

# Information Briefing

Report from: Kate Charlton, City Solicitor  
Report to: Co-ordinating O&S Committee

Date: 11<sup>th</sup> January 2019

## CONFIDENTIAL AND EXEMPT ITEMS

### 1. SUMMARY

At a previous meeting of the Co-ordinating O&S Committee, members asked about the amount of information included on private reports for Cabinet meetings. This note sets out the current position and options for change that are being considered by Corporate Management Team and the Cabinet.

### 2. LEGISLATION

There are two categories of information that may be included on a private report:

- **Confidential Information:** information given to the Council by a government department on terms which forbid its public disclosure or information which cannot be publicly disclosed by a Court Order. The public must be excluded from meetings for items where confidential information would be disclosed;
- **Exempt information:** information falling within the categories outlined in 12A of the Local Government Act 1972 (as amended) – see appendix 1.

Where a public and private report is used, the majority of the information and recommendations should be on the public report. The private report should be in effect a short appendix, containing only the exempt information decision-makers need to know.

It is important to note that in relation to all the exemptions above, it is necessary in addition to applying the exemptions, to apply the public interest test. Officers and Members must ask themselves "Does the public interest in maintaining the exemption outweigh the public interest in disclosing the information?" Information should only be exempt if it is in the public interest to make it so.

### 3. CURRENT PRACTICE IN BIRMINGHAM

Current practice in Birmingham where exempt or confidential information forms part of the decision record, is to produce two reports:

- A public report outlining the subject of the decision and any information that can be shared publically;
- A private report setting out the exempt or confidential information.

In many cases, where there are two reports, the decisions have been included on the private report, meaning that the public have little information on the decision taken.

In recent months, there has been increasing concern voiced by members about the amount of information included on private reports.

#### **4. FUTURE OPTIONS**

Work has been underway to identify a new way of presenting Cabinet reports with exempt information, to facilitate greater transparency.

A review of review of core city councils shows a more open approach, with all bar one taking more decisions in public than in Birmingham, many by having all reports in public with all exempt information in a private appendix. Examples include Leeds (an example of an agenda can be found on their website:

<https://democracy.leeds.gov.uk/ieListDocuments.aspx?CId=102&MId=8195&Ver=4>

The key principles guiding any revised approach should include:

1. Only information that is confidential
2. All decisions must be taken in public except in exceptional circumstances where the decision itself needs to be exempt
3. The Cabinet must explicitly agree to treat such information as exempt via a resolution of the Cabinet.

Broadly speaking there are two approaches that could be taken:

1. Retain the “dual report” approach but ensure tighter oversight of information included on private reports, and ensure that Cabinet Members are satisfied that the information should in fact be exempt;
2. Move to an approach whereby all reports are public (bar exceptional cases), with exempt information set out in reports. In this case, the decision resolution must refer to the fact that exempt information was considered (as on item 6 of Leeds Executive Board agenda – link above). The meeting would move into private session only if cabinet members needed to discuss/ask questions on the exempt information before taking the decision.

#### **5. RECOMMENDATIONS**

Members are asked to consider:

- Are the principles outlined above the right ones – are there others that should be observed?
- What are the merits of the two options outlined above?
- Which approach would members recommend?

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## **Appendix 1 - Local Government Act 1972 (as amended) Regulations**

The regulations were implemented on 1 March 2006 and amended section 12A of the Local Government Act 1972. They consolidated the 15 exemptions available under the previous schedule 12A to seven exemptions as follows

- I. Information relating to any individual
- II. Information which is likely to reveal the identity of an individual
- III. Information relating to the financial or business affairs of any particular person (including the authority holding the information)
- IV. Information relating to any consultations or negotiations or contemplated 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.
- V. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings;
- VI. Information which reveals that the authority proposes
  - i. to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or;
  - ii. to make an order or direction under any enactment
- VII. Information relating to an action taken or to be taken in connection with the prevention, investigation or prosecution of crime