

# Overview and Scrutiny Management Board

## 13<sup>th</sup> March 2017



**Report of:** Shahzia Daya, Service Director, Legal and Democratic Services

**Title:** Process for Dealing with Exempt Material

**Ward:** City Wide

**Officer Presenting Report:** Nancy Rollason, Service Manager, Legal

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### Recommendation

That Members consider and comment on the proposed revised procedure for dealing with exempt information before a meeting takes place.

### Summary

At the meeting on 8th September 16, the Overview and Scrutiny Management Board (OSMB) requested that a review be conducted regarding the procedure around dealing with 'exempt' material. The extract minute is copied below;

*8TH SEPTEMBER 2016 EXTRACT MINUTE;*

*16. Protocol for dealing with exempt items.*

*The Chair confirmed that he wished the Monitoring Officer to develop a protocol that worked as there had been recent instances of wholesale exempt reports when not all of the material warranted that approach. The Interim Chief Executive made clear that the objective was that as much information as possible went into the public domain. A Councillor added that it was vital that any protocol had the ability to challenge the decision to make information exempt in order to see that the decision was robust. The Chair accepted this was a valid element of the protocol.*

***Resolved – that the Board notes that a review of procedures relating to exempt/confidential material would be conducted and a report be brought back to the Board later in the municipal year.***



**Proposed process**

Overarching principle – information should be made publically available, exempt information should be the exception

**Step 1** – Officers refer a report to the Monitoring Officer to decide if any material may need to be considered in private session (exempt)

**Step 2** –Monitoring Officer makes decision as to what information may be needed to be heard in private. There will be a presumption of openness and small-scale redactions will be used where possible.

**If report contains no exempt information**

No further action required

**If report contains information that needs to be excluded from publication**

**Step 3** –Monitoring Officer refers decision to relevant Scrutiny Chair and Chair of OSM

**If Scrutiny Chairs have no objection to the decision**

No further action required

**If Scrutiny Chairs object to the decision**

**Step 4** – Decision reviewed by Monitoring Officer and final judgement made

## **2. Context**

- 2.1 The decision on whether or not information is exempt or not is one for the committee deliberating on that item of business, not officers.
- 2.2 The duty to allow members of the public and press access to a meeting, and also the papers provided to that meeting, are contained in the Local Government Act 1972 (as amended and as applied to the elected mayor and cabinet). The power to decide that an item of business on an agenda is 'exempt' from this duty resides in the Committee deliberating on that item.
- 2.3 The process for officers is in effect to work backwards from this decision. The Monitoring officer must consider whether or not it is likely that a Committee will resolve to go into private session and, therefore, not publish the papers in advance as they would otherwise do.
- 2.4 It is therefore the monitoring officer who is the final arbiter as to what is or is not likely to result in a resolution to exclude the public and press.
- 2.5 The role of the Monitoring Officer then changes from one of arbiter to one of advisor at the committee meeting itself as the final and actual decision of whether or not papers are exempt from public access is for the Committee or Cabinet to make, not the Monitoring Officer.
- 2.6 If a meeting makes a decision to remain in public session, the reports and papers previously marked 'not for publication' in the likelihood of them being exempt, would be made available to the public with immediate effect and then published in the normal way.
- 2.7 When information is required to be exempt, save in exceptional circumstances as determined by the Monitoring Officer in consultation with the chair, then the information should be contained within exempt appendices.

### **LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

Background Papers: None.