

Pro-active FOI publication: implications for the Management Board
[Revised version of paper originally circulated for July Board]

Note by the Head of the Office of the Chief Executive

Purpose

1. The purpose of this paper is to present proposals for the publication of Management Board agendas and papers, following the Commission's decision in principle to adopt a more proactive approach to FOI publication, in line with the House's new strategy.

Action

2. The Board is invited to agree that:
 - a. all Management Board agendas and papers should be published on the internet, apart from any section to which an FOI exemption applies;
 - b. it should be the responsibility of the person drafting a paper for the Board to identify any sections which are subject to an FOI exemption
 - c. agendas and papers should be published on the internet on the day of Board meetings
 - d. guidance should be given to other management groups to follow suit.

Background

3. The New Parliament: strategy for the House of Commons Service 2010-15 states "We will work at every level to earn respect for the House of Commons by: having an open and transparent way of doing business encouraging public participation in parliamentary business." Greater openness in relation to Management Board papers would be consistent with the spirit of the new strategy.
4. The Management Board is aware that as part of the new Information Security Policy agreed earlier in 2010, a new Protected Marking Scheme (PMS) will be introduced towards the end of the year. There will not be any necessary correlation between documents which are protectively marked and those containing information which may be subject to an FOI exemption. However, both the PMS and a more pro-active publication policy would require those originating documents to consider their status at an early stage in their production (to ask themselves "will this document be proactively published?" *and* "should it be protectively marked?"). The introduction of these two policies at around the same time may assist in the culture change which will be required to achieve their policy aims.
5. At its meeting on 21 June the Commission agreed to adopt an "overall policy... based on a presumption of disclosure while setting clear lines in relation to information that should be protected". More detailed proposals are being worked up for the Commission's 18 October meeting. In July, the House Committee in the Lords agreed a policy of publishing its agendas and non-reserved papers not less than 48 hours before meetings.

6. At present the Management Board publishes full minutes on the Parliamentary intranet and internet, excluding only sections to which a Freedom of Information (FOI) exemption applies. The Board's agendas and papers are not published. The publication policies of other groups and committees in the House of Commons and Lords differ widely (see Annex 2).

Publication of Management Board papers

7. The arguments for moving to a proactive publication policy include:
 - a. It is in line with proposed new "open and transparent way of doing business"
 - b. The Commission has agreed in principle to a more proactive publication policy
 - c. It would increase knowledge and understanding of the work of the Board among staff and Members, which will be particularly important as decisions are made in order to meet savings targets
 - d. It would increase knowledge and understanding of the House Administration among the press and public
 - e. It would reduce workload in responding to FOI requests as decisions would already have been made on whether papers were publishable.
8. There are also a number of possible disadvantages to moving to a proactive publication policy:
 - a. Board papers may become less frank in order to avoid disclosure of advice
 - b. There is potential for press and Member attention to Board papers with potential for reputational damage
 - c. Publication could give rise to further FOI requests for papers mentioned but not in the public domain.
9. Although to date this has not been tested, it is very likely that we would have to release any Management Board paper which was the subject of an FOI request, except where an FOI exemption applied. It is therefore proposed that the Board decide to publish its agendas and papers proactively. It will be important to communicate this change in policy clearly to staff before it is made. The Management Board is asked to agree that **all Management Board agendas and papers should be published on the intranet and internet, apart from any section to which an FOI exemption applies.**
10. The Board's example will set a positive precedent for second tier committees and groups, but – rather than assuming they will follow suit – it may be best to issue guidance that this is expected. (For bicameral groups, this will, of course, require Lords agreement.) **Does the Board wish to issue guidance that other management groups should follow similar practice on publication?**

Exemptions

11. Papers or sections of papers would be withheld only where an exemption under the Freedom of Information Act or data protection considerations applied. As a reminder the main exemptions likely to apply are:
 - *Section 22 (Information intended for future publication)*: Use of this section has to be justified on the grounds that "it is reasonable in all the circumstances" to withhold the information until publication. It can therefore

be difficult to justify the non-disclosure of information whose publication may be several months away. The exemption only applies if a decision has already been taken to publish the information at the time of the request, although a definite publication date need not have been decided. The exemption is subject to the public interest test.

- *Section 24 (National security)*
- *Section 34 (Parliamentary privilege)*: Exemption of an item of information from disclosure is necessary to avoid an infringement of parliamentary privilege (no public interest test).
- *Section 36 (Prejudice to effective conduct of public affairs)*: Information is exempt if its disclosure: “would, or would be likely to, prejudice-
the free and frank provision of advice, or
the free and frank exchange of views for the purposes of
deliberation,
or would otherwise prejudice, or would be likely otherwise to prejudice,
the effective conduct of public affairs.” (no public interest test with Speaker’s certificate)
- *Section 38 (Health and Safety)*
- *Section 40 (Personal information)*
- *Section 41 (Information provided in confidence)*: Information provided by a third party to the House in confidence whose disclosure would constitute a breach of that confidence, is exempt.
- *Section 42 (Legal Professional Privilege)*
- *Section 43 (Commercial interests)*: Information whose disclosure “would, or would be likely to, prejudice the commercial interests of any persons (including the public authority holding it)” is exempt. This exemption is subject to the public interest test.

12. It is proposed that it should be the responsibility of the person drafting a paper for the Board to identify any sections which might be subject to an exemption, and to identify the relevant exemptions in footnotes. It should be the responsibility of the Board secretariat to challenge in any instance where an exemption seemed unjustifiably claimed. The Management Board is asked to agree that **it should be the responsibility of the person drafting a paper for the Board to identify any sections which are subject to an FOI exemption.**

Timing

13. It is proposed that agendas and papers should be published on the intranet and internet on the day of the Board meeting. This would give Board members an opportunity to see the papers, and for any errors to be identified, before publication. The Management Board is asked to agree that **agendas and papers should be published on the internet on the day of Board meetings.**

14. In some cases an exemption from publication will be time limited. The Board secretariat will make a note of papers which can be released at a later date and publish these on the internet at the appropriate time. The exemption of any paper from publication would always be reviewed if an FOI request were received which related to it.

15. The first annex to this paper sets out two examples of the Management Board papers received for recent meetings and how they might have been treated under these proposals.
16. The second annex to this paper shows the current publication practices of other House of Commons and Lords committees and groups.

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Annex1 : Examples of policy in relation to May and June Management Board papers

May

MB2010.P.47– Actions from previous meetings [Publish]
MB2010.P.48 – Balanced Scorecard [Publish in part – the revised scorecard developed in the Autumn will be designed so that some can be published – some might be exempt under s. 36]
MB2010.P.49 – 2009/10 Stewardship Report [Publish perhaps with some s.36 exemptions]
MB2010.P.50 – Organisational structure [exempt s.36]
MB2010.P.51 – Delivering business change through ICT in 2010/11 [Publish]
MB2010.P.52 – Benefits Delivery [Publish]
MB2010.P.53– The new strategy: next steps [Publish]

To take note:

MB2010.P.54 – The new Remedies Directive and the House of Commons [Publish]
MB2010.P.55 – Independent Parliamentary Standards Authority: update [Publish]

June

MB2010.P.56 – Actions from previous meetings [Publish]
MB2010.P.57 – Balanced Scorecard [Publish in part – the revised scorecard developed in the Autumn will be designed so that some can be published]
MB2010.P.58 – Savings Programme: HR mechanisms [exempt s.36]
MB2010.P.59 – Band A-E Pay: Options for Addressing Areas of Business Risk ('Hotspots') [temporarily exempt until decision announced s.36]
MB2010.P.60 – Developing a strategic plan [Publish]
MB2010.P.61 – Strategy for Public Engagement [Publish]
MB2010.P.62 – Information Management [Publish]
MB2010.P.64 – Risk management project [Publish]

To take note:

MB2010.P.65 – 2010 Members' Survey of Services [Publish]
MB2010.P.66 – House of Commons HR and finance programme [Publish]
MB2010.P.67 – Records Management health-check [Publish]

Annex 2: Publication practices of other Parliamentary committees and groups**House of Commons**

Committee	Agendas	Minutes	Papers
Commission/MEC	Not published	Decisions published	Not published
Audit	Not published	Internet	Not published
Administration	Not published	Notes of discussions published	Not published
Finance and Services	Not published	Decisions published	Not published
Members Allowances	Not published	Formal minutes published	Not published
Other Select Committees	Not published	Formal minutes published	Not published
PEB	Not published	Intranet	Not published
PICTAB	Not published	Intranet	Not published

House of Lords

Committee	Agendas	Minutes	Papers
House	Internet	Internet	Internet
Audit	Not published	Previously agreed to publish on internet but yet to do so	Not published
Administration & Works	Intranet	Intranet	Not published
Information	Intranet	Intranet	Not published
Refreshment	Intranet	Intranet	Not published
Works of Art	Not published	Intranet	Not published

The table reflects the present position in the Lords but all domestic committees will publish agendas and (redacted where necessary) minutes on the internet by the end of the year.