



**GUIDELINES FOR DECIDING WHEN COUNCIL  
SHOULD TAKE ITEMS "IN COMMITTEE"**

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### **1. Background**

The Council Strategic Policy and Resources Committee, held on 1<sup>st</sup> June 2009, requested a guideline paper be produced to aid the process of deciding which items the Council should take "In Committee" (In Private).

### **2. Context**

2.1 Section 100A and Schedule 12A of the Local Government Act 1972 contains the access to information provisions for public authorities. The 1972 Act was amended by the Access to Information Act 1985 so as to provide greater public access to meetings and papers of local authorities.

2.2 On 1<sup>st</sup> March 2006 the Schedule 12A of the 1972 Act was amended so as to bring the categories of "exempt information" under the Local Government Act in line with the exemptions in the Freedom of Information Act. The most significant limit is the application of the public interest test. The Council must only treat a matter as 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".**

The 1972 Act now requires local authorities to exclude the press and public from meetings where it is likely that "confidential information" would otherwise be disclosed to them and permits local authorities to exclude press and public from meetings where it is likely "exempt information" would otherwise be disclosed.

#### **\* What is the public interest?**

There is no legal definition of what the public interest is but Meredith Cook in her 2003 study *"Balancing the Public Interest: Applying the public interest test to exemptions in the UK Freedom of Information Act 2000"* identifies the following as some of the relevant considerations:

- The public interest in disclosure is particularly strong where the information in question would assist public understanding of an issue that is subject to current national debate.
- The issue has generated public or parliamentary debate
- Proper debate cannot take place without wide availability of all the relevant information
- The issue affects a wide range of individuals or companies
- The public interest in a local interest group having sufficient information to represent effectively local interests on an issue

- Facts and analysis behind major policy decisions
- Knowing reasons for decisions
- Accountability for proceeds of sale of assets in public ownership
- Openness and accountability for tender processes and prices
- Public interest in public bodies obtaining value for money
- Public health
- Contingency plans in an emergency
- Damage to the environment

### **3. Definition of “confidential information”**

The category of “confidential information” is restricted to information provided by a government department upon terms which expressly forbid the disclosure of information to the public and to information the disclosure of which is prohibited by statute or by an order of the court.

### **4. Policy Context**

- 4.1 Maintaining an open and accountable decision making process will assist the Council in achieving the confidence of the public and in adopting an active, consistent approach to all aspects of its work.
- 4.2 Open decision making will help the Council abide by the principles of openness, inclusivity, integrity and accountability.
- 4.3 It has always been the case for the meeting of the Council or Committee to make the decision as to whether an individual matter should be considered in public or “in committee”. It is necessary for a provisional decision to be taken, when preparing the agenda for a meeting, as to whether an item should be taken “in committee”. This officer decision can be overturned by members at the meeting, although clearly once a report has been published its contents will already be in the public domain even if the matter is subsequently debated “in committee”.

### **5. Proposals**

- 5.1 It would be of assistance to members and help ensure the public interest test has been fully applied if each item to be taken “in committee” includes a paragraph explaining the reason for the item being exempt.
- 5.2 The following items to be considered as exempt by the Council and therefore taken “in committee”
- 5.2.1 Personal information relating to any individual or any such information from which an individual could be identified, the disclosure of which would contravene the Data protection Act 1998.

- 5.2.2 Information which would prejudice the private financial or commercial interests of any particular person or body, including the Council.
- 5.2.3 Information relating to the financial business affairs of any particular person.
- 5.2.4 Information which has been provided to the Council in confidence by another person, the disclosure of which would constitute an actionable breach of confidence.
- 5.2.5 Information which would endanger the health and safety of any individual
- 5.2.6 Where Council is receiving legal advice.
- 5.2.7 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings
- 5.2.8 Information relating to any consultations or negotiations, or contemplated consultation or negotiations, in connection with any industrial relations matter arising between the Council and its employees.
- 5.2.9 Information which is exempt from disclosure under the Freedom of Information Act 2000 (see Appendix 1) the Environmental Information Regulations 2004 or any other Enactment
- 5.2.10 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
- 5.2.11 Information which reveals the Council proposes to:
  - (a) to give under any enactment a notice imposing requirements on any person;  
or
  - (b) to make an order or direction under any enactment

## **APPENDIX 1**

### **Freedom of Information Act Exemptions (FOIA)**

There are two types of exemption to the right of access, described in the FOIA

(a) Absolute exemptions of which there are eight:

1. Information accessible to the applicant by other means
2. Security matters
3. Court records
4. Parliamentary privilege
5. Prejudice to the effective conduct of public affairs
6. Personal information
7. Confidential information
8. Other legal prohibitions on disclosure

(b) Qualified exemptions which might apply:

- (i) If disclosure would prejudice certain interests
- (ii) For reasons of public interest - where withholding information outweighs the public interest in disclosing it.

The public interest test applies to all qualified exemptions (see Page 1 for definition of public interest)