

## **Guidance about Schedule 12 A - Local Government Act 1972**

### **Introduction**

Any standards committee set up in order to discharge functions under the Localism Act 2011 is an 'ordinary committee' of the authority. That means the same rules apply to it as apply to all other committees of the authority which do not have specific statutory rules applying to them.

As an 'ordinary committee' there are two particular rules which apply. The first is that the committee must reflect the political balance of the council as a whole unless the council as a body has resolved to waive that requirement (the so-called 'proportionality rules').

The second is that the committee is subject to local government access to information provisions. These are procedural rules set out in law which say that a committee must meet in public but that certain items can be taken in closed session if the information is covered by one or more category of 'exempt information'.

### **What is the starting point?**

The initial position should always be in favour of disclosure of as much information as possible about the decisions the council takes, and only in limited circumstances should information be withheld, where there is a justification, in law, for doing so.

The categories of information which can be exempt under Schedule 12A of the Local Government Act 1972 "the 1972 Act." All of them require consideration of the public interest before deciding whether to withhold the information.

The categories are-

- 1 Information related to any individual;
- 2 Information which is likely to reveal the identity of an individual;
- 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information)
- 4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relating matter arising between the authority or a Minister of the Crown and employees of, or office holders under the authority.
- 5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- 6 Information which reveals that the authority proposes: (a) to give under any enactment a notice of by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment
- 7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

### **Who decides whether something is exempt or not?**

The monitoring officer when publishing the report will decide whether information contained in the report is exempt or not.

If information has deemed to be 'exempt information' the committee must then consider and vote on whether the matter be dealt with in private and can decide in actual fact still to hold the meeting in public if they believe it is nevertheless in the public interest to do so.

## **How should we consider the exemptions?**

Start from the position that you will disclose everything. If there is information that you think should be withheld, check if any of the categories apply. If they do apply, consider the public interest test.

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

The public interest test provides that the council must release the information unless, "in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information".

This requires the council to make a judgement about the public interest. Where the balance between disclosure and withholding the information is seen as equal, the information must be released.

## **What is public interest?**

There is no legal definition of what the public interest is but the following are some of the relevant considerations,

### **Arguments in favour of disclosure**

- 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.
- Upholding the Nolan principle of openness
- 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.
- Promoting accountability and transparency by public authorities for decisions taken by them.
- Allowing individuals to understand decisions made by public authorities affecting their lives and, in some cases, assisting individuals in challenging those decisions.
- Bringing to light information affecting public safety.
- Information already in the public domain

### **Arguments in favour of maintaining the exemption**

- Likelihood of prejudice

- Impact of the prejudice
- Age of information

**Weight to attach?**

Once the committee has identified the relevant public interest arguments it must then carry out a balancing exercise to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure. It must assess the relative weight of these arguments, to decide where the balance of public interest lies. This is not an exact process.

**Degree of disclosure**

Even if the committee considers there genuinely is 'exempt information' does this mean that the whole meeting should be conducted in private and papers withheld? For example, if it relates to one particular witness (at a hearing) or touches on details of a contract, can that information be redacted or that particular part of the meeting be heard in closed session? Or, if the meeting is to review the general position relating to a set of specific matters, each of which is covered by exemption, is it possible to conduct the general discussion without disclosing the specifics?