Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
- The motion relates to making exempt information available to all Councillors by default. The current status is that Members of Committees are provided with exempt information and other Councillors have to demonstrate a 'need to know' (to the Monitoring Officer) before the information is made available to them. By virtue of the nature of the test, this is done on a case by case basis.
- The "need to know" approach currently adopted by the Council is in line with the common law right (*R v Birmingham City Council ex p O (1983)*) which established the principle that Councillors had a right of access to material within the possession of the Council if they could demonstrate a "need to know". The proposed motion will be departing from the common law principle and the practice adopted by other Councils.
- It is vital that the implications of blanket access for Councillors and removing the 'need to know' requirement are fully considered. A simple example would be as follows:
 - The Council is looking to purchase a piece of land that is valued at £2.5m
 - The Policy and Resources Committee authorise the Director of Finance and Business Improvement to purchase the land with authorisation to spend up to £3m.

The landowner is a Councillor who has a registered DPI and also has access to the exempt information (under paragraph 3 financial/business affairs)

- The Councillor now knows that they could hold out for £3m from the Council – which prejudices the Council's interests.

(The above examples and other scenarios may hinder the Council discharging its statutory obligation eg the obligation to secure the best price reasonably obtainable under section 123(2) the Local Government Act 1972; third party information may be compromised leading to a possible contractual breach resulting in a claim for compensation / court proceedings).

- These implications, and any others, will need to be considered in detail by Democracy and General Purposes when they consider the motion and any subsequent changes to the constitution.