

Protocol for Application of commercial sensitivity exemption

The actual exemption covers information relating to the financial or business affairs of any particular person (including the authority holding that information)

What does the Exemption cover

1. This exemption is potentially wide-ranging and can cover the financial, business and commercial affairs of individuals, sole traders, companies or other organisations as well as the Council itself.
2. The exemption could apply to intended or actual procurement, supply, investment and property deals as well as planning or other matters which would or could adversely affect the financial, business or commercial affairs of a person, business or organisation.
3. It can include contemplated, past and current activities but does not cover information which is already in the public domain.

The Public Interest

4. Even if the exemption is engaged in order to be applied, the public interest in maintaining the exemption must outweigh the public interest in disclosure of the information.
5. The public interest is taken to mean the public good or what is in the interests of the public to know, not what is of interest to the public.
6. In carrying out the public interest test, the arguments in favour of disclosing **and** those in favour of maintaining the exemption should be considered and balanced against each other taking into account their relative weight.
7. The test must also be carried out in relation to the specific issue at the time.
8. The relative weight of arguments (on both sides) will be affected by other factors as detailed in d.(iii) below.

Checklist

- a. Does the information relate to the financial or business affairs of any person, business, company or organisation (including the Council)?
- b. If yes is the information already in the public domain?
- c. If yes the exemption will **not** apply.
- d. If no: is it in the interests of the public to know the information or not? (see below)

(i) Factors in favour of not disclosing:

As regards the financial , business or commercial affairs, would or could disclosure of the information:

- Cause significant damage to the business reputation of or confidence in the person/business/organisation?
- Have a significant detrimental impact on commercial revenue or threaten the ability to recruit or retain staff, obtain supplies or secure finance?
- Cause the person/organisation to be in breach of a contract or legislation?
- Significantly weaken its position in a competitive environment?
- Adversely affect a negotiation or negotiating position?
- Adversely affect the value of land, property interests or assets?
- Adversely affect consultation on a project?

Would or could disclosure of the information:

- Affect competition specifically or generally?
- Adversely affect the issue or decision being discussed or the outcome of the matter?

Are there any other adverse consequences of disclosing the information?

(ii) Factors in favour of disclosing:

Would disclosure promote:

- Transparency about the issue the information relates to?
- Accountability for decision making and the use of public funds?
- Safeguarding the democratic process?
- Ensuring justice and fair treatment for all?
- Securing the best use of public resources?
- Fair commercial competition in a mixed economy?
- Public understanding and how much will it do so?

Are there any other factors which favour disclosure of the information?

(iii) Factors affecting the relative weight of the above:

What is the likelihood and severity of any adverse consequences?

What is the age of the information and when would it become public if not disclosed now?