

# **NEATH PORT TALBOT COUNTY BOROUGH COUNCIL**

## **DEMOCRATIC SERVICES COMMITTEE**

19 October 2017

### **Joint Report of the Head of Corporate Strategy and Democratic Services and Head of Legal Services**

#### **Matter for Information**

#### **Wards Affected:**

All Wards

### **Access to meetings in accordance with the requirements of the Local Government Act 1972**

#### **Purpose of Report**

To provide Members with an overview of the rules in respect of access to meetings and reports which apply to all meetings of the Neath Port Talbot County Borough Councils ("the Council) Council Meeting, the Cabinet, Cabinet Committees, Overview and Scrutiny Committees, the Standards Committee, and Regulatory/Other Committees (including Sub Committees).

#### **Background**

##### **General Right to Access Documents**

It should be noted that, save for where requests are made under the Freedom of Information Act 2000 and Environmental Information Regulations 2004, members of the public do not have access to documents other than those reports and papers that are before the Council's Council meeting, Cabinet, Cabinet Committees, Overview and Scrutiny Committees, the Standards Committee, and Regulatory/Other Committees (including Sub Committees).

## **Access to Meetings and Reports**

The requirements for access to meetings and reports was first established in the Public Bodies (Admission to Meetings) Act 1960. It required that meetings of a body exercising public functions were to be open to the public except where the body resolved to go into closed session.

The body could only resolve to go into closed session when “*publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons arising from the nature of that business or of the proceedings*”. (Section 1(2)) While the meeting is open to the public, the body did not have the power to exclude members of the public from that meeting and duly accredited representatives of newspapers attending for the purpose of reporting the proceedings.

Recognising that the rules needed to be further clarified and elaborated on, the Local Government Act 1972 (“the 1972 Act”) (as amended) contains the current set of rules which must be taken into account in respect of access to meetings and reports. These are further referenced in the Neath Port Talbot County Borough Council Constitution (“the Constitution”) in Part 4 (Access to Information Procedure Rules).

The statutory basis in relation to access is clearly more complex than they would appear on first reading.

The basic intention of the law is clear i.e. that the public should have access to papers considered by Members in open session and should have that access in good time before a meeting to ensure that they have an adequate opportunity to understand matters which are before the Council and to make representations on those matters if they so wish.

The Courts do interpret legislation in accordance with this underlying intention. This does not prevent the holding of informal deliberations in private, with or without officers present, but these deliberations shall not take decisions, and neither do the provisions of these rules apply to such deliberations.

## **Restricting Access to Meetings and Reports**

Section 100A of the 1972 Act provides that all meetings of principal councils (of the Council is classified) are to be open to the public. There are exceptions to this, these being:

- (a) There is an obligation to exclude when ‘confidential information’ is likely to be discussed (S100A(3) of the 1972 Act)
- (b) There is a power to exclude when ‘exempt information’ is being discussed (S100A(4) and (5) of the 1972 Act)
- (c) There is power to exclude individuals to suppress or prevent disorder behaviour. (S100A(8) of the 1972 Act).

Confidential information is narrowly defined at S100A(3) of the 1972 Act as being information furnished to the Council by a government department on terms that it should remain confidential or information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court. However, where the meeting will determine any person’s civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary.

Members of the public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed. The categories of exempt information are set out in Schedule 12A of the 1972 Act. In order to exclude the public on the basis that exempt information is likely to be discussed, the meeting needs to pass a resolution to this effect. The resolution must

- (a) identify the proceedings, or part, to which it applies; and
- (b) state the description of the exempt information giving rise to the exclusion of the public.

However, in some of the exemptions (as highlighted) there is a test that must first be satisfied, commonly known as the Public Interest Disclosure Test, details of which are set out below.

The current exemptions are:

<b>Exempt Information</b>	<b>Qualification</b>
12. Information relating to a particular individual	Public interest disclosure test (see below)

<p>13. Information which is likely to reveal the identity of an individual</p>	<p>Public interest disclosure test (see below)</p>
<p>14. Information relating to the financial or business affairs of any particular person (including the financial information of the Council)</p>	<p>Information falling within paragraph 14 is not exempt information by virtue of that paragraph if it is required to be registered under –</p> <ul style="list-style-type: none"> <li>The Companies Act 1985</li> <li>The Friendly Societies Act 1974</li> <li>The Friendly Societies Act 1992</li> <li>The Industrial and Provident Societies Act 1965 to 1978</li> <li>The Building Societies Act 1986</li> <li>The Charities Act 1993</li> </ul> <p>Public interest disclosure test (see below)</p>
<p>15. 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 the employees of, or office holders under, the authority</p>	<p>Public interest disclosure test (see below)</p>
<p>16. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings</p>	<p>There is no public interest disclosure test here. This exemption is where a report is made which contains professional legal advice for consideration or which may have an impact on any decision making that must be made.</p>

<p>17. Information which reveals that the Council proposes:</p> <p>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) to make an order or direction under any enactment</p>	<p>Public interest disclosure test (see below)</p>
<p>18. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime</p>	<p>Public interest disclosure test (see below)</p>
<p>18A. Information which is subject to any obligations of confidentiality</p>	<p>Public interest disclosure test (see below)</p>
<p>18B. Information which relates in anyway to matters concerning national security</p>	<p>Public interest disclosure test (see below)</p>
<p>18C The deliberations of a standards committee or of a subcommittee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred to it.</p>	<p>Public interest disclosure test (see below)</p>

The public interest disclosure test referenced above covers information which falls within any of paragraphs 12 to 15, 17 and 18 of Schedule 12 of the 1972 Act and in summary sets out that a report will only be considered exempt if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

This is a test that must be satisfied at all times when reports are considered exempt and should be considered by the authors of any such report and Members in determining any recommendation.

### **Consequences of failure to allow access**

It should be noted that failure to apply these rules correctly, could expose the Council to a judicial review of any decision made stemming from that report. If a judicial review is successful, options include the granting of a quashing order, which will effectively quash the decision made, which means the Council would have to go back and re-start the decision making process, a prohibition order, which effectively would prohibit us from doing something or a mandatory order, which would compel us to act. The Court can also order damages to be paid.

### **Dissemination of Confidential and Exempt Reports by Members**

Members should note that where exempt reports are disclosed to Members that information should not be distributed further.

Article 2(b)(ii) of the Constitution provides that “Councillors will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a council or officer entitled to know it”.

The Public Services Ombudsman for Wales has issued guidance on the Members Code of Conduct, which as far as it relates to this matter reads as follows:

*“ As a general rule you should treat items discussed in confidential sections of meetings (exempt items) as confidential. These reports have usually been assessed by the authority as containing sensitive information, following legal advice. The sensitivity of the information may decline over time, but you are strongly urged to take proper legal advice before disclosing it” (The Code of Conduct for Members of Local Authorities in Wales Guidance from the Public Service Ombudsman for Wales April 2010 page 16)*

### **Financial Impact**

Not applicable.

### **Equality Impact Assessment**

Not applicable.

## **Workforce Impacts**

There are no workforce impacts associated with this report.

## **Legal Impacts**

The legislative requirements for access to information and meetings are as set out in the Local Government Act 1972 as amended.

## **Risk Management**

Not applicable.

## **Consultation**

There is no requirement under the Constitution for external consultation on this item.

## **Recommendations**

That Members note the content of this report in respect of access to meetings and reports in accordance with the legislative provisions.

## **List of Background Papers**

The Constitution of Neath Port Talbot County Borough Council

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