

## Board of Management

<b>Date of Meeting</b>	<b>Wednesday 21 June 2017</b>
<b>Paper No.</b>	<b>BoM6-I</b>
<b>Agenda Item</b>	<b>13</b>
<b>Subject of Paper</b>	<b>Board of Management Publication of Papers</b>
<b>FOISA Status</b>	<b>Disclosable</b>
<b>Primary Contact</b>	<b>Paul Clark; College Secretary/Planning</b>
<b>Date of production</b>	<b>5 June 2017</b>
<b>Action</b>	<b>For noting</b>

### Recommendations

1. The Board of Management notes the guidance on the publication of Board papers.

## **2. Purpose of report**

This guidance was developed by the CDN Secretary to the Board Network following the Audit Scotland review and report on the compliance of colleges with the Code of Good Governance with respect to the publication of Board papers.

## **3. Context**

3.1 Audit Scotland reported in 2016 that nearly all colleges fell short of full compliance with the Code of Good Governance with regard to the publication of Board papers.

3.2 The Secretary to the Board Network recognised that the Code of Good Governance (the “Code”), and the Audit Scotland (AS) Report (2016) were open to a degree of interpretation with regard to the publication of Board papers, referring to “prompt production, dissemination, and publication” and “appropriate timeframes”. The relevant sections of the AS Report and the Code are referenced.

3.3 The Network sought to provide guidance to Boards/Board Secretaries that reflected an agreed position which was compliant with the Code, and with Audit Scotland’s recommendations. This takes the form of a series of recommendations in response to a set of queries from Secretaries to the Board across the sector.

3.4 It was noted that there was a lack of clarity with regard to the applicable exceptions under FOI legislation, and the attached guidance provides a brief indicative summary of the principal exemption categories.

3.5 It should be noted that these exemptions protect the public interest, and that simply publishing all papers irrespective of this consideration, is not good practice.

3.6 In preparing this guidance, the views of Martin Fairbairn, Chief Operating Officer at the Scottish Funding Council, were sought.

## **4. Impact and implications**

4.1 The guidance provided is designed to encourage good practice, compliance, and a consistent approach for the sector. While there will be variations in the approaches taken by Colleges, this guidance reflects an agreed position within the interpretation of the Code and the AS Report. It is therefore intended as a reference document, rather than directing action.

**Appendix 1:  
Publication of Papers and Freedom of Information (Scotland) Act 2002;  
(CDN Board Secretary Steering Group, May 2017).**

# **CDN BOARD SECRETARY STEERING GROUP**

## **Publication of Papers and Freedom of Information (Scotland) Act 2002**

### **1 Introduction**

This paper provides recommendations for a way forward in relation to the publication of papers, to enable colleges to take a broadly consistent approach, and one that is manageable for Board Secretaries.

### **2 What does the guidance say we need to do?**

#### **2.1 Code of Good Governance for Scotland's Colleges**

“C7 - The board must ensure that its decision-making processes are transparent, properly informed, rigorous and timely, and that appropriate and effective systems of financial and operational control, quality, management of staff, risk assessment and management are established, monitored, continuously improved and appropriately impact assessed. This includes:

- a) the prompt production, dissemination and online publication of board/committee agendas, minutes and papers to the public
- b) every board meeting and every committee meeting having a well-structured agenda circulated timeously in advance
- c) the retention of key documentation which help justify the decisions made by the board and its committees.”

#### **2.2 Audit Scotland 2016 Report**

Audit Scotland also recommended in its 2016 report that colleges should:

- make agendas, supporting papers and minutes (subject to confidentiality issues) for board and committee meetings publicly available within appropriate timeframes.

### **3 What is a reasonable for us?**

The issue of when papers should be published has been discussed previously amongst Board Secretaries and there is general agreement that agendas can be published in advance, but that papers should not be published until after a meeting has taken place.

#### **Recommendation:**

- Agendas are published one week in advance of a meeting.
- Minutes are published within one week after they have been approved.
- Relevant papers/reports are published within one week of a meeting (but are circulated to all members and any other attendees one week in advance).

#### **4 How long should papers remain on the website?**

Some Board Secretaries have commented that adding significant amounts of papers to their websites may be problematic. How long is it likely to be that papers are in the public interest?

**Recommendation:** To publish papers for current academic year + 1 previous year as a minimum. Where Colleges chose to remove older papers, a statement could also be added to the website advising older papers may be available upon request.

#### **5 Which Committees should publishing apply to?**

**Recommendation:** Publish as many papers as possible for the Board and all Committees.

#### **6 Who should decide what papers should be published, withheld or redacted?**

**Recommendation:** This decision will need to be taken by each College separately, based on arrangements and structures within their own organisation. The Board Secretary will normally wish to have a role in determining what Board level information is published. The presumption should be that all papers will be published in full unless there is good reason not to do this.

#### **7 Reviewing papers**

There was a suggestion that papers should be regularly reviewed in order that information could be released into the public domain when it is no longer confidential. This would be very time consuming and a never ending task.

**Recommendation:** Papers should be published releasing as much information as possible. Rather than reviewing information regularly, a statement could be added to the website advising that information may become available when it is considered to no longer be confidential and if someone wishes to see information, they should make a request where full consideration will be given, in accordance with FOI/DPA/other relevant policies.

#### **8 What should be withheld/redacted?**

Remember that FOI always has a presumption in favour of disclosure. As many papers as possible should be published. Wherever possible, confidential information should be redacted rather than a paper withheld in its entirety. It is likely that individual Colleges need to consider their own papers and seek guidance where necessary.

## 9 Some exemptions that may apply

Please note that these exemptions are only indicative and it is important always to consider all provisions of the legislation prior to making a decision to publish, redact or withhold information. The examples suggested below are only indicative and there may be exemptions that apply more often than others.

- **Otherwise accessible** (S25), eg information already on College's website; background briefing papers for Board (such as Code of Good Governance, Ministerial Guidance, SFC circulars, Financial Memorandum, etc)
- **Due for future publication** (S27), eg Annual Accounts, draft Strategic Plan, draft Regional Outcome Agreement.  
(NB Information must be due to be published within 3 months of information being requested.)
- **Information that may prejudice the conduct of public affairs** (S30)  
Exemption applies if
  - Likely to inhibit substantially free and frank provision of advice, or exchange of views for purposes of deliberation; or
  - Prejudice substantially effective conduct of public affairs(NB Substantial Prejudice and Public Interest tests apply)
- **Commercial Interests** (S33)  
Exemption applies if
  - Information is a trade secret
  - Its disclosure would prejudice substantially the commercial interests of any person (including the public authority)
- **Confidentiality** (S36)
  - If a claim of confidentiality of communications could be maintained in legal proceedings  
Public Interest test applies
  - If obtained by SPA from another person and disclosure would constitute a breach of confidence  
Absolute exemption
- **Personal information** (S38)
  - If personal data of which the applicant is the data subject –  
Absolute (should be processed under Data Protection Act)
  - Personal information about a living person – subject to conditions  
Absolute

**10 Should we make exemptions clear when publishing papers?**

**Recommendation:** Agendas should be clearly marked to state which papers are in the public domain and which are not. It is probably not desirable to state which exemptions apply when publishing, although if a request for information is received, then that will require consideration then. This approach allows Colleges to consider which exemptions are valid at the time a request for information is received, as this may change, e.g. in relation to time sensitive information.

**May 2017**