

Consideration of Exempt Information

Audit Committee

Date: 24th September 2013

Author:	Director of Law and Democratic Services
Wards:	No specific ward
Locality Affected:	No specific locality
Parishes Affected:	No specific parish

1. Purpose and Reasons

- 1.1 To allow the Committee to consider its existing administrative arrangements for the consideration of reports containing exempt information, as defined in Part 1 of Schedule 12A of the Local Government Act 1972, and determine whether alternative administrative arrangements should be introduced.
- 1.2 The report is submitted to the Committee in response to a claim made by a local media organisation that it had obtained a copy of a report submitted to the Audit Committee at its meeting on 25th June 2013, that had been categorised as containing “exempt information” and was “Not For Publication”. The newspaper did not state who had passed them the report and so it has to be emphasised that it is not known whether this originated from an officer or a member.

2. Recommendations

The Committee is recommended to:

- 2.1 To consider the current administrative arrangements for the presentation to the Committee of reports containing information categorised as “exempt information” and to determine whether these should be revised.
- 2.2 That the Leaders of the Political Groups on the Council, and the Chief Executive and Group Directors, be requested to advise members and colleagues of their commitment to respect confidentiality and not to divulge confidential information.

3. Detail

Access to Information Procedure Rules

- 3.1 Council Committees will, on occasion, be invited to consider matters that, in the officers’ (author’s) opinion, will include the consideration of information categorised as “exempt information”, as defined in the respective paragraph of Part 1 of Schedule 12A of the Local Government Act 1972. In such cases, the meeting will be recommended that the public be excluded during the Committee’s discussion of the matter.
- 3.2 The Council is required to give at least five clear (working) days’ notice of its intention to hold part of a meeting in private and the agenda for that meeting will include a notice that sets out the reasons for the officers’ recommendation that the public and press be excluded from the debate of the particular matter. It

Further information on the subject of this report can be obtained from Steve Jones, Direct Dial (46)3602, stevejones@swindon.gov.uk.

Consideration of Exempt Information

Audit Committee

Date: 24th September 2013

should be noted that information can only be classified as “exempt” when it falls within one of the seven specific categories set out in Paragraph 1 of Schedule 12A of the aforementioned Act (the categories are set out in Appendix 1 to the report).

- 3.3 Where a Committee is to be recommended that the press and public be excluded during the consideration of a particular item, the agenda available for public inspection will show the item as “Not For Publication” and the related report will not be included in any publicly available copies of the agenda (hard or digital copies).
- 3.4 The report containing exempt information will be included in the agenda circulated to members and to Council officers. In accordance with the Council’s practice, each page of the report will be endorsed as “Not For Publication” and will be printed on gold coloured paper, to reinforce the position that the report is not to be made available publicly. The report is also put on the intranet and access to such exempt reports to Audit Committee is password protected.
- 3.5 At the commencement of the meeting at which the report containing exempt information is to be considered, the Committee will be asked to consider the officer recommendation that the public and press be excluded. It is, ultimately, the Committee’s decision as to whether or not this action is taken.

Audit Committee – 25 June 2013

- 3.6 When the agenda was prepared for the meeting of the Audit Committee to be held on 25th June 2013, the officers involved in producing the report “Museums Storage” report considered that the report involved the likely disclosure of exempt information, as defined by Paragraph 7 of Part 1 of Schedule 12A of the Local Government Act 1972.
- 3.7 Consequently, the requisite notice was included in the agenda (recommending the exclusion of the public and press during the Committee’s discussion of the matter) and the report itself was not included in the agenda pack available for public inspection.
- 3.8 In accordance with existing practice, the report was included in the agenda pack and was issued to members of the Committee and the Lead Cabinet Member, and a limited number of officers. The report being printed on gold coloured paper and endorsed “Not For Publication”. The report was also put on the council’s intranet site with restricted access.
- 3.9 At the meeting on 25th June, the Committee considered the officers’ recommendation and agreed that the public and press be excluded during the Committee’s consideration of the item.

Consideration of Exempt Information

Audit Committee

Date: 24th September 2013

- 3.10 More than two weeks after the Audit Committee meeting, the Council's Communications Division was contacted by a representative of a local media organisation who claimed to have been given a copy of the "Not For Publication" report. Although no detailed investigation has been undertaken to confirm that the media organisation did, in fact, have a copy of the report, or to try and determine how the report might have been obtained, elements from the report were included in a subsequent press article so it is reasonable to conclude that the organisation did have access to the report.

Members' Code of Conduct – Information Disclosure and Confidentiality

- 3.11 The Audit Committee is advised that, following their election to the Council, all members are obliged to sign a declaration of acceptance of office that includes an undertaking to observe the Swindon Borough Council's code of members' conduct. The Code, itself, reminds members that they "may obtain information that has not been made public and is still confidential" and advises that they "must never disclose information given in confidence by anyone, or information acquired which (they) believe is of a confidential nature" without prior consent.

Media Guidelines for Councillors

- 3.12 The Audit Committee is further advised that, In addition to the provisions in the Code of Conduct regarding members' commitment not to disclose information given in confidence, the media guidelines for Councillors reinforces that position, advising that members "should never disclose or use confidential information for their personal advantage .. or to the disadvantage or the discredit of the Council".

Officers Code of Conduct

- 3.13 The officers code of conduct clearly states that Council employees may obtain information that has not been made public and is still confidential and instructs that they must never disclose information acquired which they believe is of a confidential nature, or given in confidence by anyone, without prior consent.

Possible revision to the existing arrangements for the Committee's consideration of reports containing exempt information

- 3.14 With regard to the issue relating to the Audit Committee meeting on 25th June (described above), and in order to seek to maintain the confidentiality of exempt information presented to Committee, members are invited to consider whether they would wish to consider a change in administrative procedures.
- 3.15 One possibility would be to only make exempt reports available to members at the meeting and require these be returned to the Committee Officer immediately after the meeting to arrange for their secure disposal. This has been done in the past on an ad hoc basis but it does have the disadvantage that members would not be able to familiarise themselves with the report prior to the meeting.

Consideration of Exempt Information

Audit Committee

Date: 24th September 2013

- 3.16 Members may wish to propose any other alternative. So far as officers are concerned, the list of those officers able to access exempt reports will be reviewed.

4. Alternative Options

- 4.1 Members may decide not to change the current arrangements, or may suggest alternatives to those set out in the report.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 This report has no direct financial implications.

Legal and Human Rights Implications

- 5.2 The Council is statutorily required to make copies of agendas and reports available for public inspection in advance of meetings, unless they contain exempt information. It should be noted that it is a matter for members as to whether the public are excluded from the consideration of an agenda item and, hence, whether the report is publically available during or after the meeting.

- 5.3 The report has no direct human rights implications.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.4 There are no other specific implications.

Links to One Swindon, Strategic Objectives, Plans and Policies

- 5.5 This report has no direct links to One Swindon, Strategic Objectives, Plans and Policies.

Diversity Impact Assessment

- 5.6 A Diversity Impact Assessment (DIA) has not been undertaken.

Risk Management

- 5.7 A Risk Assessment has not been completed. If the Committee approves a change in administrative practice it is hoped this will mitigate the risk of confidential information being leaked but the proposed procedural changes have no significant associated risks.

6. Consultees

- 6.1 The Board Director Resources (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

Further information on the subject of this report can be obtained from Steve Jones, Direct Dial (46)3602, stevejones@swindon.gov.uk.

Consideration of Exempt Information

Audit Committee

Date: 24th September 2013

6.2 The Head of Internal Audit has also been consulted.

7. Background Papers

7.1 None

8. Appendices

8.1 Appendix 1 – the seven categories of exempt information under Part 1 of Schedule 12A to the Local Government Act 1972