

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 22nd September 2011
Report of: Democratic and Registration Services Manager
Subject/Title: Member Access to Part 2 and Confidential Reports

1.0 Report Summary

- 1.1 This report provides information upon the Council's existing approach in terms of access for Members to Part 2 and confidential reports, and sets out potential options for the future.

2.0 Recommendations

- 2.1 That
- (1) Members consider whether Council should adopt the approach set out in paragraph 10.10 and Appendix B of this report and, if so
 - (2) authorisation be given to the Borough Solicitor to make such changes and additions to the Constitution as she considers are necessary in order to give effect to the wishes of Council, and that
 - (3) the above arrangements be put in place for a trial period of 6 months, after which they will be reviewed.

3.0 Reasons for Recommendations

- 3.1 In order for Members and Officers to understand clearly the Council's approach to the availability to Members of Part 2 and confidential reports.

4.0 Wards Affected

- 4.1 All Wards are affected.

5.0 Local Ward Members

- 5.1 All local Ward Members are affected.

6.0 Policy Implications

- 6.1 The Council's agreed arrangements should be reflected in the Constitution which clearly sets these out.

7.0 Financial Implications

- 7.1 There are no such implications.

8.0 Legal Implications

- 8.1 The legal implications are contained within the main body of this report.

9.0 Risk Management

- 9.1 By clearly setting out in the Constitution the way in which the Council deals with Member rights of access to Part 2 and confidential reports, risk is minimised. Members will be clear as to their own rights and officers will be clear upon how the Council's arrangements should apply to Members.
- 9.2 However, extending the rights of access to Part 2 and confidential reports to Members gives Members rights over and above those which are afforded by the law. Members would be relied upon to deal with the information in question appropriately.

10.0 Background

- 10.1 Most reports which are presented to the Council's decision-making and other bodies are freely available and open to inspection by Members and members of the public. However, certain reports, which officers believe contain "exempt information" or confidential information, may be held back from public circulation because the contents appear to meet certain statutory criteria eg they contain information about the financial or business affairs of an individual, or information about a proposed prosecution. Those categories of information which are exempt are referred to in the Access to Information Procedure Rules within the Constitution. They are set out in Appendix A to this report.
- 10.2 The final decision on whether such reports will be dealt with by the decision-making body in private is made by the body itself when it considers the standard agenda item: "Exclusion of the Public and Press". If this is moved, seconded and agreed by the body in question, the report will be dealt with in private and the report will remain unavailable to the public and press.
- 10.3 The situation in respect of access to such reports by Members of the Council is, however, different. Over many years, court cases have established clear principles relating to the rights of Members to Part 2 and confidential reports. These principles are summarised in the following paragraphs.
- 10.4 Members of the body in question are generally entitled to receive copies of Part 2 or confidential reports. However, where a Member is not a member of that body, there is no automatic right of access. Where this is the case, the Member must demonstrate a "need to know" such information in order to properly carry out duties as a Councillor.

- 10.5 If this thinking is followed in each case, a judgement has to be made when a request is made by a non-member of the decision-making body in question: does the Member requesting access to the report have a “need to know”, in order to properly carry out their duties as a Councillor? The decision on whether there is a “need to know” is for the Council to make and the courts are reluctant to interfere.
- 10.6 There is currently no formally agreed mechanism in place which provides for a judgement to be made as to whether or not a legitimate “need to know” exists, when this is claimed to be the case by a Member. In the absence of a formally agreed mechanism, therefore, the judgement must be made by Officers. In practice, this can put Officers in a difficult position, requiring them to make a decision as to whether or not legal criteria have been met, potentially against a backdrop of strong views expressed by the Member in question.
- 10.7 The Council’s existing practice is to widen the categories of cases where Members automatically receive Part 2 Cabinet reports. In addition to the Cabinet members, reports in hard copy are made available to:
- Group Leaders
 - Ward Members affected, in accordance with the Ward Member Protocol.
 - Relevant scrutiny committee Chairmen and Vice-Chairmen.
 - Members visiting the meeting in question, who would receive the papers upon arrival.

However, whilst this approach appears to have been effective in appropriately addressing the needs of most Members wishing to see Part 2 reports, and the categories of Members listed above are more likely than others to have a “need to know”, this is not based on a judgement in each case of a request against “need to know” principles. It could be argued that the approach is not entirely logical.

It is not proposed to remove the existing arrangements as set out above.

- 10.8 There are no similar arrangements for regulatory committees.
- 10.9 Looking at the picture nationally, there is widely varying practice in respect of Member access to Part II and confidential reports. Even when consideration is given to the practices of the demised authorities, it is understood that different approaches were followed. Some authorities allow completely unrestricted access to Members to all Part 2 and confidential reports. This removes the need for any Officer judgement to be exercised when Members ask for copy reports, but the approach carries with it an acknowledgement that Members might be afforded access to the most sensitive information, eg staffing, disciplinary, Code of Conduct and child care information. The practices of these authorities therefore rely on trust.
- 10.10 Alternatively, all Part 2 and confidential reports could be released to Members upon request, except for certain very sensitive categories, which would be

excluded from automatic release. These arrangements could be trialled for 6 months in order to establish how they settle down. Such suggested categories of report could be those which contain the following information:

- Staffing information, where the identity of Officers would be revealed; and
- Information relating to vulnerable children or adults

Even in respect of reports containing the above categories of information, it is quite possible that a Member might still claim to have a “need to know”. In order to provide for these circumstances it is suggested that a procedure such as that which is set out at Appendix B could be adopted.

10.11 Consideration should now be given to whether the Council’s existing approach should be varied. This approach should be documented and acknowledged in the Constitution.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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