

Committee(s) Policy & Resources Court of Common Council	Dated: 17 March 2016 21 April 2016
Subject: Access to Information	Public
Report of: Town Clerk, Remembrancer and Comptroller & City Solicitor	For Decision

Summary

The purpose of this report is to review the application of The Local Government (Access to Information) Act 1985 (the Act) by the City Corporation to its non-Local Authority, Port Health and Police Authority meetings and functions (referred to below collectively as the 'local authority' functions). The Act affects two principal areas, namely, the public's right of access to meetings and papers and the rights of Members to obtain information about the City Corporation's work.

In 1986, the Court of Common Council agreed that the Act should be applied to meetings of the Court, its Committees and Sub-Committees as well as the functions of committees whether they be financed out of Rates (now City Fund), City's Cash or Bridge House Estates.

The continued treatment of the City Corporation's non-local authority business under the Act is confusing and bearing in mind that since 1986 Parliament has specifically distinguished between the Corporation's local authority and other functions in local government legislation, we believe that the existing policy should change so that the statutory provisions are applied to the City Corporation in its capacity as a local authority. This will provide clarity in demarcating the field of application of the legislation to the various aspects of the City Corporation's activities. Such clarity is desirable on grounds of good corporate governance.

In practice, the City Corporation's local authority business will be unaffected. As to the City Corporation's non-local authority business, the expectation of openness will remain as a matter of policy but on the basis that this recognises (as the Freedom of Information Act recognises) that there will be cases where the statutory rights of entitlement of access to information will not be applied to non-local authority functions; to do so would be inconsistent with the general approach to access applied by other organisations exercising similar functions.

In light of this, it is recommended that the City Corporation should adopt the principle of voluntarily publishing dates of its strictly non-local authority Committee or Sub-Committee meetings and allow public access to them and to any agendas or reports etc for items of business that the City Corporation considers should be publicly available. It should, however, be made clear that such access is discretionary and not as a matter of right under legislation.

Recommendation: It is recommended that:

- subject to the concurrence of the Court of Common Council, the provisions of The Local Government (Access to Information) Act 1985 should no longer be treated as extending to the City Corporation's non-local authority functions with effect from 1 May 2016;
- the provisions of Standing Order Nos. 4 & 32 be amended so as to make clear that their provisions apply only to the City Corporation's local authority activities and business and all references to its non-local authority and non-police authority functions are removed (see Appendix 1 for revised wording); and
- approval be given to the principle of voluntarily publishing dates of its strictly non-local authority Committee or Sub-Committee meetings and of allowing public access to them and to any agendas or reports etc for items of business that the City Corporation considers should be publicly available, on the basis that such access is discretionary and not as a matter of right under legislation.

Main Report

Background

1. The purpose of this report is to review and clarify the application of The Local Government (Access to Information) Act 1985 (the Act) by the City Corporation to its non-local authority, meetings and functions. The Act affects two principal areas:

- The public's right of access to meetings and papers; and
- The rights of Members to obtain information about the City Corporation's work.

2. The extent of the Act is wide-ranging and includes the right for the public to attend meetings of the Court, Committees or Sub-Committees, provision for deciding whether a report or part of it can be taken in private session and the right to exclude the public from a meeting.

3. In 1986, the Court of Common Council was advised that the Act should be applied to meetings of the Court, its Committees and Sub-Committees as well as the functions of committees whether they be financed out of Rates (now City Fund), City's Cash or Bridge House Estates. This advice was doubtless based on the fact that the Act did not make any distinction between the City Corporation's various capacities, as was the practice at the time. However, since 1986, Parliament has specifically distinguished between the Corporation's local authority and other functions in local government legislation, applying it only qua local authority or police authority as appropriate. A recent and highly relevant example is the Openness of Local Government Bodies Regulations 2014 which introduces a public right to film and record local government meetings and access to certain delegated officer decisions. These new rights are stated to apply to "the Common Council of the City of London in its capacity as a local authority or police authority". It is the view of the

Remembrancer and the Comptroller & City Solicitor that the 1972 Act should therefore be interpreted consistently with modern local government legislation.

4. The position is reinforced in Standing Order No.32 which stipulates that all meetings of Committees and Sub-Committees are open to the public unless there is confidential information to be discussed as defined in the Act or a resolution has been passed to exclude the public for the disclosure of exempt information again as defined in the Act. The Standing Order does, however, state that it shall also apply in respect of non-local authority and non-police authority functions unless a Committee or Sub-Committee determines otherwise. The current Standing Order does, therefore, provide an opportunity for discretion to be exercised but on a piece-meal basis.

Present Position

5. Since 1986, the provisions of the Act have been applied regardless of whether the matter or function under consideration falls within the City Corporation's remit as a Local Authority. For example, the Act is applied to meetings and business of the Boards of Governors of the three City School Boards which are not local authority activities and where there is no City Fund expenditure. Similarly, the Act is applied to meetings of The City Bridge Trust Committee which operates under charity law and, in fact, did not exist at the time of the passing of the legislation.

6. When the decision was taken by the Court to apply the Act in this manner, it was decided to run with the arrangements for a trial period of five years and then review the position. No record can be found of such a review having taken place and it is now timely for the way in which the City Corporation applies this legislation to be looked at with a view to the provisions of the Act no longer being applied to its non-local authority meetings and functions.

7. The provisions of the Act are specifically applied to determine whether an item contains exempt information and a motion is placed on the agenda to exclude the public from the meeting under the Act for those items. The grounds for exemption include the types of information set out below where, in all cases, the public interest in maintaining the exemption outweighs the public interest in disclosure:

- relating to any individual or which is likely to reveal the identity of an individual
- relating to the financial or business affairs of any particular person
- relating to any consultations or negotiations in connection with any labour relations matter (or contemplated consultations or negotiations)
- in respect of which a claim to legal professional privilege could be maintained in legal proceedings
- which reveals that the authority proposes to give under any enactment a notice under or by virtue of which requirements are imposed on a person or to make an order or direction under any enactment
- relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of a crime.

8. It is, of course, necessary for meetings of the Court, Committees and Sub-Committees where the business before them relates to the City Corporation's local

authority activities, to comply with the provisions of the Act in respect of those matters.

A Review of the Current Arrangements

9. In the light of the current position, your officers have reviewed the voluntary application of the Act across all of the City Corporation's activities. We consider that the continued treatment of the City Corporation's non-local authority business under the Act is confusing and, subject to Members' views, that the time is now right for the existing policy, agreed in 1986, to change so that the provisions of the Act are applied consistently with other contemporary legislation, in particular, the Freedom of Information Act and the Openness of Public Bodies Regulations 2014 and in accordance with the general principles of public law that decision makers must understand the law they are applying and give effect to it. This would enable a clear distinction to be drawn between the various aspects of the City Corporation's responsibilities.

10. In practice, this will mean no change to the current arrangements for the way in which the City Corporation's local authority business is dealt with, which will be compliant with the provisions of the Act. It will, however, mean that the City Corporation can deal with its non-local authority business with greater discretion in terms of public access and in accordance with the best practice of organisations in the sectors with which the City's non-local authority activities are most appropriately aligned.

Practical Implications

11. If the Act is no longer taken as applying to the City Corporation's non-local authority business, reports and other papers should be written ensuring clear separation between the various functions and distinguishing whether they concern local authority business (and, therefore, City Fund expenditure) or not. In some cases, for example, a property transaction involving both City Fund and non-City Fund, this may not be feasible and in those circumstances it would mean that the business being transacted would be subject to the provisions of the Act.

12. Currently meetings of the Court, its Committees, Boards and Sub-Committees are divided into two parts; the first being open to the public including public access to the various public minutes and reports and the second part (Part 2) is for business where the public are excluded from the meeting under the Act (see paragraph 7 above for the grounds for exemption).

13. The Court and a considerable number of Committees, such as Policy & Resources, Finance, Planning & Transportation, Police, Markets etc, regularly consider both local authority and non-local authority business at their meetings and, if a change is made not to apply the Act to non-local authority business, it will be necessary to re-structure the agendas. This will include a section for the consideration of public items clearly marked as to which category ie: local authority or non-local authority matters, a Part 2 section for the consideration of exempt local authority business and a further section for the consideration of non-local authority business with the public excluded. This has the added advantage, noted above, of emphasising in all cases in which capacity Members are acting i.e. local authority, private or charitable.

14. Currently, virtually all Committee, Board and Sub-Committee meetings are open to the public and have a section for public business including items such as the making of declarations by Members. For the majority of Committees and meetings, there would be little change with most continuing to conduct public business in accordance with the Act. For some meetings, however, where there is no local-authority business transacted, such as the Boards of Governors of the City's Schools or The City Bridge Trust Committee, it would be for those Committees to decide on disclosure subject to a presumption of openness which the City Corporation has a reputation for applying.

15. In such cases, the City Corporation should adopt the principle of voluntarily publishing dates of its strictly non-local authority Committee or Sub-Committee meetings and allow public access to them and to any agendas or reports etc for items of business that the City Corporation considers should be publicly available. It should, however, be made clear that such access is discretionary and not as a matter of right under legislation. There would be no need to justify the reason for treating a non-local authority matter as confidential. There may, however, be occasions when the City Corporation does not wish to publish the date or any of the reports etc for a non-local authority Committee or Sub-Committee meeting, nor allow public access, but this would be the exception rather than the rule.

16. Currently the timescales for the publication of agendas and reports etc for all City Corporation Committees and Sub-Committees is in accordance with the Act (ie: 5 clear working days before the published meeting date). It would be practical to maintain the same regime for agendas and reports etc regardless of whether they are for our local authority activities to ensure a consistent approach and Members having a clear understanding of when to expect their papers. Standing Order No. 33 currently makes provision for this.

17. It is proposed that, if agreed, the change should be implemented from 1 May 2016.

Rights of Access to Documents by Members

18. Standing Order No.45 deals with entitlement of Members to access documents and covers the position for both the City Corporation's local authority and non-local authority activities. The Standing Order was reviewed as part of the overall review of governance in 2011/12 and there are no proposals for the provisions to be amended in any way.

Conclusion

19. This report recommends that the current application of the Local Government (Access to Information) Act 1985 (the Act) by the City Corporation to its non-local authority, Port Health and Police Authority meetings and functions should cease. The voluntary application of the Act across all services and functions was implemented in 1986 and no record can be found of the position being reviewed since that time. The continued treatment of the City Corporation's non-local authority business under the Act is confusing and a change of approach would enable a clear distinction to be drawn between the various aspects of the City Corporation's responsibilities. This will require a change in the way in which the Court's and the various Committees

and Sub-Committee's business is conducted but, overall, the principle of openness and transparency should be maintained.

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Proposed revisions to Standing Order Nos. 4 and 32. (revisions to the Standing Orders are in *italics*):

4. Access to Court of Common Council Meetings

All meetings are open to the public unless:-

(a) confidential information as defined in Section 100A (3) of the Local Government Act 1972 is to be discussed; or

(b) a resolution has been passed to exclude the public as there is likely to be disclosure of exempt information as defined in Part 1 of Schedule 12A of the Local Government Act 1972; or

(c) a resolution has been passed to exclude the public in respect of information concerning non-local authority and non-police authority functions which the City Corporation decides not to disclose.

32. Access to Committee and Sub-committee Meetings

All meetings of Committees and Sub-Committees are open to the public unless:-

(a) confidential information as defined in Section 100A (3) of the Local Government Act 1972 is to be discussed; or

(b) a resolution has been passed to exclude the public as there is likely to be disclosure of exempt information as defined in Part 1 of Schedule 12A of the Local Government Act 1972; or

(c) a resolution has been passed to exclude the public in respect of information concerning non-local authority and non-police authority functions which the City Corporation decides not to disclose.