

# Company Handbook



Section 5: Guidance on council processes and policies

## Exempt information

An overview of how the companies should approach the publication of information relating to them at council meetings, and how legal exemptions may be considered



## Introduction

1. The council is required to disclose the agenda and connected reports in respect of each of its public meetings, unless certain limited conditions are met.
2. The council is able to withhold certain information from publication if that information is exempt from disclosure, as set out in the Local Government Act 1972 (see **Appendix 1**) and reflected in the council's constitution.
3. Please note that the categories of information that can be exempt in respect of a Freedom of Information Request are slightly different and will be set out in a separate Guidance Note.
4. The purpose of this Guidance Note is to set out what qualifies as 'exempt information', how this gets decided, who receives exempt information and how exempt information is dealt with at meetings.

## What information is exempt?

5. The starting point for the council is that all information submitted to council meetings should be public.
6. However, the council recognises that, due to the commercial nature of the council's companies, sometimes information may need to be submitted to a meeting that meets the criteria of exempt information (as set out in **Appendix 1**).
7. The most common exempt information category applicable to company information is "information relating to the financial or business affairs of any particular person (including the authority holding that information)."
8. Information will only be exempt in accordance with this exemption '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.'
9. If any of the proposed exempt information is already in the public domain (including by virtue of having been included in any other section of a public report or having been referred to in other public statements/media), it cannot be exempt.

## Who decides if information is exempt?

10. If the company believes any information that will be presented to a meeting is exempt, they should:
  - a) include the information in a separate document which should simply be a list of specific pieces of exempt information (therefore accepting that this document is unlikely to make sense as a stand-alone document);
  - b) include clear cross references in the main document to the exempt information (e.g. "please see Exempt Appendix [xxx] for more information on this point");
  - c) email the proposed exempt information to the Shareholder Liaison Team with an explanation as to why the information included in the exempt appendix is considered to be exempt, taking into account the grounds for exempt information (set out in **Appendix 1**).

11. The Shareholder Liaison Team will then work with BCC Legal to ascertain whether the information has correctly been identified as exempt. The Monitoring Officer will need to approve any decision to declare information exempt. Once this approval has been given, the Shareholder Liaison Team will confirm that to the company.

### **Who receives exempt information?**

12. Typically, only the elected members who are appointed to the relevant meeting can receive the exempt information. For example, if exempt information is included in a Cabinet Report, only Cabinet members will be able to see the exempt information. However, if that Cabinet Report is going to be reviewed by OSMB, OSMB members will also be able to see the relevant exempt information.
13. Sometimes, additional members may be granted access to the information, where it is reasonably necessary for those members to carry out their duties. The Shareholder Liaison Team will be able to advise, having first discussed with BCC Legal, who will view the exempt information on a case-by-case basis.

### **How is exempt information managed at meetings?**

14. Only public information will be considered in open session at a meeting. The Chair of the meeting, and the Monitoring Officer and/or Deputy Monitoring Officer supporting that meeting, will be aware of any exempt information and is likely to highlight to members at the start of the meeting that exempt information should not be considered in open session. If a member asks a question relating to the exempt information, the meeting is likely to move into a closed session, where no media or members are permitted, except those appointed to the relevant meeting.
15. Exempt sessions are minuted, but the minutes cannot be published publicly until the content of those minutes is no longer exempt. Decisions taken in exempt session are published, unless the decision itself is exempt (which only occurs in rare circumstances).

### **Further information**

16. For further information on exempt information and how it is managed, please contact the Shareholder Liaison Manager: [Helen.Davis@bristol.gov.uk](mailto:Helen.Davis@bristol.gov.uk)

## **Appendix 1**

### **Categories of Exempt Information Part 1, Schedule 12A, Local Government Act 1972**

1. Information relating 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 relations 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 under or 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.

*Table 1: Version Control Table*

<b>Version</b>	<b>Summary of Edits</b>	<b>Editor</b>	<b>Date of Version</b>
<b>V 1</b>	<b>First version for publishing</b>	<b>Shareholder Liaison Service</b>	<b>10.11.2021</b>
<b>V 2</b>			
<b>V 3</b>			