UNIVERSITY OF LEICESTER

FREEDOM OF INFORMATION AND DATA PROTECTION:
GUIDANCE FOR UNIVERSITY COMMITTEES

Purpose of this guidance

1. This document provides guidance to committee chairs and secretaries on the impact of Freedom of Information Act and Data Protection Act requirements on committee servicing at the University of Leicester. It explains the relevant procedures by which the University seeks to meet its obligations under the legislation, and to maintain openness and transparency in the conduct of its business.

Scope of this guidance

2. This guidance is aimed primarily at the chairs and secretaries of Council and Senate, and of the standing committees which report to those bodies. The guidance should be read in conjunction with the University’s Committee Servicing Guidelines.

3. This guidance is not directed at committees, sub-committees, working groups etc which lie beneath the high-level structure, such as ad hoc working groups or committees operating at departmental level. Those bodies tend to deal with local operational or technical matters where there is little to be gained by publishing information about the work of the committee on a routine basis. However, such committees and groups should still refer to and follow this guidance if they decide to make their minutes or other information available on the internal or external website, as the issues surrounding confidentiality, commercial interests and privacy will still apply.

4. In this guidance, the term “committee papers” is used as a general reference to all of the papers (whether electronic or hard copies) relating to a committee meeting: the agenda, supporting papers sent out in advance, supporting papers tabled at the meeting - which should happen only when genuinely unavoidable - and the minutes.

The legal background

5. The University is subject to the requirements of the Freedom of Information Act and the Data Protection Act. The legislation applies to recorded information held by the University, including committee papers, and in this context it means that:

   a. information in committee papers can be requested under the Freedom of Information Act, by people who submit Freedom of Information requests
   b. individuals can use the Data Protection Act to request access to personal information relating to themselves in committee papers
   c. the Data Protection Act contains privacy rights which have to be respected in how the University handles committee papers. For example, information in committee papers should not be placed in the public domain (including the internal website) if that would release personal data about individuals in a way which would breach the Data Protection Act.

6. Access rights created by Freedom of Information and Data Protection are subject to various exemptions and limitations, which balance the right of access to data against the legitimate
interests of the University and other organisations and individuals. Where exemptions apply, committee papers do not have to be made available, and in some cases it would be unlawful to do so. As a general rule, the right of access does not distinguish between different formats, so both electronic and hard copies of committee papers will be covered.

7. Information which the University already publishes does not have to be produced separately in response to a Freedom of Information request, as it can be accessed by other means. The Freedom of Information Act requires such information to be included in the University’s Publication Scheme, which summarises the information which the University routinely makes available, the formats in which it is provided and whether any charge applies.

8. In the context of a University committee, for example, if its Unreserved minutes are placed on the website and this fact is recorded in the Publication Scheme, persons requesting the minutes can simply be referred to the relevant part of the Publication Scheme or to the specific web location. There is then no need for the committee secretary to do any detailed searching, as enquirers can do this for themselves, which reduces the burden of responding to FOI requests and improves the transparency of the University’s governance arrangements.


Implications for committee servicing – Unreserved and Reserved agendas

10. To help the University to manage and comply with its Freedom of Information and Data Protection obligations, the agendas and minutes for meetings of Council, Senate and their standing committees divided into Unreserved and, where necessary, Reserved Business sections.

11. Unreserved Business refers to agenda items which are deemed to involve, and are likely to generate information in the resulting minutes, which **WOULD NOT** be exempt from disclosure under the Freedom of Information Act. Any agenda item which does not match with one or more of the exemption categories in section 15 of this guidance should therefore be placed on the Unreserved agenda, and the discussion normally recorded in the Unreserved minutes (but see also paragraph 21 below).

12. Reserved Business refers to agenda items which are deemed to involve, and are likely to generate information in the resulting minutes, which **WOULD** be exempt from disclosure under the Freedom of Information Act. Any agenda item which matches with one or more of the exemption categories in section 15 of this guidance should therefore be placed on the Reserved agenda, and the discussion normally recorded in the Reserved minutes (but see also paragraph 22 below).

13. It must be emphasised that an item should only be placed on the Reserved agenda if it is genuinely considered that it clearly meets at least one of the Freedom of Information exemptions. Very often a meeting will only deal with Unreserved Business, in which case there is obviously no need to produce a Reserved Business agenda (and *vice versa* for meetings which only have Reserved Business).
Freedom of Information Exemptions

14. The Freedom of Information Act contains 24 categories of exempt information, only a few of which are likely to be relevant to the work of University committees. The main ones are listed in section 15 below. Please be aware that this is not a definitive list and in rare situations there may be other exemptions that apply.

Exemption categories

15. The most relevant exemption categories for University committees are as follows, and agenda items should be placed in Reserved Business if they deal with:

a. **Personal data**

   This category covers information about any named or identifiable living person. Personal data is protected by the Data Protection Act, which makes it unlawful to transfer or release certain types of personal information. This is reflected in Section 40 of the Freedom of Information Act, which allows personal data to be withheld if its release to a third party would contravene the Data Protection Act.

   Some personal information dealt with by committees can be treated as Unreserved Business, whilst some should be treated as Reserved Business because placing it in the public domain, such as on the University’s website, would breach the Data Protection Act.

   The Information Commissioner, as the authority which regulates Freedom of Information and Data Protection, has suggested that public bodies can release certain types of personal information in response to Freedom of Information requests, because doing so does not contravene the principles of the Data Protection Act and is in the interests of public accountability. Based on this guidance, it is appropriate for the following types of personal information to be placed on the Unreserved agenda and recorded in the Unreserved minutes:

   i. routine notices of the appointment, departure or promotion of staff (but not details of the reasons for such events)
   ii. basic information about the job titles, roles, duties and responsibilities of staff, and their work contact details
   iii. grades and salary bands of staff (but NOT specific salaries, except for staff earning over £100,000 where the Information Commissioner suggests the disclosure of salaries in £10,000 bands)
   iv. minor references to individuals which do not convey anything substantive about them
   v. personal information which is already in the public domain, such as on the University website
   vi. information about the decisions or actions of individuals that are taken in a work or official capacity (eg as a committee member), unless it is covered by another exemption category.

   Other types of personal information which comes before committees should be placed on the Reserved agenda and recorded in the Reserved minutes, as releasing it could breach the privacy rights of individuals under the Data Protection Act. Examples of personal information that should always be treated as Reserved Business include:
i. sensitive employment-related information about individual staff, such as grievance, discipline, or performance issues
ii. sensitive information about the health, welfare or personal lives of individuals
iii. sensitive information about individual students, such as academic progress, examination performance, or disciplinary matters.

Some committees will occasionally discuss specific post titles rather than named individuals, and this will not necessarily amount to personal data. For example, discussing the case for the creation of a new post will not involve personal data because no one has yet been appointed to it. On the other hand, information about a post will involve personal information if the post can be associated with a named individual through sources such as the University website. Whether the discussion of a specific post should be placed in Unreserved or Reserved business will inevitably depend on the individual circumstances and the wider context outlined above.

b. Commercial Interests

This category covers information which, if released, could harm the commercial interests of the University or another organisation. Examples include:

i. discussion of forthcoming contracts, negotiations or purchases
ii. details of ongoing negotiations (eg involving contracts or purchases), where release of the information might jeopardise the negotiations or the University’s bargaining position
iii. sensitive operational information, trade secrets or pricing details received from suppliers, tenderers or contractors
iv. information which might be of value to a competitor, such as information about the University’s student recruitment or commercial activities, or its plans to expand in a particular area.

Agenda items which involve such information should be placed in Reserved Business, as the information may be exempt under Section 43 of the Freedom of Information Act.

It is unlikely that the disclosure of high-level financial information about the University’s income and expenditure would normally be regarded as harming its commercial interests, but a detailed breakdown of financial information might be exempt if, for example, it disclosed the price charged by a supplier, or the salary of an individual (see Personal Data above).

c. Information provided in confidence

This category covers information which:

i. has been supplied by an organisation or individual outside the University (including another HEI); and
ii. the information is not in the public domain; and
iii. the University does not have permission to make the information available; and
iv. the supplier of the information has indicated that they regard it as confidential; or
v. a reasonable person would assume that permission should be sought before making the information publicly available.
Agenda items which involve such information should be placed in Reserved Business, as it may result in the discussion of information the release of which would be a serious breach of confidence and the University could be liable to legal action. This information may be exempt from release under Section 41 of the Freedom of Information Act.

d. **Health and Safety**

This category covers information which, if released, might endanger the physical or mental health or safety of any person. This might occur, for example, if there was a risk that placing the information in the public domain would expose an individual to threats or harassment, aggravate a known medical condition, or place research staff in danger from extremist groups.

Agenda items which involve such information should be placed in Reserved Business, as the information may be exempt under Section 38 of the Freedom of Information Act.

e. **Law enforcement**

This category covers a wide range of law enforcement interests, and whether these could be prejudiced by the disclosure of certain types of information. In the University’s context this is most likely to involve information which could prejudice the prevention and detection of crime, for example by:

i. revealing details of security arrangements, procedures and monitoring systems

ii. revealing details of financial procedures and processes, which might make it easier for someone to commit fraudulent acts against the University

iii. compromising IT security systems and protocols

Agenda items which involve such information should be placed in Reserved Business as the information may be exempt under Section 31 of the Freedom of Information Act.

f. **Information intended for future publication**

This category covers information which may be exempt from disclosure in response to an FOI request because it is already intended for publication by the University at a later date. This could include, for example, financial information which is intended to be published in the *Financial Statements*, or the intended publication of the findings from a research project.

The intention to publish at a later date (and within a reasonable timescale) must already be in place at the time the request is received, even if the exact date of publication is still to be decided, and it must be deemed to be reasonable in all the circumstances to withhold the information until the date of publication.

Agenda items which involve such information should be placed in Reserved Business as the information may be exempt under Section 22 of the Freedom of Information Act.

g. **Legally privileged information**

This category covers information about legal advice provided to the University or another organisation, or communications with the University’s legal advisers or representatives.
Agenda items which involve such information should be placed in Reserved Business as the information may be exempt under Section 42 of the Freedom of Information Act.

h. **Prejudice to the free and frank provision of advice, exchange of views for deliberation or effective conduct of public affairs**

Section 36 of the Freedom of Information Act makes provision for information to be withheld if releasing it would prejudice "the free and frank provision of advice", "the free and frank exchange of views for the purposes of deliberation" or "the effective conduct of public affairs".

It might be appropriate to use this exemption to place in Reserved Business high-level strategic or policy discussions (eg about the future of the University), if placing the record of those discussions in the public domain would constrain either those discussions or similar discussions in the future.

This exemption is rarely used, as it is necessary to make a very strong case (which must be signed off by the President and Vice-Chancellor) in order to use it in response to a Freedom of Information request. It is most likely to apply to a detailed record of what was *said* at a meeting, and by whom, rather than to what was *decided* at the meeting. As the aim is to produce minutes that are brief and concise, and to record decisions rather than provide detailed accounts of discussions, this exemption should rarely be applicable.

16. **Committee chairs and secretaries** who are still uncertain as to whether a specific agenda item is likely to be covered by an exemption and should be placed in Reserved Business, or who believe that an item should be withheld but it does not seem to fit within one of the above exemption categories, should contact Information Assurance Services for further advice.

**Final decisions on committee paper exemptions**

17. It must be emphasized that committee chairs and secretaries are not being asked to make the final decision on whether an agenda item involves information which is or is not exempt under the Freedom of Information Act. They are only being asked to identify items which involve information which is *likely* to be exempt, and to place such items in the Reserved Business section of agendas and minutes.

18. The final decision on whether information classified as Reserved Business is *actually* exempt if the subject of an FOI request will depend on the circumstances at the time. The University might decide to release Reserved information in cases where:

   a. it is no longer sensitive: for example, information which is commercially sensitive often remains sensitive for only a limited period
   b. the exemption does apply but the case requires a public interest test, and the public interest at the time favours release of the information
   c. the University decides that some of the information in an FOI request is not actually exempt and should be released. As indicated above, FOI exemptions apply to the actual information in question and final decisions will be made at the time of the request. Committee chairs and secretaries, on the other hand, are only being asked to recognise and classify broad categories of information at the time that the committee papers are prepared.
19. In reality, processing an FOI request often requires a series of decisions to be made on individual components of the information. For example, the Reserved agenda is basically just a list of topics for discussion in Reserved Business, although some of the information contained on the agenda itself may be exempt in its own right. This might be because it is concerned with commercial interests or personal data about a named individual. However, other information contained on the Reserved agenda itself may not be exempt in its own right, even if exemptions do apply to a supporting agenda paper or to the subsequent discussion of the information as recorded in the minutes. This means that if the Reserved agenda was subject to an FOI request, the University might be required to release certain information on the agenda but to redact other information.

Implications for committee servicing – Unreserved and Reserved minutes

20. As stated above, the general rule is that a committee’s discussions and decisions in relation to items on the Unreserved agenda should be recorded in the Unreserved minutes. Discussions and decisions in relation to items on the Reserved agenda should be recorded in the Reserved minutes.

21. Occasionally, however, information may emerge unexpectedly under Unreserved Business which is likely to be exempt and therefore should not be released. If it is necessary for this information to be referred to specifically in the record of the discussion then the secretary should place this record in the Reserved minutes. In very rare cases, this may require the secretary to produce Reserved minutes for a meeting where there was originally only an Unreserved agenda.

22. Similarly, an opposite situation may arise in cases where it becomes apparent that the discussion of an item of Reserved Business may appropriately be recorded in the Unreserved minutes. For example, a particular item may have been listed for discussion under Reserved Business because the report accompanying the item was known to contain sensitive personal data or other exempt information. But if there is no need for this sensitive information to be included in the record of the discussion then the resulting minute is unlikely to be exempt and it should be placed in the Unreserved minutes. See also the section below on appropriate language and style for the minutes.

23. In the interests of transparency and to avoid possible future confusion when the minutes are compared to the original agenda, the Unreserved and Reserved sections of the minutes should both include a note to indicate that an item has moved from/to one section to the other.

FOI requests for committee minutes – appropriate language and style

24. As stated above, the separation of committee minutes into Unreserved and Reserved Business does not represent the final decision as to whether a particular piece of information contained in the minutes is actually exempt from disclosure for FOI purposes. The final decision will be taken by Information Assurance Services in the circumstances of each individual FOI request, and in some cases the University may conclude that the requested minute is not (or is not now) exempt and should be released.

25. With this in mind, and within the general spirit of the Freedom of Information Act, the minutes of University committees should not contain language or superfluous sensitive information that could make it unnecessarily difficult for the minutes to be placed in the public domain, or released in response to an FOI request.
26. Information about individuals should be treated with particular care and included in the minutes only when necessary, as it may not be possible to make it publicly available for Data Protection reasons. Individuals will usually have a right of access to information about themselves so appropriate language should be used when referring to named or otherwise identifiable individuals, and to adopt a style of writing which de-personalises minutes as far as possible.

27. Except in the attendance list at the start of the minutes, it is preferable to use job titles rather than personal names when referring to committee members and third parties. Although this information will still be regarded as personal data, many people feel more comfortable being identified this way in documents which may appear in the public domain.

28. If a meeting dealt with unreserved business only, or reserved business only, a note to this effect should be added at the end of the minutes (eg "No reserved business was considered at this meeting"). This will help to avoid confusion and unnecessary searching if minutes are requested many months or years later.

Publishing of minutes

29. The guidance issued to HEIs by the Information Commissioner indicates that “minutes of formal meetings where key decisions are made about the operation of the HEI should be available. HEIs may decide not to publish particular minutes on a case by case basis.”

30. The guidance specifically cites the minutes of governing bodies (Council), academic boards (Senate) and Teaching and Learning Committees (Academic Policy Committee) as examples of minutes that should normally be published. At Leicester the Unreserved minutes of all three bodies are available on the University website.

31. Other committees may wish to consider publishing their Unreserved minutes, if they don’t already do so. The relevant committee secretary or servicing office is responsible for placing the Unreserved minutes on the website as soon as they have been formally approved (ie at the committee’s next meeting).

32. In accordance with the Information Commissioner’s publication scheme guidance for HEIs, the Unreserved minutes should remain available on the website for the current and previous three calendar years.

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