

Appendix 4 to Standards Report 23 Jan 19

Proposed Appendix 1 to Protocol 1

Supplementary Guidance Members' Access to Confidential and Exempt (Part II) Information

1. This guidance is issued by the Monitoring Officer pursuant to paragraph 11.13 of Protocol 1 of the Council's Constitution (Member-Officer Relations) to assist members in relation to their access to confidential and exempt information, also referred to as Part II information.
2. This guidance should be read in conjunction with the [Access to Information Procedure Rules](#) in Part 5 of the Constitution and the procedural rules governing the publication of meetings of committees that are, in part, held in private.
3. Paragraph 4 of Part 5 of the Constitution defines confidential and exempt information ('Part II information') as follows:

14. Exclusion of Access by the public to meetings

Confidential information – requirement to exclude public

14.1. *The public shall be excluded from meetings during an item of business whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.*

14.2. *Confidential information means information given to the Council by a government department on terms which forbid its public disclosure or information which cannot be publicly disclosed by court order or under any enactment.*

Exempt information – discretion to exclude public

14.3. *The public may be excluded from meetings during an item of business whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.*

14.4. *Exempt information means information falling within the following seven categories (subject to any condition):*

- 14.4.1 *information relating to any individual*
- 14.4.2 *information which is likely to reveal the identity of an individual*
- 14.4.3 *information relating to the financial or business affairs of any particular person (including the authority holding that information)*
- 14.4.4 *information relating to 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*

14.4.5 information in respect of which a claim to legal professional privilege could be maintained in legal proceedings

14.4.6 information which reveals that the authority proposes:

- (a) to give under any enactment a notice by virtue of which requirements are imposed on a person, or*
- (b) to make an order or direction under any enactment.*

14.4.7 information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

14.5. Information which falls into paragraphs 14.4.1 to 14.4.7 above is only exempt 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.

14.6. Information is not exempt information if it relates to proposed development for which the local planning authority can grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.

14.7. Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

4. In the interests of openness and transparency the council will seek to ensure that as much information as is appropriate is published in the open part of the agenda and that the requirements in paragraph 3 above are applied strictly in determining what information should be contained in Part II.
5. The agenda for a meeting should explain why information is to be considered wholly or partly in Part II of the agenda.

Access by a Wiltshire Council Member

6. If you are a member of the cabinet or a committee and an agenda for a forthcoming meeting contains Part II information you should automatically be able to access that information via the [intranet](#).
7. If you are accessing the agenda via the ModGov app on either a tablet or laptop, you will need to ensure that your device is registered to access Part II information. If you are uncertain if your device is so registered, please contact committee@wiltshire.gov.uk.
8. In relation to executive business members are entitled to any document in the possession or under the control of the Leader of the Council which contains material relating to:
 - 8.1 any business to be transacted at a public meeting;
 - 8.2 any business transacted at a private meeting;
 - 8.3 any decision made by an individual member; or

8.4 an executive decision made by an officer

unless it contains exempt information falling within paragraphs 18.1, 18.2, 18.3 (but only to the extent that the information relates to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract), 18.4, 18.5, and 18.7 of the categories of exempt information; or it contains the advice of a political adviser.

'Private Meeting' means a meeting, or part of a meeting, of the decision-making body during which the public are excluded in accordance with relevant statutory provisions ie formal meetings of Cabinet

9. This means that if a member is not a member of the cabinet or a committee whose agenda contains Part II information, they will not automatically be able to access that information.
10. A member is required by law to demonstrate a 'need to know' confidential and/or exempt information before it is released to that member. On the matter of what is reasonable, in *City of Birmingham v O 1983*, the Court allowed a member to see the adoption files of a particular child, as they had genuine concerns about the implications of this adoption and it would have been the responsibility of the council as a whole, if it had gone wrong. Therefore, although the member concerned was not on the adoption committee, they did have a legitimate reason for wanting to see the file. This shows that members will be able to demonstrate that they meet the legal test, provided they can show that they have a 'bona fide and reasonably based concern' about the issue.
11. By convention Wiltshire Council deems that certain roles held by members do generally require access to Part II information to enable them to discharge their role properly, and in most instances members holding these roles will have access to any Part II information published with an agenda.

These roles are:

- 11.1 Chairman of the Overview and Scrutiny Management Committee;
- 11.2 Chairman of a relevant Overview and Scrutiny Select Committee;
- 11.3 Political Group Leaders.

12. If a member believes that they are entitled to have access to Part II documentation on an agenda, for example as a local member or some other position, or they are otherwise able to demonstrate a 'need to know' they should submit a request for access via the named officer on the front of the agenda giving reasons in support of their 'need to know'. The request should be submitted at the earliest opportunity in advance of the meeting and will be determined by the Monitoring Officer or his nominee.
13. Any information provided to a Member must only be used in connection with the proper performance of their duties.
14. Any queries relating to this subject or guidance should be directed to:

Ian Gibbons (Monitoring officer) or Frank Cain (Deputy Monitoring officer)
(ian.gibbons@wiltshire.gov.uk and frank.cain@wiltshire.gov.uk)