

Guidance about Schedule 12A.

Introduction

From the 1st March 2006 Schedule 12A is amended. This is to take account of the impact of the Freedom of Information Act 2000 (FOIA). There are seven categories of information which can be exempt (an additional three apply only to the Standards Committee). All of them require consideration of the public interest before deciding whether to withhold the information.

What are they?

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 officeholders 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.

What is the starting point?

When writing a decision report you should aim to make as much information as possible available to the public about the decisions the County Council takes and why it is taking those decisions. Only in limited circumstances should information be withheld.

How should we consider the exemptions?

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

What is the public interest?

There is no legal definition of what the public interest is but the following are some generally accepted relevant considerations which you should think about when applying the public interest test.

- 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
- 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

Who decides whether something is exempt or not?

The meeting or person considering the report will actually decide whether information contained in the report is exempt or not. However, bearing in mind the legal requirements for agendas and papers to be published, the report writer needs to consider these issues as well and give the reasoning for their view in the body of the report. The previously accepted practice of stamping "Exempt" on a report without reasons being set out is no longer acceptable practice.

What are the process considerations?

You need to build in a step in the writing of reports that involves consideration of whether there is exempt information contained and whether the public interest in disclosure outweighs the use of an exemption. Whether a report contains exempt information is a matter for the report writer and not the officer giving "Legal Services Comments".

How practically should we be writing reports to take account of this new approach?

A County Council Select Committee recently recommended that where there is exempt information in a report, it should be placed in a schedule separate to the main body of the report. All that does is physically separate the potentially exempt information into an easily identifiable document. In the event of an FOI request being made the main body of the report can then be disclosed and only the exempt schedule being withheld.

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Issued by Elizabeth Bennett

Executive Head of Democratic & Legal Services (Monitoring Officer)