

Guidance for reserving matters to a private session of Trust Board
Approved by Trust Board 30 January 2018

It is the Trust's intention for all matters to be discussed in public, unless there are special reasons as outlined in this guidance document.

Background

The Trust's Constitution (section 30.1) states that meetings of the Trust Board shall be open to members of the public. However, members of the public may be excluded from a meeting for special reasons. Within the Constitution's Standing Orders for the practice and procedure of the Trust Board, it outlines that special reasons shall include, but not be limited to, the following:

- Discussion of any matter which contains confidential, personally identifiable information relating to a member of staff or a service user or carer.
- Discussion of any matter which contains commercially sensitive information relating to the Trust or a third party.

Determination

Within the NHS Providers' guidance *The Foundations of Good Governance: A Compendium of Best Practice 2011* and NHS Leadership Academy's *The Healthy NHS Board 2013 - Principles for Good Governance*, it recommends that when determining which matters should be reserved for private consideration, the Trust should consider whether the information to be discussed would be exempt from disclosure under the Freedom of Information Act (FOI) 2000.

The below table outlines the exemptions most likely to apply to information considered by the Trust Board as a point of reference.

The final decision on whether items shall be discussed in public or private session shall be made by the Chair, having taken advice from the Chief Executive and Company Secretary, and in accordance with this guidance note.

FOI section	Reason for exemption
Section 22* Information intended for future publication	Drafts of documents not in final form that have firm plans for future publication that can be advised to the requestor e.g. <ul style="list-style-type: none"> - The Annual Report and accounts which can only be made public once has been laid before parliament - Draft consultation documents.
Section 31 31(1)(a), (b), (c) and (f) 31(1)(g)*, 31(2)(b) * or (j) * Law enforcement	<ul style="list-style-type: none"> - Disciplinary or legal investigations of members of staff or the Trust. - Processes for identifying any improper conduct. - Serious incident reports.

FOI section	Reason for exemption
Section 32 Information contained in court records	Information that we hold that was created explicitly for or was used in any court proceedings.
Section 36 36(2)(b)(i)*, (b)(ii)* and (c)* Free and frank discussion and the effective conduct of public affairs	Exemption may only be considered if the Trust's qualified person (Chief Executive) has provided a written opinion that disclosing the information would prejudice the Trust's affairs. Information discussed could include: <ul style="list-style-type: none"> - Matters in the initial stages of enquiry. - Early stages of strategic thinking. - Sensitive 'live' issues. - Draft minutes of meetings. - Recommendations from external organisations. - Professional advice obtained. - Options papers. - Discussions about future public consultations.
Section 38 Health and safety	Matters in relation to the health and safety of staff members, service users, carers or other members of the public.
Section 40 40(2) Personal data	Information containing the personal data of including staff members, service users, carers or other members of the public where the disclosure would not be fair to that person. This exemption only applies to the living, and consent to the disclosure being considered will not have been given and that the other legal bases for disclosure, as set out in the Data Protection Act, will need to be considered.
Section 41 Information provided in confidence	Information provided in confidence from another person or organisation, if releasing that information would lead to a claim for breach of confidence.
Section 42* Legal professional privilege	Legal advice including communications with law firms.
Section 43* 43(2)* Commercial interests	Disclosure of the information would be likely to damage the Trust's commercial interests or those of a third party. The Trust must be able to demonstrate exactly how the requested information would prejudice the Trust's or another party's interests.
Section 44 Prohibitions on disclosure	Information which is prohibited to be disclosed by law, stating which law prohibits the release of the information and why.

* Exemptions subject to the public interest test.