

## Recording of Committee and Council meetings; Part B Exempt Information

### Joint report by the Director for Communities and the Director for Digital & Resources

#### 1.0 Summary

- 1.1 Worthing Borough Council on 20 October 2015 approved the recommendation of the Joint Governance Committee, to digitally record its Council and Committee meetings, including the recording of Part B exempt information discussions - those held in private, when the press and public are excluded, as defined under the Local Government Act 1972 (as amended).
- 1.2 Adur District Council on 22 October 2015 approved the recommendation of the Joint Governance Committee, to record its Council and Committee meetings but specifically voted **not** to record any Part B exempt information discussions.
- 1.3 The Joint Governance Committee is requested to consider the implications of recording exempt parts of meetings of Joint Committee meetings, (Joint Strategic Committee, Joint Overview and Scrutiny Committee, Joint Staff Committee, Joint Senior Staff Committee, Joint Senior Staff Appeals Committee) where Worthing Borough Council has agreed to the digital recording of such discussions but Adur District Council has not.

#### 2.0 Background

- 2.1 Background is contained in report to the last meeting <http://www.adur-worthing.gov.uk/media/media.136159.en.pdf>
- 2.2 The Officer recommendation to the Joint Governance Committee when this was considered, was to receive a report back on exempt items. However, during discussions at the Joint Governance Committee meeting, Members added a recommendation to the Officer report to record Part B exempt discussions, and not to publish such recordings on the website, but to securely retain them.
- 2.3 Each Council can determine the recording of its own Council meetings, and amend its constitution to reflect arrangements relating to such decision. Joint Meetings are governed by the Joint Committee Agreement which forms part of each Council's Constitution. The Joint Committee Agreement is currently silent on the issue of recording of such meetings, and would need to be amended to reflect whatever decision is made.

- 2.4 The Local Government Act 1972 (as amended) defines 7 categories of information which are Part B Exempt Information. The statutory provisions are further expanded upon in the Councils' Access to Information Procedure Rules (AIPR) which can be found at Part 4 of the Councils' Constitutions. There is a further category of information, 'confidential' which is defined in legislation as 'information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclose by Court Order. Matters relating to Government Department confidential items would not appear on an agenda neither would discussions be minuted. This later category is extremely rare.
- 2.5 It is for the Solicitor to the Councils in consultation with the report author, to agree the category of exemption before publication of the agenda and report. Any exemption is subject to the public interest test; in determining whether the information should be exempt, a decision must be made as to whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Prior to an exempt matter being discussed by Members at a meeting, there is an item on the agenda requiring Members in attendance to formally resolve whether to go into private session to discuss the item, or not.
- 2.5 Requests for information are often made to the Council by the press and public. Often the Councils are obliged to comply with such requests under the provisions of both the Freedom of Information Act 2000 and the Environmental Information Regulations 2005. Legislation relating to FOI Act relates to documents held by the Council. Documents is defined widely and would apply to digital recordings of meetings. Information must be disclosed unless one of the statutory exemptions in the FOI Act applies, and the public interest test is also satisfied.
- 2.6 The storage of recordings in Part B would have to be distinguishable from the recording of the rest of the meeting; this could be as simple as a separate recording of the exempt part of the meeting and a distinct reference number. By having a second recording this should prevent the accidental use of the recording of the meeting being placed in the public domain, without an edit or redaction. A full protocol should be developed between Legal Services and Democratic Services, that ensures the secure retention of Part B recordings; who has access to the stored recordings and also how an application to access these stored recordings should be made. There ought to be a determination and appeal process for access and a retention policy determining for how long recordings are retained and how they are disposed of.

### **3.0 Proposals**

- 3.1 One option is to resolve to record all part B exempt information parts of Joint Committee Meetings of the Councils, to instruct Officers to develop a protocol dealing with retention, storage and access issues, and to amend the Joint Committee agreement accordingly. This option does pose risks as to security of the recording. But Members must also be aware that the Council may be obliged to release a recording of information which has been deemed to be exempt to the press and/or public, following an FOI request. The categories of information relating to exempt information legislation are not the same as the exemptions under FOI

legislation; consequently the recording of information that has been deemed exempt under Local Government Act 1972 (as amended) and is dealt with in Part B private session of a meeting, may be disclosed following an FOI request if there is no relevant exemption to disclosing the information, or the public interest test is not met, under FOI legislation. The benefit of this option is that it provides an accurate record of events which may be useful internally.

- 3.2 A further option would be to resolve not to digitally record part B exempt information at Committee meetings.

#### **4.0 Legal**

- 4.1 The Local Government Act 1972, (as amended) governs procedures at meetings. Schedule 12 provides 7 categories of exempt information which includes: information relating to an individual; information likely to reveal the identity of an individual; information relating to the financial or business affairs of anyone; information relating to negotiations between the authority and its employees; information subject to legal professional privilege; information relating to a prosecution of investigation of a crime.
- 4.2 The Freedom of Information Act 2000 provides a right for the public to obtain information held by a public body, unless an exemption applies and the public benefit in disclosing the information is not outweighed by the public benefit is not releasing it. The exemptions include: information relating to security matters; information held in relation to court proceedings; personal information; investigations; health and safety information; law enforcement information; information relating to commercial interests.
- 4.3 The Council Procedure Rule 22.0 in the Councils' constitutions deal with previous decisions. Generally a decision of full Council cannot be rescinded within 6 months of it being made, but the exception to this rule is where a motion to amend the Council decision is moved in pursuance of a recommendation of a Committee.

#### **5.0 Financial implications**

- 5.1 There are no direct financial implications to the recording of Part B exempt information discussions
- 5.2. There may need to be some purchase, within budget, of recording equipment.

#### **6.0 Recommendation**

- 6.1 The Joint Governance Committee is recommended to resolve to bring a motion to the next meeting of Worthing Borough Council to amend the previous decision to resolve to digitally record its Council and Committee meetings, including Joint meetings with Adur District Council, to exclude all parts of all meetings where the press and public are excluded under the Local Government Act due to exempt information being discussed.

**Local Government Act 1972  
Background Papers:**

None.

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## **Schedule of Other Matters**

### **1.0 Council Priority**

1.1 This report does not link to any Corporate Priority

### **2.0 Specific Action Plans**

2.1 None

### **3.0 Sustainability Issues**

3.1 Matter considered.

### **4.0 Equality Issues**

4.1 Matter considered and included within the report

### **5.0 Community Safety Issues (Section 17)**

5.1 Matter considered, no issues identified

### **6.0 Human Rights Issues**

6.1 Matter considered

### **7.0 Reputation**

7.1 Recorded information could inadvertently be released to the public causing reputational damage to the Councils.

### **8.0 Consultations**

8.1 Matter considered, no issues identified.

### **9.0 Risk Assessment**

9.1 Matter considered in paragraph 3.1.

### **10.0 Health & Safety Issues**

10.1 Matter considered, no issues identified.

### **11.0 Procurement Strategy**

11.1 Matter considered, no issues identified

### **12.0 Partnership Working**

12.1 Matter considered and included within the report.