

## BRIEFING PAPER NO. 5 – CONFIDENTIAL REPORTING AT COMMITTEES

### Executive Summary

This Briefing Paper sets out the Council's arrangements for confidential reporting at meetings of the Council, its Committees and Sub-Committees following a request by the Chairman and Vice-Chairman of the Overview and Scrutiny Committee. The Council has a requirement to exclude the public from meetings whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that either confidential or exempt information would be disclosed.

The procedures adopted by the Council form part of the Council's Access to Information Procedure Rules which are set out in the Council's Constitution (pages 165-172). This Briefing Paper simply summarises the arrangements and seeks to explain why it is necessary for some decisions of the Council to be made under Part II of a meeting; for full details, Members are advised to consult the Procedure Rules within the Constitution.

### Recommendations

The Committee is requested to:

**RESOLVE That** the Briefing Paper be noted.

The Committee has the authority to determine the recommendation set out above.
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**Background Papers:** None.

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## **Briefing Paper No. 5 – Confidential Reporting at Committees**

### **1.0 Introduction**

- 1.1 The procedures of the Council specify that the Council will give at least five clear days notice of any meeting by posting details at the Civic Offices. Where a meeting is convened at shorter notice, the notice will be given at the time the meeting is convened.
- 1.2 The Agendas, Reports and Minutes of the Council's Committees are published on the Council's website and can be accessed through the Council's website or the ModGov App. The documents can also be requested by email or post if necessary.
- 1.3 There are occasions when meetings of the Council must consider items which are deemed confidential; on such occasions, members of the press and public will be excluded from the meeting during the consideration of the items, and any reports will not be available publically. Copies of all the papers are made available to the Borough Councillors.
- 1.4 This Briefing Paper seeks to explain the background to the need to have confidential items at Committee and the Council's approach to dealing with such items.

### **2.0 Confidential/Exempt Information**

- 2.1 "Confidential information" is defined by law as information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disposed by Court Order.
- 2.2 The public must be excluded from meetings whenever it is likely that "confidential information" would be disclosed.

The Council is not normally provided with information which falls within the legal definition of "confidential information".

- 2.3 "Exempt information" means any information falling within one, or more, of the following seven categories (subject to the qualifications referred to):-:

Paragraph 1: Information relating to any individual.

Paragraph 2: Information which is likely to reveal the identity of an individual.

Paragraph 3: Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Paragraph 4: Information relating to any consultations or negotiations or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.

Paragraph 5: Information in respect of which a claim to professional privilege could be maintained in legal proceedings.

Paragraph 6: Information which reveals that the authority proposes (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person or (b) to make an order or direction under any enactment.

Paragraph 7: Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

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### Qualifications

- (1) Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under the Companies Act 1985, the Friendly Societies Acts of 1974 and 1992, the Industrial and Provident Societies Acts 1965 to 1978, the Building Societies Act 1986 or the Charities Act 1993.
- (2) Information falling within any of paragraphs 1-7 is not exempt by virtue of those paragraphs if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.
- (3) Information which (a) falls within any of paragraphs 1-7 above and (b) is not prevented from being exempt by virtue of qualifications 1 or 2 above is 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.

2.4 The public may be excluded from meetings whenever it is likely that exempt information will be disclosed. The decision to do so is formally made at the meeting, following a recommendation proposed and seconded by the Chairman and Vice-Chairman respectively.

The Council's "Proper Officer" (at Woking, this is the Monitoring Officer) can provisionally anticipate this decision and withhold the information in question, marking the papers with the exemption category. After the meeting, the minutes and records need not disclose that information and public access to documents is restricted.

2.5 Items deemed as exempt from publication will be listed as such on the agenda for Committee meetings, under the Part II section of the agenda. The exempt reports will be marked accordingly, together with details of the category or categories which apply, and will not be made publicly available. The minutes of the meetings will indicate whether or not the recommendations within an exempt report have been agreed, and if necessary a Part II minute will be created to formally record the details of the decisions.

2.6 Wherever practical, the Council will put as much information on a subject as possible in Part I of the agenda, with an additional item on the subject appearing under Part II. This approach enables Elected Members to consider the item fully, whilst ensuring the public is not provided with any Part II information.

### 3.0 The Executive and Confidential Items

3.1 In August 2012 the Government adopted the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations as part of its commitment to improve transparency and were applied to meetings and decisions on executive functions (in 2014 the Government adopted new regulations which, amongst other things, applied broadly similar rules to meetings and decisions on non-executive functions).

3.2 A broad summary of the effect of the 2012 and 2014 regulations is given below: briefing papers were prepared for Councillors at the time of their adoption.

- The meetings that must be held in public, those that may be held in private, and the procedures that must be followed before a meeting is held in private.
- The rights of members of the public to film or record meetings.
- The public notice that must be given in advance of meetings.
- Public access to reports, agendas and other documents before, at and after meetings.

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- The public notice that must be given before certain "key decisions" (the executive decisions which are significant in terms of the expenditure or income, significantly affect communities in more than one ward or meet any other locally determined criterion) are taken by an individual member or officer.
- Public access to the minutes of meetings and to a record of certain decisions taken at executive meeting or by individual members or officers, plus other related documents.

3.3 The 2012 rules introduced a new requirement for private executive meetings. At least twenty-eight clear days' notice must be given before the Executive meets in private to consider an exempt item. The notice gives the reasons for the meeting being held in private and is available for public inspection at the Civic Offices and on the Council's website.

3.4 Furthermore, at least five clear days before the private meeting of the Executive, a further notice of the intention to hold a private meeting is published. This notice gives the reasons for the meeting being held in private, details of any representations received about why the meeting should be open to the public and a statement in response to any such representations.

3.5 Where the date by which a meeting must be held it impracticable to issue the notices within the timeframes, the Executive can only meet in private to consider the item if agreement that the meeting is urgent and cannot reasonably be deferred has been obtained from:

- (a) the Chairman of the Overview and Scrutiny Committee; or
- (b) if there is no such person, or the Chairman of the Overview and Scrutiny Committee is unable to act, the Mayor; or
- (c) where there is no Chairman of the Overview and Scrutiny Committee or Mayor, the Deputy Mayor.

3.6 As soon as reasonably practicable after the agreement has been awarded under (a), (b) or (c), the Proper Officer will make available at the Civic Offices for inspection by the public, and publish on the Council's website, a notice setting out the reasons why the meeting was urgent and could not reasonably be deferred.

### 4.0 Determining the Classification of a Subject

4.1 Sections 2.0 and 3.0 above set out the basis on which items are classified as exempt for the purposes of the Access to Information Procedure Rules.

4.2 The most common reasons for items to be classified as exempt are as follows:

Type of Decision	Category	Reason
Land Management (Council and the Executive)	Paragraph 3: Information relating to the financial or business affairs of any particular person (including the authority holding that information).	Where the Council is seeking the acquisition of land or property, details of the negotiations are deemed confidential but are included in the reports to ensure all the information to enable Councillors to decide a course of action is provided.
Tender Process/Award of Contract (Council	Paragraph 3: Information relating to the financial or	As part of the tender process for contracts, Councillors are provided

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and the Executive)	business affairs of any particular person (including the authority holding that information).	the details of each submission including tender values to enable them to award the contract. The information provided in the tender submissions is commercially sensitive and is therefore classified as exempt.
Taxi/Private Hire Licence Renewal (Licensing Committee)	Paragraph 1: Information relating to any individual.	Reports to the Licensing Sub-Committees on the renewal of taxi or private hire licences contain detailed information relating to the applicant, including any criminal convictions, and are therefore deemed exempt. The information provided, however, is necessary for the Members of the Sub-Committees to consider the suitability of the applicants.

### 5.0 Declassifying Exempt Reports

- 5.1 There may be occasions where the information contained in an exempt report is no longer considered exempt. Authority to remove the exempt classification of a document lies with the Council's Proper Officer. The Proper Officer may be asked to review a particular report and determine whether the exemption still applies.

### 6.0 Working Groups, Task Groups, Oversight Panels etc.

- 6.1 The question of public access to documents and discussions considered by the Council's Working Groups, Task Groups, Oversight Panels etc is commonly asked. The Access to Information Procedure Rules only apply to the meetings of Council, Committees and Sub-Committees. Unless specifically agreed under the Group's Terms of Reference (as in the case of the Sheerwater Regeneration Oversight Panel), the agendas, reports and minutes of Working Groups etc. will not be published.

### 7.0 Implications

#### Financial

- 7.1 There are no financial implications arising from this report.

#### Human Resource/Training and Development

- 7.2 There are no human resource /training and development implications arising from this report, which forms part of the Council's overarching approach to Member learning and development.

#### Community Safety

- 7.3 There are no community safety implications arising from this report.

#### Risk Management

- 7.4 There are no risk management implications arising from this report.

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### Sustainability

7.5 There are no sustainability implications arising from this report.

### Equalities

7.6 There are no equalities implications arising from this report.

### Safeguarding

7.7 There are no safeguarding implications arising from this report.

## **8.0 Conclusions**

8.1 This Briefing Paper sets out the Council's provisions for the consideration of exempt information at meetings of the Council, Committees and Sub-Committees and forms part of the Council's programme for elected Member learning and development.

8.2 The Council has adopted Access to Information Procedure Rules which cover all aspects of the meetings of the Council, the Executive, Committees and Sub-Committees. The basis for the Procedures Rules lies in the legislation adopted by the Government.

REPORT ENDS