

Governing Body Confidentiality Policy

Owner: Clerk to the Governing Body	Related Strategies:
Relevant to: Governing Body members, College staff and students and members of the public	

Office Use only:

Corporate Intranet Family: Governance	Approval Board/Committee/Group: SRG Committee Executive Owner: Clerk	Approval/Re-approval Date:	Implementation Date:	Next Review Date:
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Originator:	Family:	Page 1 of 6

New Policy or Substantive Policy Review

Version	Date	Policy Development Agreed by (Executive Owner)	Policy Development Author	Draft Policy Verified by	Policy Approval	Impact Assessment (if applicable)
1	4.11.19	Requested by Governing Body	Clerk	CEP	SRG Committee	

Rationale for new or substantive policy review	SRG Committee charged with clarifying the Governing Body's rules on confidentiality of board minutes and papers and the process for reviewing declassification and release of confidential items in line with the Instrument and Articles of Government (Instrument 17.4 refers:).
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Periodic Policy Review / Change History

Version	Date of Review / Revision	Description of Change	Reviewed By	Approved By (Executive Owner)
1	4.11.19	First draft based on the principles approved by SRG Committee at its meeting on 19 June 2019	CEP	TBC
2	13.11.19	Revision to section 3 to move ELT responsibilities to top of section	SRG chair	SRG

Communication

To be agreed by Executive Leadership Team

Announcement on hub	<input checked="" type="checkbox"/>	SLT email	<input type="checkbox"/>
College newsletter	<input type="checkbox"/>	All staff email	<input type="checkbox"/>
SLT meeting	<input type="checkbox"/>	Cascade brief	<input type="checkbox"/>
External website	<input checked="" type="checkbox"/>	Training needed (specify who)	<input type="checkbox"/>

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1. POLICY STATEMENT

Instrument 17 of the College Instrument and Articles of Government (I&AG) set out the rules on confidentiality that regulate the operation of the Board and its committees and Instrument 17(2)(d) specifies that material relating to the following shall be kept confidential:

- (a) a named person employed at or proposed to be employed at the institution;
- (b) a named student at, or candidate for admission to, the institution;
- (c) the Clerk [i.e. where the Clerk is not an employee under (a)]; or
- (d) any matter which, by reason of its nature, the Corporation is satisfied should be dealt with on a confidential basis.

In addition, Instrument 17(4) requires the Corporation to review regularly ‘... all material excluded from inspection under paragraph (2)(d) and make any such material available for inspection where it is satisfied that the reason for dealing with the matter on a confidential basis no longer applies, or where it considers that the public interest in disclosure outweighs that reason.’

This policy is intended to ensure that the Governing Body and its committees operate in a transparent and open manner whilst maintaining the confidentiality of those items where disclosure to the general public at the time of the paper circulation, may be unlawful or prejudicial to the College’s interests or the conduct of public affairs.

2. DEFINITIONS

‘**FOIA**’ means the Freedom of Information Act 2000

‘**Confidential**’ means information that has been classified as such according to the principles and process in this policy. Such information is normally shared with Governing Body members and those College staff who need to know but would not be shared with others unless and until the material had been declassified by the process in this policy.

‘**Strictly confidential**’ means information that is classified as Confidential and is withheld from some Governing Body members under the Standing Orders or the Conflict of Interest policy.

‘**The Clerk**’ means the Governance Adviser and Clerk to the Governing Body or other nominee that the Clerk has nominated to deputise for the Clerk.

3. PRINCIPLES

Freedom of information is the default position in law.

As the recipient of large amounts of public money and a public body for the purposes of the FOIA, the College is required to operate in an open and transparent way. This means that the College operates on the basis that all information is available publicly unless an exemption applies. The College must demonstrate that exemption.

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Lawful reasons for keeping some items Confidential

The Clerk may apply any of the lawful reasons under FOIA in determining on behalf of the Corporation that the matter should be dealt with on a confidential basis.

The Clerk will routinely consider the following exemptions when determining if a paper or minute should be classified:

1. Absolute exemptions

- a) **Personal Information** - information requested concerns an identifiable living individual **and** disclosure would breach one of the Data Protection Principles.
- b) Information **provided in confidence** by a third party that continues to justify secrecy by the nature of its content, restricted circulation and, where applicable, the parties are bound by contract or a duty of care to maintain the confidentiality.

2. Qualified exemptions (where the information may only be withheld if the public interest in withholding is greater than the public interest in releasing the information).

- a) Information intended **for future publication** – e.g. annual reports and draft policies that are confidential during draft stages but will be made public once finalised. Normally policy drafts shall not be marked confidential unless the Clerk is satisfied that one of the other reasons in this section also applies.
- b) **Prejudice to effective conduct of public affairs** – e.g. where disclosure of discussions and/or advice might have a chilling effect on frank analysis of risks, potential policy decisions. This exemption would rarely be relevant to college business and, under FOIA, requires approval by the organisation's chief executive officer (i.e. Chief Executive and Principal for the College).
- c) **Personal information**. If disclosure would not breach any of the Data Protection principles, but would cause unwarranted damage or distress.
- d) **Legal professional privilege**.
- e) **Commercial interests**, as defined in FOIA.

Strictly Confidential items

Where Confidential papers are not circulated to all members, due to a conflict of interest, the Clerk shall mark the papers Strictly Confidential to distinguish them from confidential items that are circulated to all members.

Marking Confidential Papers

The Clerk shall annotate the agenda and the header of each confidential paper to denote those items that are Confidential or Strictly Confidential.

Code of Conduct

As set out in the Governor Code of Conduct, members and those present at a meeting where confidential minutes and reports are discussed, shall respect the confidentiality of items marked as confidential, unless and until an item is declassified under this policy.

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4. SCOPE AND LIMITATIONS

The Policy applies to those papers and minutes that are prepared for the Governing Body or one of its Committees. The Clerk shall advise the Executive Leadership Team on its responsibilities for other reports and information.

5. RESPONSIBILITIES

Executive Leadership Team and other report authors are responsible for:

- Drafting reports and advising the Clerk of material within reports that may come within the Confidentiality Policy so that relevant papers and minutes may be protected as appropriate and information that is no longer confidential may be de-classified.

The Clerk is responsible for:

- Consulting with paper authors on the content and likely confidentiality of material in reports;
- reviewing papers and minutes and marking items as confidential or strictly confidential according to the principles in this policy;
- circulating confidential information on a 'need to know basis to members and officers;
- ensuring there is restricted circulation of strictly confidential items to appropriate members and officers;
- compiling a log of confidential items for the board or a committee to review annually to consider declassification;
- Supporting the annual review of the classified items log and marking where items have been declassified;
- Arranging for the publication of declassified minutes on the College website;
- Where requests are received for confidential minutes or reports, liaising with the Data Protection Officer and the chair of the relevant board or committee to determine if the grounds for maintaining confidentiality apply and responding to the requester;
- Providing briefing to report authors on the grounds for confidentiality and the information they should provide to the Clerk to enable appropriate material to be protected.

Search, Remuneration and Governance Committee (SRG) is responsible for:

- Monitoring the implementation of the Confidentiality Policy; and
- undertaking an annual review of the log and de-classifying any items where the grounds for maintaining confidentiality no longer apply.

Board and committee members, and officers attending meetings, are responsible for:

- Maintaining confidentiality where items are marked;
- Challenging confidential markings in the meeting if they have any queries about the grounds for confidential marking.

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6. IMPLEMENTATION ARRANGEMENTS

The Clerk shall review all board and committee agenda items to implement the policy, in consultation with report authors. Where an item appears to fall within the Confidentiality Policy, in the Clerk's opinion, the Clerk shall mark the agenda and reports as confidential or where the Conflict of Interests Policy applies, Strictly Confidential.

In meetings, it is open to members to challenge the Confidential marking where they have queries about the grounds for classification. The Clerk shall advise the meeting on the reasons for protecting the report or minutes. Where the members present are not satisfied that the grounds for classification apply, the board or committee may decide to change the classification, by a vote of the members present. The item would then be declassified and the minutes would record this.

Where a member or officer is concerned about the classification of an item and is not able to challenge this in the meeting then the member should seek advice from the Clerk in the first instance. Members are reminded that the College Whistleblowing Policy sets out the procedure for pursuing serious matters of concern where they believe that disclosure may be in the public interest.

The Clerk shall maintain a log of confidential minutes and reports.

SRG shall consider the log on an annual basis, normally at the first meeting of the next college year. SRG shall determine which items are no longer confidential e.g. the information is now in the public domain; the public interest in making the information publicly available outweighs the public interest in maintaining confidentiality or the grounds for marking the item confidential no longer apply.

7. MONITORING AND REVIEW

SRG shall monitor the policy annually, when reviewing the log of confidential business to ensure it is proportionate and does not unduly infringe on the transparent and open operation of the College's governance.

8. SUPPORTING/RELATED DOCUMENTS

Governor Code of Conduct
College Publication Scheme
Whistleblowing Policy

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