

THE UNIVERSITY OF SHEFFIELD

Agendas, Papers and Minutes: Freedom of Information and Data Protection Guidance

1 Definition of Open and Closed Business Items

- a) The terms “Open” and “Closed” refer to the freedom of information status of the items:

An **open** item is one over which there would be no issues for the University in releasing the information to the public in response to a freedom of information request.

A **closed** item is one that contains information that could be withheld from release to the public because an exemption under the Freedom of Information Act 2000 (FOIA) applies. If an exemption is deemed to apply, the application must be capable of justification and the duration of the exemption should be estimated.

A closed item should be recorded by closing as little of the formal record as possible. A paper may be closed but the minute and agenda entry may be able to be kept open. Where closed items exist these must be indicated so as not to mislead the public. Even if an item is closed the University has an obligation, should a member of the public request access, to check as to whether either part or full access could be granted. It is important to remember that the FOIA includes a presumption in favour of disclosure.

- b) The exemptions of greatest potential relevance to the University’s situation are:

Section 21 Information available by other means

Section 22 Information intended for future publication.

Section 36 Prejudice to effective conduct of public affairs

Release of the information would, or would be likely to, inhibit—

- (i) the free and frank provision of advice, or
- (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

Section 38 Health and safety

Section 40 Personal information

Section 41 Information provided in confidence

Information is exempt information if—

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

Section 42 Legal professional privilege

Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is exempt information.

Section 43 Commercial interests

Information is exempt information if it constitutes a trade secret or if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

- c) These are not the only exemptions under the Freedom of Information Act 2000. For a full list of exemptions please see the text of the Act available through the website of the Office of Public Sector Information www.opsi.gov.uk

2 Committee Agendas

- a) Try to write the agenda so that it can all be kept open. Even if some papers are closed, try to describe them on the agenda in a way that allows the entire agenda to be kept open.
- b) If all of the agenda cannot be kept open create a second, closed agenda as a separate document to contain only the closed items. The open agenda should contain the open items and reference to the items which are closed.
- c) Even if the agenda entry is open, the paper may be closed. In this case, the agenda must clearly indicate that the paper is closed so that it is not accidentally released to anyone without authorisation.
- d) There may be occasions on which a paper is closed and its agenda and minute entry are also closed.
- e) Data Protection legislation restricts the transfer of personal data outside the European Economic Area (unless certain conditions are met), a principle which may be breached by online publication of committee members' names within minutes (unlikely to be the case for full members of major University Committees: the public interest outweighs personal data considerations in these circumstances). It is good practice therefore to advise committee members that their names may be published online and give them the opportunity to opt out of this before publication.

An example text which can be attached to a committee agenda is set out below:

"The agenda, papers and minutes of this committee may be made publicly available on the University website or in response to freedom of information requests. Committee members who object to their names being made available in this way must notify the committee secretary within X weeks of this meeting."

3 Committee Papers

- a) The secretary of a committee should be responsible for determining whether the paper is open or closed on the basis of information provided by the author of the document. Caution must always be exercised in closing a paper as the public interest is always weighted in favour of disclosure.
- b) The information to be provided by the author (e.g. by means of the cover sheet/executive summary sheet) should be sufficient to enable the secretary of a committee to determine:
- the freedom of information exemption(s) which applies
 - for how long the exemption needs to apply.
- c) Try not to refer to individuals unless necessary. If it is necessary to refer to specific people then, where possible, refer to job titles rather than names.

4 Committee Minutes

- a) Write minutes clearly and concisely – introduce the subject briefly, summarise the major points and record the decision reached.
- b) Aim to write all minutes so that they can be open, even if the matter discussed was closed. This is an important consideration in the event that the University later decides or is compelled to disclose a previously closed minute.
- c) If all relevant information cannot be recorded in the open minutes, create a separate document for closed minutes to contain only those items that cannot be open. Refer to the closed items in the open minutes, giving the exemption(s) under which the items are being withheld and the duration of the exemption(s).
- d) Try not to refer to individuals unless necessary. Where possible, refer to job titles rather than names.

5 Expiry of Exemptions

Once exemptions have expired, information must be released, especially if the documents are published on the internet. A nominated individual should be assigned responsibility for ensuring that this is undertaken.

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University of Edinburgh, 'Committee Servicing- the Implications of Freedom of Information and Data Protection'

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