

CONSTITUTION & DEMOCRATIC SERVICES COMMITTEE

Date of Meeting	Wednesday 6 November 2024
Report Subject	Part 2 Reports and Information
Report Author	Chief Officer (Governance)

EXECUTIVE SUMMARY

Formal council meetings are open to the public, with the agenda and associated reports published on the Council's website.

However, certain information can be exempt from being heard in the public domain and/or accessed by the public. The definition of what information can be exempt from the public is contained in the Local Government Act 1972.

When exempt information is considered at a meeting, members of the press and public can be excluded from the meeting. Excluding the press and public is often referred to as 'moving into Part 2'.

At the July meeting of Corporate Resources Overview & Scrutiny Committee, several members queried the use of 'Part 2' and when information considered under such conditions could be discussed / released to the public.

RECOMMENDATIONS

1.	That the Committee welcomes the decision to provide press releases to councillors before they are sent to the press.
2.	That the Committee continues with the current process for determining what information can/cannot be released from reports containing exempt information, noting that: Members should either <ul style="list-style-type: none"> i. await the official release of information by the Council, or ii. seek the advice of the Monitoring Officer before making public any exempt information.

REPORT DETAILS

1.00	EXPLAINING THE USE OF 'PART 2' REPORTS AND INFORMATION
1.01	<p>At the Corporate Resources Overview and Scrutiny Committee meeting on 19 July 2024, the use of 'Part 2' to discuss reports at Committee meetings was raised.</p> <p>The Committee resolved: <i>"That comments on the process for dealing with exempt reports be referred to the Constitution & Democratic Services Committee for consideration."</i></p>
1.02	<p>Reports are provided to councillors to enable them to either advise on or take decisions on behalf of the Council. The information contained within the reports is therefore provided to councillors for the purposes of running the organisation.</p>
1.03	<p>The overwhelming majority of reports are considered in public. However, the use of 'Part 2' when considering items at meetings is not new and is used in a limited number of circumstances as per the definition of confidential and exempt information in the Local Government Act 1972. It is something that occurs across all levels of Government and is used to protect the interests of the council (as a corporate body), private individuals, commercial organisations who have or seek dealings with the council etc.</p>
1.04	<p>Part 4 of Schedule 12A of the Local Government Act 1972 details the exempt information in paragraphs 12 to 18:</p> <ul style="list-style-type: none">12. Information relating to a particular individual.13. Information which is likely to reveal the identity of an individual.14. Information relating to the financial or business affairs of any particular person (including the authority holding that information).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 employees of, or office holders under, the authority.16. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.17. Information which reveals that the authority proposes —<ul style="list-style-type: none">a. to give under any enactment a notice under or by virtue of which requirements are imposed on a person; orb. to make an order or direction under any enactment.18. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime. <p>18 A-C Specific exemptions for Standards Committees</p>

	These are (or should be) referenced on the agenda whenever an item is identified as being exempt.																					
1.05	<p>In deciding whether to exclude an item from being heard in and/or accessed by the public, a <i>Public Interest Test</i> is applied.</p> <p>Committee reports are assessed on a case-by-case basis having regard to a number of factors designed to ensure a proper balance is achieved between:</p> <ul style="list-style-type: none"> • transparency • the right to know, • such rights as personal privacy; and • the delivery of effective government. <p>In applying that test, the Council has to be cognisant of parallel routes to access information such as the Freedom of Information Act 2000 (FOI). So, whilst it might be possible (even expected) that the council would classify the available budget for a contract as commercially sensitive under paragraph 14, guidance issued by the Information Commissioner’s Office makes clear that under FOI such information should be released. So, there would be little gain seeking to restrict it under the Local Government Act 1972 only to be forced to reveal it under FOI.</p>																					
1.06	Since the County Council Election in May 2022, for the period to July 2024, 130 out of 3,108 (4%) reports discussed at either Full Council or Cabinet were considered under ‘Part 2’ conditions across the six North Wales Local Authorities.																					
1.07	<p>A crude numerical analysis of the proportion of reports at either Full Council or Cabinet under ‘Part 2’ conditions is listed below:</p> <ul style="list-style-type: none"> • Flintshire – 43/613 (7%) • Conwy – 40/684 (6%) • Wrexham – 21/439 (5%) • Anglesey – 12/393 (3%) • Denbighshire – 12/395 (3%) • Gwynedd – 2/584 (<1%) 																					
1.08	<p>Table 1 below shows which of the paragraphs are used for moving to ‘Part 2’ across the six North Wales Authorities. Paragraph 14 is the most commonly used – and in the vast majority of cases it is when contract details are being considered.</p> <table border="1"> <thead> <tr> <th>Paragraph</th> <th>Count</th> <th>%</th> </tr> </thead> <tbody> <tr> <td>12</td> <td>5</td> <td>4%</td> </tr> <tr> <td>14</td> <td>103</td> <td>79%</td> </tr> <tr> <td>15</td> <td>6</td> <td>5%</td> </tr> <tr> <td>16</td> <td>2</td> <td>2%</td> </tr> <tr> <td>Multiple paragraphs</td> <td>10</td> <td>8%</td> </tr> <tr> <td>Not stated</td> <td>4</td> <td>3%</td> </tr> </tbody> </table> <p>(Table 1)</p>	Paragraph	Count	%	12	5	4%	14	103	79%	15	6	5%	16	2	2%	Multiple paragraphs	10	8%	Not stated	4	3%
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Table 2 shows which paragraphs are used, broken down into each Local Authority.

Para	Wrexham	Flints.	Denbighshire	Conwy	Anglesey	Gwynedd
12	0	0	2	2	1	0
14	18	37	8	33	5	2
15	3	3	0	0	0	0
16	0	2	0	0	0	0
Multiple	0	1	2	5	2	0
Not stated	0	0	0	0	4	0

(Table 2)

1.09 For Flintshire specifically, there have been a number of contracts due for renewal where reports have been brought before either Council and/or Cabinet. These were therefore considered exempt due to the potentially commercial sensitivities involved. As can be seen from the table above Gwynedd and Anglesey rarely report contracts to Cabinet/committee, and they, along the other councils, also utilise single member decisions, which we do not.

Similarly, there are a number of recurring items (6) considered under 'Part 2. These are where an item is reported annually, such as the business plans for Newydd, Theatre Clwyd and New Homes. Again these would not be reported to Cabinet/committee at all.

1.10 If one therefore removes the reports utilising the paragraph 14 exemption the figures are as follows:

- Anglesey – 7/393 (1.78%)
- Conwy – 7/684 (1.02%)
- Flintshire – 6/613 (0.98%)
- Denbighshire – 4/395 (1.01%)
- Wrexham – 3/439 (0.68%)
- Gwynedd – 0/584 (0%)

1.11 At the CROSC meeting in July, frustration was expressed by some Members present that they are unsure when they can discuss or comment on items that have been considered under 'Part 2' at a meeting once the decision has been made.

They cited examples that some of the discussions that took place under 'Part 2' conditions were subsequently included in the Council's press releases without Members being informed beforehand.

The Members suggested that they were not aware that the information was being released and therefore felt unsure what they could then discuss and placed at a disadvantage when dealing with enquiries from residents. This has been addressed and the Communications Team now issue press releases to councillors before they are released to the press.

1.12	<p>It was confirmed at the CROSC meeting that the Council does not have a process to 'de-classify' information previously categorised as 'Part 2'.</p> <p>Due to the nature of what is classed as 'Part 2' information, it is not always possible to release the full reports. Some of the information could be particularly sensitive and therefore not appropriate for release, and some might only be appropriate for release after a particular process has concluded. For example, a proposed staff re-organisation might only be appropriate for release after the reorganisation has been concluded and a competitive contract proposal (which included details of pricing) might not be released until the end of the contract term.</p>
1.13	<p>What information can be made public from a report discussed under 'Part 2' conditions is therefore considered carefully on its own merit and only released on behalf of the Council by an authorised representative. The Chief Officer Governance as monitoring officer is the officer appointed for that task.</p> <p>Deciding to declassify council information is/would be a decision made on behalf of the council. Since individual councillors are not permitted to make decisions on behalf of the council, they need to either 1) await the official release of information by the Council, or 2) seek the advice of the Monitoring Officer before making public any exempt information.</p>
1.14	<p>Due to the range of information that could be classed as exempt, and the length of some reports, it would be resource intensive to proactively review 'Part 2' reports to decide whether any information can be 'de-classified'. At present the decision whether to declassify information is taken reactively as and when the release of that information is requested. Such requests have not been common to date.</p> <p>The existing guidance as outlined in para. 1.03 therefore remains appropriate to continue.</p>

2.00	RESOURCE IMPLICATIONS
2.01	None arising from this report.

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	Not applicable.

4.00	RISK MANAGEMENT
4.01	None arising from this report.

5.00	APPENDICES
5.01	None.

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	<p>Flintshire County Council Constitution</p> <p>Contact Officer: Steven Goodrum, Democratic Services Manager Telephone: 01352 702320 E-mail: Steven.Goodrum@flintshire.gov.uk</p>

7.00	GLOSSARY OF TERMS
7.01	<p>Part 2: a term used for exempt information as defined in the Local Government Act 1972.</p> <p>Confidential information - under the Local Government Act 1972, this is defined as</p> <p>“Section 100A (3). For the purposes of subsection (2) above, “confidential information” means—</p> <p>(a) information furnished to the council by a Government department upon terms (however expressed) which forbid the disclosure of the information to the public; and</p> <p>(b) information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court;</p> <p>and, in either case, the reference to the obligation of confidence is to be construed accordingly.”</p>