

Item No. 7.1	Classification: Open	Date: February 22 2006	Meeting Name: Council Assembly
Report title:		Constitutional Review – Access to Information	
Ward(s) affected:	or groups	All	
From:		Chief Executive (Borough Solicitor)	

RECOMMENDATIONS

1. That the standards committee recommends changes to the constitution on access to information arising from statutory instruments published on January 26 2006 be agreed and take effect from March 1 2006.

BACKGROUND INFORMATION

2. The role of the standards committee includes specific responsibility for the oversight, review and recommending amendments to the constitution.
3. Standards committee on February 6 2006 considered a report entitled constitutional review 2005/06. The recommendation regarding access to information arises from the committee's consideration of that report.
4. The existing constitution was adopted at council assembly (constitutional meeting) in May 2005.

KEY ISSUES FOR CONSIDERATION

Access to Information - New Descriptions of Exempt Information

5. On January 26 2006 the government laid before parliament the statutory instruments on access to information that will change the definitions of exempt information. The order comes into force on March 1 2006. Currently the rules on admission to meetings of a council permits a local authority to exclude the public from a meeting whenever it is likely that there would otherwise be a disclosure of exempt information to the public. This applies to access to meetings and documents of the council assembly, committees and sub-committees. Exempt information is defined in section 100I in schedule 12A. The 2006 order substitutes a new schedule 12A - the new definitions are set out in the table below.
6. The government states that the new descriptions listed in the new schedule 12A are simpler and clearer than those in the existing version. Similarly, some of the previous qualifications are replaced by a public interest test.
7. Given the implementation date of March 1 2006 the new definitions need to be considered at the earliest opportunity. Therefore, the standards committee recommends the changes to the February council assembly. In terms of the Southwark constitution the main change is to amend section 10.4, which sets out the existing definitions of exempt information.

Recommendation

That the existing definitions of exempt information set out in section 10.4 of the constitution be replaced by the following new definitions and qualifications of exempt information.

NEW DESCRIPTIONS OF EXEMPT INFORMATION

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 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.
- 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.

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.

Recommendation

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.

Community Impact Statement

8. This report contains no specific proposals that will impact on local communities.

Legal Implications

9. The borough solicitor and her staff have been involved in the preparation of this report and the legal implications are contained in the body of the report.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark's Constitution	Constitutional Team Southwark Town Hall Peckham Rd, SE5 8UB	Ian Millichap 020 7525 7225
Standards Committee Minutes	- Ditto	Lesley John 020 7525 7228

AUDIT TRAIL

Lead Officer	Deborah Holmes, Borough Solicitor Graham Love, Head of Democratic Services	
Report Author	Ian Millichap, Constitutional Team Manager Lesley John, Constitutional Officer	
Version	Final	
Dated	February 10 2006	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Chief Executive	Yes	Yes
Borough Solicitor	Yes	Yes
Executive Member	No	No
Date final report sent to Constitutional Team		February 10 2006