

## Glasgow Colleges Regional Board

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| Date of Meeting     | Monday 26 March 2018                   |
| Paper Title         | FOI(S)A and Disclosure of Board Papers |
| Agenda Item         | 17                                     |
| Paper Number        | BM4-P                                  |
| Responsible Officer | Penny Davis, Board Secretary           |
| Status              | Disclosable                            |
| Action              | For Approval                           |

### 1. Report Purpose

- 1.1 To advise the Board of disclosure requirements arising from Freedom of Information legislation (FOI(S)A).
- 1.2 To provide a basis on which to agree an approach to the disclosure of Board papers and related information.

### 2. Recommendations

- 2.1. The Board is asked to:
  - **note** requirements and exemptions that may apply;
  - **approve** the proposed approach to disclosure of Board papers and related information.

### 3. Context

- 3.1. At its meeting on 18 December 2017 the Board discussed disclosure and agreed that it would benefit from guidance on those circumstances in which board papers should be disclosed or should be withheld from disclosure.
- 3.2. The Internal Auditor was present at the meeting on 18 December and was asked to consider ways in which GCRB could reduce the risk of inappropriate or damaging disclosure of information. He took the opportunity to raise the matter with Board Members in the one-to-one interviews that formed part of the external evaluation process. The proposed approach outlined under 4 below takes account of the Auditor's feedback.
- 3.3. As a public authority, GCRB is required to have in place a publication scheme aligned to the model scheme provided by the Scottish Information Commissioner. The publication scheme sets out what information an organisation will publish in nine classes, several of which are relevant to GCRB. For example, Class 1 includes information about the board including its governance structures and policies, Class 3 includes agendas, minutes and papers, and Class 4 includes budget and accounts information.

- 3.4.** The Model Publication Scheme was revised in 2017 and the GCRB executive is now reviewing the GCRB scheme to ensure it is up-to-date and compliant.
- 3.5.** Members of the public may also request information through a Freedom of Information Request.
- 3.6.** While there is a presumption in favour of disclosure, FOI(S)A sets out several grounds on which information may be exempt from disclosure. In brief, exemptions most likely to apply to GCRB information are:
- S25 – Information Otherwise Accessible
  - S27 – Information Intended for Future Publication
  - S30 - Prejudice to the Conduct of Public Affairs
  - S33 – Commercial Information
  - S36 – Confidentiality
  - S38 – Personal Information
- 3.7.** Most exemptions are qualified, which means that they are subject to the public interest test, that is, the Board must weigh the public interest against any reason for withholding information. If information is already accessible (S25), or disclosure would constitute an actionable breach of confidence (under S36) or would breach data protection legislation (under S38), the decision is not subject to the public interest test.

#### **4. Proposed GCRB Approach to Disclosure of Board Papers**

- 4.1.** GCRB currently takes a proactive approach to publishing Board and committee papers on its website promptly after meetings, in line with the relevant legislation and guidance. In the interests of improving practice further, and ensuring that Board Members are fully informed in making decisions about the disclosure of papers, it is proposed that:
- The Board confirms that its policy, consistent with FOI(S)A, is to disclose information except where an exemption applies.
  - The GCRB Publication Scheme is reviewed to ensure it reflects the updated Model Publication Scheme, and that current practice is reviewed to ensure it is compliant with the scheme.
  - All Board and committee papers include a recommended disclosure status and, where non-disclosure is recommended, any relevant exemptions are provided.
  - At each meeting, the Board or committee considers and agrees a position on which papers are non-disclosable.
  - In reaching a decision not to disclose, the Board or committee takes into account the Public Interest Test, where this applies.
- 4.2.** Notwithstanding the points above relating to disclosure of board and committee papers after a meeting has taken place, it is proposed that the Board also agrees that all papers are confidential prior to their consideration at the relevant meeting. This would help to prevent disclosure prior to the Board or committee having agreed its position on whether information should be disclosed, and is consistent with the Code of Conduct, which states that:

- *There may be times when you will be required to treat discussions, documents or other information relating to the work of the body in a confidential manner. You will often receive information of a private nature, or which is not yet public. You must always respect the confidential nature of such information, and comply with the requirement to keep such information private.*
- *It is unacceptable to disclose any information to which you have privileged access, for example, derived from a confidential document, either orally or in writing. In the case of other documents and information, you are requested to exercise your judgement as to what should or should not be made available to outside bodies or individuals. In any event, such information should never be used for purposes of personal or financial gain, or for political purposes or used in such a way as to bring the public body into disrepute.*

**4.3.** It is proposed that the Board's regulations are updated to reflect the agreed approach to disclosure of information.

## **5. Risk Analysis**

**5.1.** Adoption of an unambiguous and compliant approach to disclosure of information will help to mitigate *GCRB Risk 0003: The reputation of the College Sector in Glasgow is damaged as a result of adverse publicity*, and *GCRB Risk 0012: There is a breach of legislation/guidance/code of practice and this results in a failure of governance*.

## **6. Legal Implications**

**6.1.** There are no further legal implications associated with this report.

## **7. Resource Implications**

**7.1.** There are no further resource implications associated with this report.

## **8. Strategic Implications**

**8.1.** This report is not directly relevant to the Regional Strategic Plan, however, robust governance arrangements are the essential to the effective determination and delivery of GCRB objectives.