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| University Council cannot exclude public from meetings on basis of members needing ‘free and frank’ discussion |
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| Legislation Ombudsmen Act 1975, Local Government Official Information and Meetings Act 1987  Ombudsman Sir Brian Elwood  Case number(s) W45114  Date 2001 |

*Exclusion of public from part of meeting—adequacy of grounds for exclusion—free and frank expression of opinion not a sufficient basis to exclude the public—Local Government Official Information and Meetings Act 1987, s 48(1)(a)(ii)*

The complainant was a member of a University Council who was concerned at the adequacy of the grounds on which the Council voted to exclude the public from part of a Council meeting. The two agenda items in question were ‘Final report of the Deficit Reduction Project Committee’ and ‘Statement of Objectives 2001-2003’. The motions passed by the Council cited *‘commercial sensitivity and personal privacy’* as the reasons for excluding the public from its consideration of the first item, and *‘commercial sensitivity’* as the reason with respect to the second item.

At the Council meeting in question, the complainant asked why the Council was going into closed session to discuss the University’s deficit reduction document. He pointed out that the document was in the public domain, had been reported in the press, had been discussed in the public session of the Academic Board, and that there were no proposals to introduce any new information. In response he was told that members of the Council would be more inclined to have an open exchange about the document if the public was excluded. The complainant questioned whether this was sufficient reason to exclude the public, and noted that there were many members of the University community present who wished to witness the debate. He also noted that these concerns did not match the reasons for excluding the public given in the resolutions passed by the Council.

Commenting on the complaint, the Council explained that it had concerns that the views of its members and those of its senior management team on the report would be likely to prejudice the University’s commercial position. It also explained that Council members believed that for them to express their opinions and comments freely and frankly, their privacy ought to be protected.

However, section 48(1)(a)(ii) of the Local Government Official Information and Meetings Act, from which the Council derives its authority to exclude the public, does not identify "free and frank expression of opinions" as a ground on which the public may be excluded from the proceedings of a meeting. It was not accepted the privacy of Council members can be used as a reason to exclude the public where the privacy concerns relate solely to their ability to express free and frank opinions.

The Chancellor and Vice Chancellor of the University then undertook discussions with the complainant with a view to resolving his concerns. They acknowledged that the agenda items in question ought not to have been considered in the public excluded section of the meeting, and undertook to ensure that greater care would be taken in determining which items would be addressed with the public excluded.

The complainant was satisfied with this outcome, and the investigation discontinued on that basis.

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