

Guidance:

Confidential Council and Committee Agenda Items

Introduction

When confidential information enters Council or Committee meetings it can cause confusion or concern.

- What is confidential information?
- How should it be treated?
- Who is entitled to participate in discussions?
- Who can see the minutes?
- How long does the matter need to remain confidential?

This document is intended to provide guidance on dealing with confidential matters and supplements the information contained in the SSSC's Standing Orders.

Designating an Item as Confidential

Careful consideration is required to determine whether information really is confidential. Declaring an item confidential should not be used merely as an excuse to avoid a potentially embarrassing matter coming into the public domain.

Openness and transparency are core principles of good governance in the public sector and decisions on designating an item as confidential should not be taken lightly.

The following matters are cited in the Standing Orders as potential reasons for designating an item as confidential:

- a) matters likely to breach personal data legislation (as defined by the General Data Protection Regulation and Data Protection Act 2018 or any subsequent legislation)
- b) matters relating to named training and education providers or care service providers, such that their credibility and reputation may be affected
- c) matters involving issues of commercial or financial sensitivity or confidentiality
- d) matters relating to policy or the internal business of the Council which are for discussion with the Scottish Government or other regulatory or public bodies, prior to final approval by the Council.
- e) Information which may be considered to be legally privileged or relate to matters of legal proceedings either in progress or relating to the SSSC
- f) Any other matters which if publicly disclosed might reasonably prejudice the effective discharge of the SSSC's functions

Agenda Presentation

Where and when ever possible agenda items to be designated as confidential should be identified in advance of a meeting and the issue of papers for this

meeting. For Council items the Convener should agree both the reason(s) for the confidential designation and if and when information might be released.

The Chairs of Committees will perform a similar role for committee items.

Council agendas should clearly distinguish between the items to be considered in the public part of the meeting and items that will be considered in a private session. The confidential items should provide a reference to the reason(s) for an item being designated as confidential and indicate when and if the information will be available for public disclosure.

See appendix 1 for an illustrative example of a Council agenda with a confidential item.

Committee meetings are all held in private so do not have public and private sessions but the agenda should still clearly distinguish between items that will become publicly available within eight days of the Committee Chair signing the minutes and items that are designated confidential and will not be publicly available. The reasons for and duration of the confidential designation should be disclosed on the agenda in a similar way to Council agendas.

Recording Confidential Sessions

In writing the minutes of a confidential discussion the clerk has an important role to ensure that the discussion and the decision is minuted clearly and unambiguously.

Where an item has been designated as a confidential matter it should be recorded in the Confidential Part 2 of the minutes. Confidential - Part 2 of the minutes is NOT a separate minute but a continuation of the minutes of that meeting.

However, as they may be separated from the main body of the minutes, Part 2 should also be headed with the meeting details i.e. meeting of, meeting date and those present for the confidential items discussed.

It may not always be possible to identify confidential items before a meeting and confidential matters can arise during a discussion. In these situations any further discussion should be halted and anyone who may have an interest in the matter should leave the meeting whilst the matter is discussed. This should be clearly recorded in the minutes e.g.

“During consideration of this item a confidential matter arose in connection with xxx. Before the consideration of the confidential matter XXX declared an interest and left the meeting. Further discussion is minuted in Confidential Items Part 2 of these minutes”

Access to Confidential Minutes

Who has the right to see confidential items is an issue that can cause confusion.

For example, on an occasion when a Council or Committee member has to declare an interest in the proceedings and then has to leave the room and take no part in the consideration of or voting on that particular item. The question then arises as to whether that Council member is entitled to have access to full copy of the minutes that includes the record of the decision on the matter in which he/she declared an interest.

The simple answer to this question is yes. The main issue is that the Council Member that declared an interest left the meeting and took no part in the consideration of the item in which he/she declared an interest. All Council members are bound by the rules of confidentiality and are entitled to have a full copy of the minutes including the confidential part² of all meetings of the Council and its committees. This includes those where an interest was declared in a matter.

Officers in attendance for confidential items can access the associated minutes. The Convener or Committee Chairs can approve access to minutes of confidential items to other officers as appropriate.