

Values and Ethics Sub Committee

26th March 19



Report of: Tim O’Gara, Service Director – Legal and Democratic Services

Title: **Guidance for Councillors re Confidential/Exempt Information**

Ward: All Wards

Officer Presenting Report: Nicholas Mimmack

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Recommendation

That the Sub-Committee notes the legal position regarding confidential/exempt information and endorses the guidance attached at Appendix A.

Summary

The report provides information to enable the Sub-committee to consider and decide whether to endorse the guidance on confidential/exempt information.

The significant issues in the report are:

As set out in the report and the appendices to the report.



Policy

1. This guidance will assist in supporting the Council's duty to promote and sustain high standards of conduct, one of the functions of the Value & Ethics Sub-Committee.

Consultation

2. N/A

Context

3. Questions around access to confidential/exempt information arise frequently in relation to access by councillors. Additionally one of the key recommendations of the LGA Corporate Peer Challenge was 'ensuring information is shared in good time and used responsibly by all.' It was therefore felt that it would be useful to provide further guidance to councillors in this regard.
4. This report summarises the legal position relating to confidential/exempt information. It also provides some practical guidance about how councillors should handle confidential/exempt information, as set out in Appendix A.

Legal Position

5. The meetings of Full Council, its committee and sub-committees are required by law to be open to the public and press. However there are circumstances under which the Council either must or may exclude members of the public/press.

Confidential Information

6. A local authority must exclude the public and press from a meeting during an item of business if it includes confidential information. Confidential information includes information:
 - Provided to the local authority by a government department that forbids disclosure of the information to the public;
 - That is prohibited from being disclosed to the public under legislation or Court Order.
7. A resolution does not need to be passed during a meeting where an item of business that includes confidential information will be considered, as a statutory requirement will already be in place to exclude the public/press. It is therefore sufficient for the chair of the meeting to request that the public leave the room so that the item of business containing confidential information can be dealt with in private.
8. Any relevant documents should have been marked as confidential when published in advance of the meeting in order that the public/press are on notice that they will not be able to attend this part of the meeting. If possible, then any confidential information should be placed in a separate appendix in order that the remainder of the report may be read.

Exempt Information

9. Exempt information includes information relating to:

- An individual (including information that reveals the identity of an individual);
- Financial and business affairs of people or companies (including the authority holding the information);
- 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;
- Legal professional privilege;
- A proposal by an authority to either give a notice imposing requirements on an individual or to make an order under any enactment;
- Any action taken or to be taken in connect with the prevention, investigation or prosecution of crime.

10. The information in the first four categories listed above may only be considered to be exempt if the public interest in maintaining the exemption outweighs the public interest in disclosure. The above exemptions and full list of qualifications may be found at Appendix B.

11. A local authority can exclude the public or press from a meeting by resolution for the course of the discussion relating to that item if it includes exempt information. A resolution must:

- Identify the proceedings (or part) to which it applies; and
- Describe the category of exempt information that gives rise to the decision to exclude the public from the meeting.

12. If a local authority is satisfied that the above criteria have been met, it will pass a resolution allowing it to lawfully exclude the public during the relevant proceedings at a meeting.

13. The same provisions apply as regards confidential information in that any documents containing exempt information should be marked accordingly when published and any exempt information should, if possible, be placed in an exempt appendix in order that the remainder of the report may be read.

14. A local authority must act reasonably when exercising its discretion to exclude the public/press from a meeting if an item of business includes exempt information. It must justify its action by referring to the statutory list of items of exempt information at Appendix B.

Practical Guidance for Councillors relating to the handling of confidential/exempt information

15. Councillors should take their responsibilities relating to the handling of confidential/exempt information seriously. Appendix A to this report sets out some practical guidance for councillors.

Risk Assessment

16. All councillors are likely to have access to confidential/exempt information at some point. This report and the associated guidance highlight the legal obligations of councillors relating to

confidential/exempt information and will reduce the risk that information is inadvertently disclosed.

Public Sector Equality Duty

17. Nothing arising directly from this report.

Legal Implications

18. As set out in the report.

Resource Implications

19. None arising directly from this report.

Appendices:

Appendix A – Guidance for Councillors re Confidential/Exempt Information.

Appendix B – Categories of Exempt Information

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

None