

## **ACCESS TO INFORMATION IN LOCAL GOVERNMENT**

### **1 SUMMARY**

- 1.1 The Office of the Deputy Prime Minister (ODPM) has produced a policy paper on the current and future framework governing access to information for local authorities in England. A copy of the Executive summary of the paper is annexed at Appendix 1.
- 1.2 Councils are invited to comment on the paper and a consultation in the form of 25 questions, annexed at Appendix 2, is included within the document.

### **2 INTRODUCTION**

#### **2.1 Current Legislation**

- 2.2 The Local Government (Access to Information) Act 1985 introduced the general principle that reasonable public notice must be given of all matters to be considered at any council, committee or sub-committee meeting. Adequate facilities must be provided for members of the public to see copies of reports and materials on which reports are based.
- 2.3 The Act also introduced the concept of “confidential” and “exempt” information. For matters that are confidential, that is material supplied in confidence by government departments or where disclosure is prohibited by statute or by a court, exclusion of the public is automatic.
- 2.4 In the case of exempt information, the meeting has a choice whether to exclude the public or not. Exempt information is defined by Schedule 12A of the Local Government Act 1972 and is reproduced for information at Appendix 3 to this report.
- 2.5 **Freedom of Information Act 2000**
- 2.6 The Freedom of Information Act 2000 (the Act) is much more far reaching. It provides that any person making a request for information to a public authority is entitled (a) to be informed in writing by that authority whether it has the information requested and (b) if it does, to have that information communicated to him/her.

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- 2.7 The Act is phased and will come into effect in full in January 2005. As well as the general right of access to information, it includes;
- A new information Tribunal with powers to enforce those rights
  - A new post of Office of Information Commissioner combining responsibilities for data protection and freedom of information
  - A duty to disclose exempt information where it is in the public interest to do so
  - Publication Schemes – each authority must adopt a scheme for the publication of information
- 2.8 The Act itself includes exemptions, some of which are “absolute”. Exemptions generally relate to matters that it is not in the public interest to divulge and are largely concerned with central government functions.
- 2.9 Freedom of Information is simple in concept but complicated in effect and further reports and Member/Officer training will be provided between now and 2005 and as guidance is issued.

### **3 THE ODPM POLICY PAPER - CONSULTATION**

- 3.1 The policy document now issued is part of a review process looking at the current access to information regime and ahead to the new requirements under the Freedom of Information Act but is principally concerned with the operation of executive rather than alternative arrangements. In particular, the ODPM is seeking views on:
- How councils can most effectively provide local people with information both now and when the Freedom of Information Act 2000 comes into force, and how the new requirements will work alongside existing responsibilities
  - How it effects executive arrangements
  - How authorities operating executive arrangements define “key” decisions.
- 3.2 As a result it is difficult for this authority to comment directly on the 25 specific questions raised in the paper. Therefore, rather than respond to the questionnaire, it is suggested that the Council offer a general comment on those issues outlined in the Executive Summary.

### **4 COMMENTARY**

#### **4.1 Current Duties and Responsibilities**

- 4.2 This authority has endeavoured to operate in an open and transparent way for many years and welcomes the Act as a further move to open government. However, local authorities are already subject to powerful access rights. As well as the Local Government (Access to Information) Act 1985 and the Local Government Act 2000, the Accounts and Audit Regulations 1983 require that all “books, deeds, contracts, bills, vouchers and receipts” pertinent to the audit must be available to the public for 15 days.
- 4.3 In practical terms, the cost in time of making information available is a problem. Members of the public can have difficulty identifying the documents relevant to their enquiries. Some may undertake “fishing expeditions” with no clear purpose other than curiosity. Even when identified and available, deeds and documents cannot be left unattended during inspection. The nature of an enquiry may mean that a person will spend several hours perusing documents.
- 4.4 The Council must carry out its statutory duties. Of necessity, it will set priorities. The Council is required to produce a range of plans and strategies from Best Value Performance to Home Energy Conservation. A Publication Scheme is required under the Freedom of Information Act 2000 by 31 December 2002. There are no additional resources for this task but, as usual, officers will use their best endeavours to see that it is completed within the timeframe set by government.
- 4.5 Open government is important, and given the accountability of Members to the electorate and the freedom to information under the 2000 Act, it is perhaps appropriate for the government to relax the current resource intensive regime of regulation and inspection or to make adequate funds available to undertake such initiatives.
- 4.6 **The Process of Records Management**
- 4.7 Any freedom of information legislation is only as good as the quality of the records to which it provides access. Councils across the country are striving to achieve the government target of 2005 for electronically enabled transactions. The Public Record Office has produced model action plans for developing records management systems. This should be co-ordinated nationally utilising a document imaging process to allow search and retrieval facilities obviating the need for personal contact in most cases. Access to information could thus become widely available uniformly, quickly, efficiently and securely and within the spirit of the Act.
- 4.8 Government departments hold vast amounts of information and are included within the scope of the Act. A national programme of

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procurement of document imaging technology and implementation for all public bodies, funded centrally, would be considerably more cost effective as a means of achieving the step change envisaged under the Act than leaving individual authorities to devise individual solutions.

**5 RESOURCE IMPLICATIONS**

- 5.1 None at present other than officer time in developing a Publication Scheme, estimated at one week. Implementation of the Act in full is likely to impact on officer time with additional costs flowing from changes in the authority's records management which have not yet been quantified.

**6 LEGAL IMPLICATIONS**

- 6.1 The Act introduces new duties and obligations on the Council to be detailed in further reports.

**7 RECOMMENDATION**

- 7.1 It is proposed that Committee considers its response to the Policy Paper and recommends accordingly. (CD(LPA))

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**Background Papers:**

None

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Appendix 1

## EXECUTIVE SUMMARY

### The context of this policy paper

1. Our councils should be open in the way they do business, in delivering local services to local people and in how they make decisions. They need to be ready to provide information about the council's services and the decisions they make.
2. Councils already make a great deal of information available to the public – both through the rules they work under and on their own initiative. Under existing rules, the public already have access to the minutes and reports from council meetings and the reasons why councils have made decisions, as well as a wealth of information in areas of key service provision, such as housing, education, health and planning.
3. Alongside the existing rules for access to information, people will have new rights to obtain information under the Freedom of Information Act 2000. This Act will bring about a step change in the range of information the public can request from their council and the way in which the council releases it to them.
4. The first milestone is that councils must produce, by February 2003, a guide for the public to the information they publish or intend to publish. This is known as a Publication Scheme. It will show everyone what information they can get, where they can get that information, and if there is a charge for information. The full set of rules will come into force from January 2005.
5. Under Freedom of Information, the essential approach is that any person will have a general right to see any information that is held by the council. Local authorities can decide to withhold certain types of information, for example if it relates to information provided in confidence or personal information about a third party. But, in most of these cases, the council will not be able automatically to withhold information – if they want to do so, they have to be able to prove that it is the public interest to do so. They will need to be able to justify such a decision to the independent Information Commissioner.

### Issues for consideration

6. Because new rules are coming in, the Government is reviewing the current access to information rules which apply to local authorities to see how they can best be integrated with the new rules under Freedom of Information. This consultation document is an important part of the review process, and is intended to help deliver a culture of openness throughout local government.
7. We are asking individuals, user-groups and key stakeholders to tell us:
  - \* how they think councils can most effectively provide local people with information, both now and when the Freedom of Information Act 2000 comes into force,
  - \* what practical problems people who want access to information held by local authorities face, and how these can be addressed,

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- how the new requirements will work alongside the responsibilities councils already have to release information, and whether the existing rules need amending to make them clearer and easier to operate, for both councils and for local people,
  - how councils release information to the public now including examples of best practice and examples of how they use electronic media, such as the internet.
3. More detailed questions to which we are seeking answers can be found at Annex C. We also welcome any general comments about the issues raised in this paper and comments from user groups about their practical experience of the implications of the legislation. We would be grateful for comments by 2 December 2002.

Appendix 2

## ANNEX C

### Question Summary Sheet

- Q1: The Department seeks to identify and disseminate best practice in how local authorities are approaching the process of implementing the Freedom of Information Act 2000. What structures have local authorities established for managing the process of implementing the Freedom of Information Act 2000?
- Q2: The Government is interested to hear suggestions from local authorities and other interested stakeholders as to how the exemptions in the Freedom of Information Act and Schedule 1ZA can be more closely aligned, including examples of best practice.
- Q3: Do you see any of the following as being additional uses of your forward plan?
- Internal management planning/communications document?
  - Tool to encourage public participation?
  - Work programme of the executive?
  - Other (Please specify)
- Q4: How do you publicise your forward plan to the electors?
- Q5: What feedback do you get from local people and key stakeholders on your forward plan?
- Q6: Do you think the forward plan achieves its purpose, of being the means by which electors know the decisions, which an executive is to take?
- If not, why not?
- Q7: What impact has the advent of the forward plan had on the working practices of your local authority?
- Q8: What proportion of key decisions are taken at public meetings?
- Q9: How does your local authority make their scheme of executive delegations available to the public?
- Q10: How does your local authority publicise key decisions taken by officers and executive members under delegated powers?
- Q11: What proportion of executive decisions, that would be key decisions, has the authority had to make under urgency procedures?
- Q12: How does your local authority make agendas and connected reports available to the public?

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- Q13: How does the authority publish decisions?
- Q14: Does it make use of electronic media to publish decisions?
- Q15: How does it help with providing the public with access to records of these decisions?
- Q16: How does your local authority ensure accurate records are kept of key decisions taken by individual members or officers?
- Q17: What processes have local authorities developed to deal with applications for the release of exempt information, including disputes over the classification?
- Q18: What provisions are in place to monitor the authority's performance, including consistency of its decisions?
- Q19: Describe how your authority defines key decisions?
- Q20: How does your authority publicise the criteria it is using to define key decisions? Does it receive and act on public feedback on this definition?
- Q21: How does your authority define "significant" expenditure?
- Q22: Has your authority set a standard financial threshold or a number of different thresholds? What is the reason for the approach taken?
- Q23: How does the authority ensure that decisions, which are likely to be significant in terms of their effects on communities, are defined as key?
- Q24: Have overview and scrutiny committees been challenging the executive with regard to the definition of key decisions?
- Q25: Has your definition of a key decision altered as your local authority gets used to working under new arrangements? Do you intend to review your definition, and if so, how do you plan to go about this review?



Appendix 3

## ANNEX B

# Schedule 12A of the Local Government Act 1972

## Access to Information

### PART I

#### Description of Exempt Information

1. Information relating to a particular employee, former employee, or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an officer holder under, the authority.
2. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular officer, former officer or applicant to become an officer appointed by –
  - (a) a magistrates' court committee, within the meaning of [section 27 of the Justices of the Peace Act 1997]; or
  - (b) a probation committee [within the meaning of the probation Service Act 1993].
3. Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of the authority.
4. Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority.
5. Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the authority.
6. Information relating to the adoption, care, fostering or education of any particular child.
7. Information relating to the financial or business affairs of any particular person (other than the authority).
8. The amount of any expenditure proposed to be incurred by the authority under any particular contract for the acquisition or disposal of property or the supply of goods or services.
9. Any terms proposed or to be proposed by, or to the authority in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.
10. The identity of the authority (as well as of any other person, by virtue of paragraph 7 above) as the person offering any particular tender for a contract for the supply of goods or services.

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11. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office-holders under, the authority.
12. Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with –
  - a) any legal proceedings by or against the authority; or
  - b) the determination of any matter, affecting the authority.
13. Information which, if disclose to the public, would reveal 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.
14. Any action taken or to be taken in connection with the prevention, investigation or prosecution of a crime.
15. The identity of a protected informant.

**PART II**

**Qualifications**

1. Information relating to a person of a description specified in any of paragraphs 1 to 5 of Part I above is not exempt information by virtue of that paragraph unless it relates to an individual of that description in the capacity indicated by the description.
2. Information falling within paragraph 7 of Part I 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 Industrial and Provident Societies Act 1965 to 1978;
  - d) the Building Societies Act 1962; or
  - e) the Charities Act 1960.
3. Information falling within paragraph 8 of Part I above is exempt information if, and so long as disclosure to the public of the amount there referred to would be likely to give an advantage to a person entering into, or seeking to enter into a contract with the authority in respect of property, goods or services, whether the advantage would arise as against the authority or as against other persons.

4. Information falling within paragraph 9 of Part I above is exempt if and so long as disclosure to the public of the terms would prejudice the authority in those or any other negotiations concerning the property or goods or services.
5. Information falling within paragraph 11 of Part I above is exempt if and so long as disclosure to the public of the information would prejudice the authority in those or any other consultations or negotiations in connection with a labour relations matter arising as mentioned in that paragraph.
6. Information falling within paragraph 13 of Part I above is exempt if and so long as disclosure to the public might afford the opportunity to a person affected by the notice, order or direction to defeat the purpose or one of the purposes for which the notice, order or direction is to be given or made.
7. Information falling within any paragraph of Part I above is not exempt information by virtue of that paragraph if it relates to proposed development for which the local planning authority can grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992 (S.I. 1992 No. 1492).

### **PART III**

#### **Interpretation**

1. (1) In this Schedule –

“child” means a person under the age of eighteen years and any person who has attained that age and –

- a) is registered as a pupil at a school; or
- b) is the subject of a care order, within the meaning of [section 31 of the Children Act 1989];

“disposal” in relation to property, includes the granting of an interest in or right over it;

“employee” means a person employed under a contract of service;

“financial or business affairs” includes contemplated, as well as past or current activities;

“labour relations matter” means –

- a) any of the matters specified in paragraphs (a) to (g) of section 29(1) of the Trade Union and Labour Relations Act 1974 (matters which may be the subject of a trade dispute within the meaning of the Act); or
- b) any dispute about a matter falling within paragraph a) above; and for the purposes of this definition the enactments mentioned in paragraph a) above, with the necessary modifications, shall apply in relation to office holders under the authority as they apply in relation to employees of the authority;

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"office-holder", in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority;

"protected informant" means a person giving the authority information which tends to show that –

- a) a criminal offence,
- b) a breach of statutory duty,
- c) a breach of planning control, as defined in [section [171A] of the Town and Country planning Act 1990], or
- d) a nuisance,

has been, or is being or is about to be committed;

"registered", in relation to information required to be registered under the Building Societies Act 1986, means recorded in the public file of any building society (within the meaning of that Act);

"tender for a contract" includes a written statement prepared by the authority in pursuance of section 9(2) of the Local Government, Planning and Land Act 1980 (estimated cost of carrying out functional work by direct labour)

2. Any reference to this schedule to "the authority" is a reference to the principal council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined and includes a reference –

- a) in the case of a principal council, to any committee or sub-committee of the council; and
- b) in the case of a committee, to –
  - (i) any constituent principal council;
  - (ii) any other principal council by which appointments are made to the committee or whose functions the committee discharges; and
  - (iii) any other committee or sub-committee of the principal council falling within sub-paragraph (i) or (ii) above; and
- c) in the case of a sub-committee to –
  - (i) the committee, or any of the committees, of which it is a sub-committee; and
  - (ii) any principal council which falls within paragraph b) above in relation to that committee.