



Quick Read - Confidentiality



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This **Quick Read** has been written to help Academy Councillors (AC's) generate some of the questions they should be asking about confidentiality – what it is, when it applies and why it matters. This is not a guide to GDPR although the principles of GDPR must be applied to all of our governance activities at all times.

Agreeing that something should be kept confidential is more than just a 'rubber stamping' exercise, more than just keeping minutes on a confidential file and more than something we all nod through at the beginning of a board meeting. Agreeing that something is confidential should be done with good reason and not because people want to keep things quiet. Effective governance should always be open and transparent.

Governance boards e.g. those with a governance responsibility such as the trust board in a Multi Academy Trust, an Academy Council (AC) or committees thereof, are corporate bodies and therefore no individual Academy Councillor has any special powers, except for the Chair who may act on behalf of the AC (see the Trust's guidance on Chair's Power to Act). Decisions made by AC's and Trustees are reached by a majority of those present at the meeting sometimes by voting but always after discussion.

Much of the material that AC's and trustees receive as part of their role and subsequently 'hold' is potentially in the public domain e.g. the AC meeting minutes, either because the material has to be made available on the school website or it could be subject to disclosure under the Freedom of Information legislation. Some of this information is confidential and should always be treated as such.

There are some useful documents referenced throughout either as footnotes or at the end of the guide.

What is confidentiality?

Let's start with some of the statutory guidance¹ around confidentiality. Government guidance for maintained schools for example states the governing board may exclude any material relating to

- (a) a named person who works, or who it is proposed should work, at the school;*
- (b) a named pupil at, or candidate for admission to, the school; or*
- (c) any other matter that, by reason of its nature, the governing body is satisfied should remain confidential.*

The guidance clearly states that the governance board must, *as soon as reasonably practicable, make available for inspection by any interested person, a copy of the*

¹ The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013

agenda for every meeting; the signed minutes of every such meeting; and any report or other paper considered at any such meeting.

It seems reasonable to apply the same principles in an academy trust.

There is also clear guidance on what academies must publish online. This does change but at the time of writing this information could be found at <https://www.gov.uk/guidance/what-academies-free-schools-and-colleges-should-publish-online>

Principles of Confidentiality

The principles of confidentiality rest upon how well we all fulfil our first core function of governance and how we as AC's, clerks and Trustees foster the trust and goodwill that goes hand in hand with effective governance and ethical leadership. We need to encourage openness whilst at the same time balancing the need for confidentiality as the situation under discussion requires. This is not always easy. It is acknowledged that those AC's with children attending and family members working in the academy may sometimes find this difficult. It is worth remembering though that the AC is a corporate entity bound by the decisions it makes collectively even if we on an individual level do not always agree.

Remember adhering to the principles of confidentiality applies to all AC's.

Nolan Principles

These are some questions we could ask ourselves about the Nolan Principles which will in turn help us set the context for our decision making. You may of course have other questions.

Selflessness – *do we govern with the best intentions? What is our purpose?*

Integrity – *do we do the best we can do? What can affect our integrity?*

Objectivity – *are we aware of what influences us?*

Accountability – *this is our second core function but what does it really mean and feel like? And, how we fulfil are responsibilities?*

Openness – *are we as democratic as we say we are? Do we understand confidentiality and when it does and doesn't apply?*

Honesty – *this is not just about our third core function!*

Leadership – *do we understand what good leadership is and what it looks like?*

All schools and academies should have the highest regard for transparency and integrity and should be as open as possible about why they made the decisions that they made. Remember having well written minutes are essential to good decision making.

Code of Conduct

Every board should be ensuring that AC's sign the Trust's Code of Conduct every year and that they actually read it before they sign it; because once a board has agreed something is confidential it is the responsibility of each AC to respect that decision. The code should explicitly refer to confidentiality.

Minutes

Academy Council meeting agendas, both full board and committees, should always be in two parts with the items which are known to be confidential clearly identified. These are sometimes called Part One and Part Two. There should always be clear iteration between the two. Remember your minutes tell the 'story' of your governance activity.

In our Multi Academy Trust you will need to be continually aware of the Trust's Scheme of Delegation but as governance responsibility sits at trust board level there is a very high likelihood that they will require full oversight of all your minutes including confidential matters.

Part 2 minutes should be used only when appropriate. There is no need to have the Principal's Report on the Part 2 agenda. You can choose to identify elements of the Principal's Report as confidential in advance if for example you are discussing staffing matters. Remember Ofsted may wish to see these if the need arises e.g. they have governance as one of their key lines of inquiry.

The Freedom of Information Act 2000 gives rights of public access to information held by public authorities including schools. Guidance is available [here](#) and this document from the Information Commissioners Office is well worth a read. You must release minutes under the provisions of FOI Act unless any of the stated provisions apply, you cannot not release them just because you don't want to for any reason.

As stated earlier most minutes must be made available to any interested person and many schools have a copy for inspection in the reception area or in a file you can look at on request. Some schools publish them on the website but this is not mandatory. Apart from the 3 matters listed on page one above there may be other matters that the AC consider should remain confidential. Some governance boards keep conversations about restructures or building projects or bids confidential until options are agreed or restructures are costed. Your clerk should be able to advise you.

Confidential minutes should only be shared with those who need to see them – the rule of common sense applies. The Trust has guidance on who should withdraw from a meeting and when and therefore it applies that the minutes pertaining to that withdrawal should not be shared with those who were not there. These rules apply to committee meetings as well.

All non-confidential minutes should be shared with all the AC's.

It is your personal responsibility to ensure that you do not allow confidential material and minutes to ‘*fall into the wrong hands*’. Everyone is being encouraged to use school email addresses, use cloud-based storage systems, reduce what is printed out and to encrypt material as appropriate. This complies both with GDPR and with the need to act with caution about sensitive material.

The ESFA² may on occasion require urgent information from a trust, usually as a result of requests requiring the ESFA to fulfil its duties to provide information to the Secretary of State. The DfE’s Governance Handbook 2019 states that in such circumstances the ESFA *will act reasonably in its requests for information and will have regard to the costs and timescales of providing the information, and where appropriate to its confidentiality*. The ESFA discourages the use of confidentiality clauses.

Storage of confidential minutes

These should be kept separate from the minutes and are often printed on different coloured paper. If filed these must be at least password protected with access limited to those who need it. The Trust has some specific advice on this.

Meetings

AC meetings are not open to the general public, and those who are not ACs or Trustees, the Principal, someone from the Executive Leadership Team, a SET Representative or CEO, leaders presenting reports e.g. School Business Managers or SEN leads, the COO and CFO³, those in attendance by invitation e.g. observers such as NLG⁴, or the clerk cannot attend unless specifically invited. The clerk will need to ensure that they are clear as to who can vote on decisions if there are many people in the meeting. There may be times when observers are asked to leave a meeting – this is not a personal reflection on them but is in fact to ensure transparency – i.e. only those with governing responsibility are making the decisions.

AC’s or others with a pecuniary interest in any matter should leave the meeting at the point at which the matter is discussed; and this exit and return should be noted in the minutes and the time declared. This is why having a clear and up to date register of business and pecuniary interests is so important. Your clerk will be able to advise.

Most of what is said and discussed at a meeting is not recorded in the minutes because unless otherwise stipulated minutes are not verbatim records of the discussion. ACs and trustees need to be able to ruminate and consider the matters in front of them without fear.

² Education and Skills Funding Agency

³ Chief Operating Officer and Chief Finance Officer

⁴ National Leaders of Governance sometimes observe meetings as part of an External Review of Governance.

Chair's Actions

Some Chairs and Principals meet regularly to discuss a variety of issues. Sometimes there is no agenda to these meetings although there may be notes of the discussion taken by either party. These meetings are often confidential one to one conversations but should not take the place of AC decisions.

Chair's actions, i.e. that activities which chairs have undertaken because they are the chair, are sometimes confused with Chair's Powers to Act which are for urgent matters only.

Powers to Act should also not be used to make routine decisions outside of AC meetings; e.g. to make decisions which would normally be made by the Academy Council. Also, there are some decisions which cannot be made by the Chair alone; for example they cannot be delegated to one person and these are covered matters covered in the Trust's Scheme of Delegation and Articles of Association These include;

- approval of the budget
- the suspension of an AC

If you are on a board and the Chair routinely makes decisions outside of the board you are perfectly entitled to seek clarification.

That said some Chairs never use Chair's Powers to Act.

Post and Correspondence

AC's sometimes receive written communication e.g. letters from parents or staff. These should not be opened by school staff. This would protect the writer in the event of a complaint. The contact details – usually an email address for the Chair – should be published on the website. These should be school email addresses and not personal ones.

Emails – it is essential that you only send emails to those you intend to send them to, that you use bcc with caution and that you remain respectful at all times. Your emails may be subject to FOI requests. Always be careful when on social media – you are bound by the school's Social Media policy. You must not share your password with anyone and if you have a school email address this must be your primary source of communicating with other AC's and the school. It never advisable to share a personal email address and you should never use a shared email to communicate about governance. There is additional information on GDPR (General Data Protection Regulations available from the Trust's Data Protection Officer or DPO in the first instance) and all breaches of GDPR must be reported to the Academy Council.

Social Media

Remember that when using social media you always leave a digital footprint and that you are bound by both the school's and Trust's social media policy. If you are part of a closed social media group such as on Facebook e.g. School Governors UK then you must not reveal the school where you are an AC and you must respect the groups rules. Some groups are unmoderated and therefore it is even more important that you share appropriately. These groups are a useful source of information and advice but should always be treated with caution.

If you are part of an AC WhatsApp or email group for example you must make sure that all the ACs are included. Again you must respect the need for confidentiality and to be respectful.

If you are on Twitter – the same rules apply.

Whistleblowing

The DfE recommend that schools should base your whistleblowing procedure on the relevant local authority's procedure. In an academy it is the Trust. Read it. The AC should ensure that the latest Whistleblowing Policy is available to anyone who wants to read it. Some schools have a copy in the staff room for example. If someone wants to read this policy, they should be able to do so freely and without fear of judgement.

The DfE recommend that *you should appoint at least one member of staff and at least one AC who other members of staff can contact if they wish to report concerns. Your (AC) minutes should include a record of:*

- *your school's whistleblowing arrangements,*
- *the people in and outside the school that staff members should report concerns to.*

Any reported concerns must be treated confidentiality and reported appropriately. Further information from the DfE can be found [here](#). Whistleblowing is not something to be entered into lightly but that should not detract from the occasions when whistleblowing might be an appropriate course of action.

Academy Councillors need to be aware that personal grievances (e.g. bullying, harassment, discrimination) are not covered by whistleblowing law, unless your particular case is in the public interest. These should be reported under the school's grievance policy and the Academy Councillor/Council/Chair should seek the necessary advice if needed. Sometimes staff talk to Academy Councillors in confidence – remember that you may not be able to keep these confidences. The conversations which take place between the Chair and the Principal are privileged conversations and as long as the rest of the AC are aware that these conversations take place appropriately then there is no cause for concern. The relationship between

the Chair and the Principal is one of great importance and they should be able to talk freely.

Records Management

Some useful questions include;

- Are records routinely archived when no longer in use – do AC's ensure that information is secure and disposed of securely ie are they thinking about the confidentiality of the governance information they have?
- Does the school have a policy for managing both its physical and electronic records and does this cover governance? Confidential minutes?
- Is there a records retention and disposal schedule in place and are records (both physical and electronic) destroyed routinely in accordance with it? How long are minutes kept for?
- Are governors and trustees given advice on how to effectively manage their emails?

Remember...if in doubt seek advice from

1. Your Chair and Principal
 2. Your clerk
 3. The Trust's central team
- ✓ If you leave the AC then you may still be bound to keep matters confidential. Again, this depends on the issue.
 - ✓ As you have signed the Code of Conduct whilst you remain an AC or trustee you are bound by the expectations contained within the code.
 - ✓ Please note that this Quick Read is a starting point for your questions and discussions.

References

[Academy Model Memorandum and Articles of Association](#)

[Education and Skills Funding Agency](#)

[Governance Handbook March 2019](#)

[Information Commissioners Office - GDPR](#)

[The 7 Principles of Public Life - Nolan Principles](#)

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