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**To: Cross Party Sounding Board**

**On: 12 September 2019**

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**Report by: Director of Finance & Resources**

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**Heading: Exempt Items**

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**1. Summary**

- 1.1 In 2019 there have been three incidents of “exempt” reports being released to the local press.
- 1.2 This report sets out the reasons why exempt reports are used, why it is important that they are protected from publication and proposes to restrict the potential for exempt reports to be published.

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**2. Recommendation**

- 2.1 That members consider the proposed change to distribution of exempt reports as detailed in paragraph 3.13 of the report.

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**3. Background**

- 3.1 The Council and its Boards can decide that any of the reports submitted on an agenda should be exempt from the over-riding requirement that all Council and Board meetings and the consideration of any items at a meeting are held in public.
- 3.2 The grounds on which such a decision can be taken are limited to the 15 categories set out in Schedule 7A of the Local Government (Scotland) Act

1973 (see attached appendix). In practice, the grounds used to exempt reports in Renfrewshire tend to be those to protect information relating to the business affairs of any person (paragraph 6), the amount of expenditure for the acquisition of property (paragraph 8) and the terms of any negotiations for the acquisition or disposal of property or the supply of goods or services (paragraph 9).

- 3.3 It will usually be officers who suggest to the relevant convener that a report should be exempt and who will set out the appropriate grounds for exemption to be used.
- 3.4 If the convener agrees that the report should be classified as exempt, it will be referred to on the agenda but will not be included in the papers published in hard copy or published in the publicly accessible part of the CMIS system on the Council's website. However, the report will be issued on pink paper and attached to the hard copy agendas issued to all elected members and to all officers who are entitled to receive them. It is the Head of Corporate Governance who is the 'proper officer' in terms of the Act to exclude such documents. The exempt reports are also available electronically to all officers and elected members with the necessary access privileges on the CMIS system. The only exemption to this level of distribution is for appeals in respect of which only those members who are serving on the panel and a limited number of officers involved in supporting the appeals process.
- 3.5 The first page of an exempt report will have a stamp stating that it is not for publication and stating the paragraphs in Schedule 7A to the Act that are being relied on to justify exemption. Each page of the report will be clearly marked "Not for Publication."
- 3.6 Any elected member at a meeting can challenge the exempt status of a report and if supported by a seconder can move against the report being exempted. If that motion was successful, the report would be discussed in the normal way in the public domain.
- 3.7 In addition, the Council or any Board also has the power to exclude the public during any meeting, regardless of whether a report has been designated as exempt. This can be done whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings, confidential information could be disclosed in breach of an obligation of confidence. This might happen for example where an amendment has been submitted that involves the discussion of certain types of confidential information that hadn't been anticipated in advance of the meeting.
- 3.8 The number of reports that are exempt is relatively small. The recommendation from officers that a report should be exempt will be made based on risk to the Council but also in some circumstances to the business affairs of a person or organisation which wishes to undertake business with the Council. As an additional procedural step, it is intended that all

recommendations for reports to be exempt are approved by the Head of Corporate Governance prior to the reports being sent to the convener. This may have the effect of reducing the number of exempt reports.

- 3.9 The risks to the Council are that anybody suffering a loss as a result of a deliberate release of confidential or commercially sensitive information into the public domain could seek to recover compensation for their loss from the Council; there is reputational risk to the Council which may result in the loss of future opportunities if the Council is not seen as a reputable body with whom to do business; and any unlawful publication of personal data could result in sanctions, including financial penalties, being imposed on the Council by the Information Commissioner.
- 3.10 The risks to any elected member putting the confidential information into the public domain are a breach of the Councillors' Code of Conduct (paragraphs 3.16 and 3.17). The sanctions available to the Standards Commission for Scotland were a breach of the Code to be established, range from censure to disqualification; breach of the Data Protection (Scotland) Act 2018. Any breach caused by the release of personal data into the public domain by any person might lead to criminal prosecution, civil liability or a fine by the Information Commissioner. In addition, if the information has been released by a Council officer, they would be subject to a disciplinary investigation and could be dismissed for gross misconduct.
- 3.11 Whilst it is not possible to eliminate totally the risk of exempt information being released into the public domain, the measures below are aimed at reducing the risk of exempt information being released
- 3.12 The most significant of these measures would be to reduce the distribution of exempt reports. Clearly all members of a Board should have access to an exempt report on that Board's agenda. However, there may be no reason for any other member to have access to the report. In some circumstances it may be appropriate to let members of the ward where the subject matter of the report is located have access to the report. It is also appropriate that the Leader and Depute Leader of the Council have access to all exempt reports, otherwise it should be for elected members who are not on the relevant Board to justify why they should have access to an exempt report. A further measure to restrict the possibility of a copy of an exempt report being accidentally misplaced would be to restrict distribution to those members and officers having the appropriate permissions on the CMIS system. In effect, this would mean that there would no longer be any pink reports added to the end of agendas.
- 3.13 It is proposed therefore that
- Any proposal to have a report classified as exempt be agreed with the Head of Corporate Governance in the first instance, prior to the report being discussed with the relevant convener;

- access to exempt reports is given only to Board members and the Leader and Depute Leader of the Council and appropriate officers;
  - that these be available on an electronic basis only; and
  - that any elected member who is not on the Board and who wishes access to the relevant report be required to justify to the Head of Corporate Governance why they should have access.
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## **Implications of the Report**

1. **Financial** – none
2. **HR & Organisational Development** - none
3. **Community/Council Planning** – none
4. **Legal** – as detailed in the report
5. **Property/Assets** - none.
6. **Information Technology** – none
7. **Equality & Human Rights**

The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

8. **Health & Safety** – none
  9. **Procurement** – none
  10. **Risk** – none
  11. **Privacy Impact** – none
  12. **CoSLA Policy Position** – not applicable
  13. **Climate Risk** – the number of paper copies of reports will be reduced.
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## **List of Background Papers** – none

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**SCHEDULE 7A - ACCESS TO INFORMATION : EXEMPT INFORMATION -  
PART 1 - DESCRIPTION OF EXEMPT INFORMATION**

- 1 Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office holder, former office-holder or applicant to become an office holder under the authority.
- \* 2 Information relating to any particular occupier or former occupier of or applicant for accommodation provided by or at the expense of the authority.
- \* 3 Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority.
- 4 Information relating to any particular applicant for, or recipient or former recipient of any financial assistance provided by the authority.
- 5 Information relating to the adoption, care, fostering or education of any particular child or relating to the supervision or residence of any particular child in accordance with a supervision requirement made in respect of that child under the Social Work (Scotland) Act 1968.
- 6 Information relating to the financial or business affairs of any particular person (other than the authority).
- 7 Information relating to anything done or to be done in respect of any particular person for the purposes of any of the matters referred to in section 27(1) of the Social Work (Scotland) Act 1968 (providing reports on and supervision of certain persons).
- 8 The amount of any expenditure proposed to be incurred by the authority under any particular contract for the acquisition of property or the supply of goods or services.
- 9 Any term proposed or to be proposed by or to the authority in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.
- 10 The identity of the authority (as well as of any other person by virtue of paragraph 6 above) as the person offering any particular tender for a contract for the supply of goods or services.
- 11 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.
- 12 Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with
  - (a) any legal proceedings
  - (b) the determination of any matter affecting the authority, (whether, in either case, proceedings have been commenced or are in contemplation).
- 13 Information which, if disclosed to the public, would reveal that the authority proposes
  - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - (b) to make an order or direction under any enactment
- 14 Any action taken or to be in connection with the prevention, investigation or prosecution of crime.
- 15 The identity of a protected informant.