

**Title of Report :** ACCESS TO INFORMATION - CHANGES

**Report of:** Monitoring Officer

**To:** Standards Committee

**Date:** 28<sup>th</sup> April 2005

**Item No: 8**

<b>Purpose of report:</b>	To advise the Committee of recent changes in the law in relation to access to information
<b>Recommendation(s):</b>	The Committee is recommended to note the contents of the report.
<b>Key decision:</b>	No
<b>Portfolio Holder:</b>	N/A
<b>Scrutiny Responsibility:</b>	N/A
<b>Ward(s) affected:</b>	All
<b>Report Approved by:</b>	Jeremy Thomas, Monitoring Officer
<b>Policy Framework:</b>	None

### Access to Information

1. Changes have been made to the Access to Information rules by legislation that took effect on 1<sup>st</sup> March 2006. The present categories of potentially exempt information set out in Section 2 of Part 4 of the Constitution have been amended. The categories of information that applied up until the end of February 2006 are attached as Annex 1. The new categories that apply as from 1<sup>st</sup> March 2006 are attached as Annex 2.
2. The updated Access to Information categories, contain a condition on exemption of the public and press that goes to the heart of the changes. Information in any of the categories set out in Annex 2 is exempt if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

3. The categories of information relating to health services (that closely follow the categories of information that have now been changed) have themselves not been changed. These categories, set out in Section 6 of Part 4 of the Constitution therefore remain.

### **Practical Application**

4. Officers have, from 1<sup>st</sup> March 2006, been referring to the new exempt information categories in reports not for publication. They have also been applying the public interest test. The exempt category and the application of the public interest test will always be set out on the open part of agenda. It is for meetings to decide whether they agree that an item be taken without the press and public being present and whether they support the reasons given for maintaining an exemption in the public interest.
5. As far as the Standards Committee's exemptions are concerned, the Standards Board for England has reviewed its guidance for Standards Committee determinations in the light of the Access to Information changes. It remains of the view that it is in the public interest that hearings should generally be held in public. The Standards Board therefore recommends that hearings are held in public where possible to ensure fairness and openness of procedures. The Standards Board advises that Standards Committees will have a continuing obligation to consider the requirements of Articles 6 and 8 of the European convention on Human Rights when holding local determination hearings. A letter from the Standards Board for England forms Annex 3 to this report.

### **Conclusions**

6. The Committee is being recommended to note the contents of the report.

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**Background papers:** None

Former Exempt Information Categories

	<b>Category</b>	<b>Condition</b>
1	Information relating to any prospective, current or former employee or prospective, current or former office-holder of the Council.	The information must relate to and identify an individual.
2	Information relating to any prospective, current or former employee.	The information must relate to and identify an individual.
3	Information relating to any prospective, current or former Chief Officer of a local probation board.	The information must relate to and identify an individual.
4	Information relating to an applicant to become an occupier, current occupier or former occupier of any accommodation provided by or at the expense of the Council.	The information must relate to and identify an individual.
5	Information relating to an applicant for, or recipient or former recipient of, any service provided by the Council.	The information must relate to and identify an individual.

	<b>Category</b>	<b>Condition</b>
6	Information relating to an applicant, recipient or former recipient of any financial assistance provided by the Council.	The information must relate to and identify an individual.
7	Information relating to the adoption, care, fostering or education of a particular child.	Child means a person under 18 and anyone who is 18 and is still registered as a school pupil, or is the subject of a care order, within the meaning of section 31 of the Children Act 1989
8	Information relating to the financial or business affairs of any particular person (other than the Council)	The information must relate to and identify a third party. If the information is required to be registered under any statute then it is not exempt.
9	The amount to be paid by the Council under any contract for the acquisition of property or the supply of goods or services.	The exemption is only for the period of tendering and negotiation of price. It is to avoid giving potential advantage to competitors in these processes.
10	Any terms proposed or to be proposed to or by the Council when acquiring or disposing of property or the supply of goods and services.	This exemption only applies for as long as the making public of these terms would prejudice the Council in the negotiations.
11	The identity of any body tendering for a contract to supply goods or services.	This includes individual parts of the Council who may be tendering, such as Direct Labour Organisations.
12	Information relating to consultation, negotiation or future consultation or negotiation, concerning any labour relation matters between the Council or a Minister of the Crown and employees or office holders of the Council.	This exemption only lasts as long as making the information public would prejudice the Council's position. Labour relations is that defined by The Trade Unions and Labour Relations Act 1974 ie. matters which may be the subject of a trade dispute.
13	Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings). Any advice received, information obtained or action to be taken in connection with: <ul style="list-style-type: none"> <li>any legal proceedings by or against the Council; or</li> </ul>	

	Category	Condition
	<ul style="list-style-type: none"> <li>the determination of any matter affecting the Council whether, in either case, proceedings are contemplated or taking place.</li> </ul>	
14	<p>Information which would reveal that the Council proposes:</p> <ul style="list-style-type: none"> <li>to issue a legal notice requiring a person to take some action; or</li> <li>to issue an order or direction under the law.</li> </ul>	This exemption only applies if the publication of the information would enable the individual affected by the notice, order or direction to defeat its purpose or part of its purpose.
15	Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	
16	The identity of a protected informant.	<p>A protected informant means a person giving the Council information which tends to show that:</p> <ul style="list-style-type: none"> <li>a criminal offence;</li> <li>a breach of statutory duty;</li> <li>a breach of planning control; or</li> <li>a nuisance</li> </ul> <p>has been, is being, or is about to be committed.</p>
17	Information relating to the personal circumstances of any person.	
18	Information which is subject to any obligation of confidentiality.	
19	Information which relates in any way to matters concerning national security.	
20	The deliberations of a Standards Committee or a sub-committee of a Standards Committee in reaching any findings on a matter.	

New Exempt Information Categories

Descriptions of exempt information

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 the 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<sup>17</sup> 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.

Qualifications

- (a) Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under the Companies Act 1985, the Friendly Societies Act 1974, the Friendly Societies Act 1992, the Industrial and Provident Societies Acts 1965 to 1978, the Building Societies Act 1986 or the Charities Act 1993.
- (b) Information is not exempt 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.

- (c) Information which falls within any of the paragraphs 1 to 7 above , and which is not prevented from being exempt by virtue of paragraphs (a) or (b) above is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information (ie. the "public interest test" referred to in paragraph 4 of the report).

## **ANNEX 2B**

### **New Exempt Information Categories – Standards Committees**

- 7A. Information which is subject to any obligation of confidentiality.
- 7B. Information which relates in any way to matters concerning national security.
- 7C. The deliberations of a Standards Committee or a sub-committee of a Standards Committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of Sections 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.