

## Governance support resources

### Public excluded business

The board should pass a motion to exclude the public whenever it needs to protect the personal privacy of an individual or discuss sensitive issues such as tender documents.

Part 7 of the Local Government Official Information and Meetings Act 1987 (LGOIMA) Section 48 applies.

Public excluded meeting minutes are treated as confidential but can be the subject of a request under the Privacy Act 1993 or the Official Information Act 1982 (OIA).

#### Before the meeting

Any documents that are expected to contain sensitive information (e.g. applications for leave, letters of complaint) should be treated as public excluded, or 'in committee', documents. They may be distributed to trustees before a meeting, clearly marked as confidential or PEB (Public Excluded Business).

In the open meeting agenda these matters should be marked PEB and only state the type of issue to be discussed, e.g. "Personnel Issue PEB". This indicates to the community that the item will be discussed with the public excluded.

#### At the meeting

The wording for a motion excluding the public from meetings of the board is found in Schedule 2A of the LGOIMA.

The motion must include the general topic area to be discussed e.g. personnel, the reason for excluding the public e.g. to protect privacy of natural persons, and the related grounds under the OIA.

Commonly used grounds under the OIA that may be referred to in the motion are (paraphrased):

- To ensure maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
- To protect the safety of any person
- To protect the personal privacy of natural persons
- Legal privilege
- Fair contract negotiations
- Trade secret or unreasonable effect on a commercial activity

The requirement for 'full and frank discussion' is not a valid justification for excluding the public.

This motion requires a seconder unless it is moved by the Chairperson.

If the motion is passed by the majority of trustees, the board moves "in committee" and members of the public must leave the meeting room.

If the board wishes to have a member of the public present e.g. a NZSTA Employment Adviser to assist, a further motion should be put. The wording for this motion is in Schedule 2A of the LGOIMA:

"I move that \_\_\_\_\_ be permitted to remain at this meeting, after the public has been excluded, because of their knowledge of \_\_\_\_\_. This knowledge will be of assistance in relation to the matter to be discussed, is relevant to the matter because....."

This motion would be treated in the same way as the first motion.

The concept of the minute secretary (who is not a trustee) remaining in attendance while the public is excluded is not covered in law but is possible because of the language of the LGOIMA. In Schedule 2A the wording is "I move that the public be excluded from...". The minute secretary is not a member of the public, they are present as an employee of the board to do a particular task. They remain with the board when the public is excluded to continue the task they are employed to do. The only real requirement is that they must understand that as an employee they are bound by the same standards and requirements of confidentiality as everyone else present.

When the confidential board business is completed, the board resolves to move out of public excluded business.

The open meeting minutes need only record that the public part of the meeting resumed at XXX (time).

There is a common misconception that a board must repeat any motions while the public is excluded once it resumes in open meeting. This is incorrect and motions should usually be recorded and stay within the public excluded minutes.

### **After the meeting – Requests for information under the Privacy Act or OIA**

All paper work relating to public excluded business should be treated as strictly confidential. If a request is made for these minutes or documents then you must provide them. However, first you will need to decide if there is a reason under either the Privacy Act or the Official Information Act 1982 to withhold all or part of them, and that the reason outweighs the public interest in providing this information. Otherwise they should be treated as confidential at all times.



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