

CABINET

1 March 2006

AMENDMENTS TO THE CONSTITUTION – REVISED DESCRIPTIONS OF EXEMPT
INFORMATION UNDER THE LOCAL GOVERNMENT ACT 1972

REPORT OF CITY SECRETARY AND SOLICITOR

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RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

This report proposes some amendments to the Constitution, which are set out in Appendix 1. The amendments relate to the new categories of exempt information as set out in the Local Government Act 1972, as amended by two recent Statutory Instruments. The changes have been introduced so that the tests as to whether information should be treated as exempt are brought into line with similar principles that apply under the Freedom of Information Act 2000 and the Data Protection Act 1998.

RECOMMENDATION:

That it be recommended to Council that the amendments to Part 4 of the Constitution – Rules of Procedure (Section 2 – Access to Information Procedure Rules) be agreed as set out in Appendix 1 to the Report.

CABINET1 March 2006AMENDMENTS TO THE CONSTITUTION – REVISED DESCRIPTIONS OF EXEMPT INFORMATION UNDER THE LOCAL GOVERNMENT ACT 1972REPORT OF CITY SECRETARY AND SOLICITORDETAIL:

- 1.1. The old categories of exempt information (as set out in the Local Government Act 1972, Schedule 12A) will be changed with effect from 1 March 2006. The changes are set out in Local Government (Access to Information) (Variation) Order 2006 and Relevant Authorities (Standards Committee) Regulations 2001 (SI 2006 Nos. 88 and 87 respectively).
- 1.2. The intention is to bring the categories into line with the Freedom of Information Act 2000 and the Data Protection Act 1998. The number of categories has been reduced and simplified.
- 1.3. The new approach means that reports should not be classed as exempt if at all possible. If the report necessarily includes some exempt information, greater consideration should be given as to whether this can be contained within an exempt appendix whilst keeping the majority of the report open. This practice should be followed wherever possible if all the report cannot be open.
- 1.4. A key change is that a report cannot be exempt if it relates to a proposed development for which the Council might grant itself planning permission. The nature of the scheme for which permission will be sought has to be dealt with in open session. However, where necessary, the associated commercial terms (but not the nature of the development itself) could still be dealt with in exempt session.
- 1.5. Another important change is that under current Access to Information Rules some of the categories are entitled to the exemption on a permanent basis. From 1 March, this will no longer apply and the duration of the exemption will be weakened. The test in all cases is that the information 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.”

However, any public requests for exempt reports after the meeting has taken place would be dealt with by the City Secretary and Solicitor, as the proper officer for this purpose, who would make the decision as to whether the exemption still applied or the papers can be released.

- 1.6 A public interest test has always been applied in considering whether reports should be treated as exempt business. In future the wording of the test in the new legislation will be specifically set out on the agenda to draw attention to it. The test is as follows:

“To consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

OTHER CONSIDERATIONS:

2. CORPORATE STRATEGY (RELEVANCE TO):

Relevant to “Clear Communication – enhancing communication with customers, elected Members and staff.”

3. RESOURCE IMPLICATIONS:

None.

BACKGROUND DOCUMENTS: None

APPENDICES: Appendix 1 – Amendments to the Constitution – Access to Information Procedure Rules.

Appendix 1PROPOSED AMENDMENTS TO THE CONSTITUTION – EXEMPT INFORMATION1.1. Part 4 of the Constitution – Rules of Procedure (Section 2 – Access to Information Procedure Rules)

Paragraph 10.4 (Meaning of Exempt Information) be replaced with the following:

Exempt information means information falling within the following seven categories in relation to the business of Council, its Committees and Cabinet. Specific categories (7A to 7C below) relate to the work of the Standards Committee. All categories are subject to important qualifications in paragraphs 8-10 below.

The categories of exempt information are as follows:

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.

QUALIFICATIONS:

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

9. 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.
10. Information which:-
- (a) falls within any of paragraphs 1 to 7 above; and
 - (b) is not prevented from being exempt by virtue of paragraph 8 or 9 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.

Standards Committee – Additional Categories of Exempt Information

The following categories of exempt information (as outlined in Paragraphs 7A, 7B and 7C below) relate only to the Standards Committee or its sub-committees.

4) Where a meeting of a standards committee, or a sub-committee of a standards committee, is convened to consider a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Local Government Act 2000, the provisions of Parts 1 to 3 of Schedule 12A to the 1972 Act shall apply as if, after paragraph 7 of that Schedule, the following descriptions of exempt information were inserted:-

- 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 of a sub-committee of a standards committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.

1.2 Other Consequential Amendments

Paragraph 7.1 – Insert additional paragraph:

- “ e) The City Secretary and Solicitor will determine any requests from the public for exempt reports/minutes after the meeting has taken place by applying the following statutory test:

“To consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Paragraph 24.1 revise as follows:

“Material Relating to Previous Business

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

- a) it contains exempt information falling within paragraphs 1-3 of the categories of exempt information. However, in relation to paragraph 3 this can remain exempt if the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract.”
- b) It contains the advice of a political advisor.

(Note by way of background information and not for formal inclusion in the Constitution: this provision only applies to the legal right of Cabinet to hold decision-making meetings in private, other than in relation to non-exempt key decisions, if it so wishes. This practice is not currently followed in Winchester but the necessary provisions are included in the Constitution to provide guidance and the necessary protections should the event occur.)