

BRENT HOUSING PARTNERSHIP BOARD

Meeting: Board Meeting	Date: 15th December 2011
Report Author: Linda Footer – Head of Corporate Services	Title: Treatment of Confidential information
Contact Officer: Linda Footer x 2356	Classification: For Decision
Contains Private and Confidential Information:	NO

1. Matters for Consideration

Exempt information under the Freedom of Information Act 2000

- 1.1 Since its inception in 2002, BHP has always had an open policy on minutes of board meetings. All minutes of board meetings have been published on BHP's website available for viewing by members of the public. This now needs to be reviewed by the Board to ensure that sensitive personal data which may be exempt under the Freedom of Information Act 2000 (FOIA) is not disclosed in the publishing of such minutes.
- 1.2 It is necessary for the Board to be made aware of and make decisions in some personnel matters which are outside the normal remit of the Head of Service or Chief Executive. It is important that those discussions and decisions by the Board are minuted for our records but BHP as an organisation must be mindful of the rights and privacy of individuals which is documented in the Data Protection Act 1998 (DPA) balanced against the principles contained in the FOIA.
- 1.3 BHP falls within the FOIA under the section 'General Right of Access to Information held by Public Authorities' by virtue of the fact it is a wholly owned company of the local authority Brent Council. This is referred to in Schedule 1 of the FOIA.
- 1.4 Section 36 of the FOIA also provides an exemption for information where disclosure would or would be likely to 'inhibit the free and frank provision of advice or exchange of views or otherwise prejudice the effective conduct of public affairs'.

Non disclosure of personal information

- 1.5 We recently had cause to remove two sets of minutes from our website due to reference to an individual who although not named in the minutes, the person's identity could be easily established through reference to their post title.
- 1.6 According to guidance on exemptions under the FOIA an underlying principle is that 'the disclosure of such information will likely be unfair if it comprises information that

individuals will regard as the most private. This means that in the majority of cases it will be in the reasonable expectation of the individual that such information will not be disclosed. In assessing fairness, authorities should consider the likely consequences of disclosure in each particular case. Personal information should not be used in ways that have unjustified adverse effects on the individuals concerned.'

- 1.7 Because BHP falls within the 'General Right of Access to Information held by Public Authorities' it is not sufficient for BHP to have a blanket policy on non disclosure of personal information. As well as determining 'fairness', when deciding to publish information on any individual BHP must take into consideration the following which is explained in more detail under the following heading in guidance issued by the Information Commissioner's Office attached at Appendix A:
- the possible consequences of disclosure on the individual;
 - the reasonable expectations of the individual, taking into account expectations both at the time the information was collected and at the time of the request;
 - the nature of the information itself;
 - the circumstances in which the information was obtained;
 - whether the information has been or remains in the public domain;
 - the 'freedom of information' principles of transparency and accountability; and any legitimate interests in the public having access to the information relevant to the specific case.
- 1.8 The above conditions described in 1.7 and 1.8 are only two of a variety of tests which have to be performed to decide whether personal information can or should be disclosed. There are further tests which have to be applied for example to establish whether the disclosure is necessary for the legitimate interests of the public.
- 1.9 Legislation on the disclosure or non disclosure of information is extremely complex. Guidance has been produced on the Data Protection Act which is itself a 174 page document.

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- 1.10 There are other matters arising at board or other meetings where an open and frank exchange of views by those attending may be inhibited if they were aware that the details of those meetings were to be disclosed. There are also reports presented at board and other meetings for example contracts being tendered, audit reports and loan agreements which have appeared as confidential reports and therefore historically although minuted, the minutes exclude details which are considered confidential in nature. Some organisations, for example schools in Brent, have a system where they fully minute all the discussions but the minutes are classified as either Part I or Part II where only Part I minutes are disclosed to the public and Part II minutes are withheld from public access. Other organisations use a system of 'redaction' which gives the option to select part of a document or to blank out personal details from a document before disclosure.

Freedom of Information Requests

- 1.11 From time to time there are requests from the public for BHP to disclose information to the public. At the time of writing this report a request has come through for the disclosure of minutes of board meetings and board reports for the last 3 years, and information concerning the amount of expenses or allowances being paid to board members. Such requests are always handled by BHP's in house lawyer who determines whether disclosure is allowed. However it would be unreasonable to expect BHP's in-house lawyer to read through the minutes of meetings and confidential board reports over the last 3 years to determine whether there is information which should or should not be disclosed.

'Qualified Person' to determine exemption from publication

- 1.12 Under Section 36 of the FOIA, each Public Authority must have a 'Qualified Person' to decide whether the exemption (in the case of disclosure of information which would inhibit the free and frank exchange of views or prejudice the effective conduct of public affairs'. For Local Authorities (BHP comes under this section by virtue of being a wholly owned local authority company) a qualified person is either a Minister of the Crown or a person authorised as the 'qualified person' by a Minister of the Crown. This is apparently not the same as a Freedom of Information Officer.
- 1.13 BHP's Head of IT and Business Support is registered with the Information Commissioner as a Data Controller and at the time of writing this report, it will need to be clarified whether this is the same as a 'Qualified Person' who has responsibility for ensuring that information under Section 36 of the FOIA is exempt from disclosure.

The future treatment of confidential information

- 1.14 There is more work to be done to determine how confidential information will be treated in the future and it is recommended that in addition to determining whether BHP will adopt a Part I and Part II minute system or a 'redaction' system and determine who is the 'Qualified Person' to make decisions about exempt information, BHP should also according to the FOIA have a Publication Scheme which informs the public about what information will be disclosed to them. There are model Publication Schemes available and the Council have one in place which BHP could easily adopt for our business purposes.

2. Financial and/or Legal Implications

- 2.1 BHP have a legal duty to comply not only with the Data Protection Act 1998 but also the Freedom of Information Act 2000 and advice on this will be sought from the Council's Legal Department who have much experience with the broader issues mentioned in this report regarding the disclosure of information.

3. Equality Analysis

- 3.1 Attached as Appendix B.

4. Recommendations

4.1 The Board is recommended to:

- a) Agree to a review of how Part I and Part II minute systems operate in practice in other organisations and report back to the board for a decision on whether to adopt such a scheme.
- b) Agree that BHP will determine a 'Qualified Person' as described in Section 35 of the Freedom of Information Act and notify the Board accordingly as to how this person will carry out their duties in relation to the treatment of exempt information.
- c) Agree that BHP will present a report to the Board at the next Board meeting on a Publication Scheme in accordance with the requirements under the Freedom of Information Act.

5. Access to Information

5.1 No restrictions apply