



CONFIDENTIALITY GUIDELINES

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Applicable Legislation	<i>Local Government Act 1999</i>

1. Purpose

The purpose of these Guidelines is to assist Eastern Health Authority (“EHA”) to comply with its obligations under its Charter (“the Charter”) and the Local Government Act 1999 (“the Act”) in relation to dealing with matters in confidence at Board meetings. These Guidelines intend to inform and educate the community regarding access to EHA meetings, minutes and other documents.

2. Guidelines

2.1 Public access to Board Meetings and Consideration of matters in Confidence

2.1.1 Clause 3.10 of the Charter provides that:

2.1.1.1 meetings of the Board of EHA must be conducted in a place open to the public; and

2.1.1.2 the Board may order that the public be excluded from attendance at any meeting in accordance with sections 90(2) and 90(3) of the Act.

2.1.2 Accordingly, Board meetings will be open to the public except where the Board considers it is necessary to exclude the public from its consideration and determination of a particular matter (i.e. where the need for confidentiality outweighs the principle of open decision making).

2.1.3 Pursuant to section 90(2) of the Act the Board may order that the public be excluded from attendance at a meeting to the extent (and only to the extent) that the Board considers it to be necessary and appropriate to act in a meeting closed to the public in order to receive, discuss or consider in confidence certain information that is listed under section 90(3) of the Act.

Procedure for Moving into Confidence at Board Meetings

- 2.1.4 Pursuant to sections 90(2) and 90(3) of the Act, the Board may only resolve to exclude the public from a meeting to consider the following information in confidence:
- 2.1.4.1 information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
 - 2.1.4.2 information the disclosure of which:
 - a. could reasonably be expected to confer a commercial advantage on a person with whom EHA is conducting, or proposing to conduct, business, or to prejudice the commercial position of EHA; and
 - b. would, on balance, be contrary to the public interest;
 - 2.1.4.3 information the disclosure of which would reveal a trade secret;
 - 2.1.4.4 commercial information of a confidential nature (not being a trade secret) the disclosure of which:
 - 2.1.4.4.1 could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
 - 2.1.4.4.2 would, on balance, be contrary to the public interest;
 - 2.1.4.5 matters affecting the security of EHA, members or employees of EHA, or EHA property, or the safety of any person;
 - 2.1.4.6 information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
 - 2.1.4.7 matters that must be considered in confidence in order to ensure that EHA does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
 - 2.1.4.8 legal advice;
 - 2.1.4.9 information relating to actual litigation, or litigation that EHA believes on reasonable grounds will take place, involving EHA or an employee of EHA;
 - 2.1.4.9.1 information the disclosure of which:
 - 2.1.4.9.2 would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of EHA, or a person engaged by EHA); and
 - 2.1.4.9.3 would, on balance, be contrary to the public interest;
 - 2.1.4.10 tenders for the supply of goods, the provision of services or the carrying out of works.

- 2.1.5 If the Board considers that the public ought to be excluded from the meeting in order to receive, discuss or consider in confidence any of the information listed above, it may formally resolve to exclude the public from the meeting for so long as the Board considers the particular agenda item. Where a resolution is passed in these terms, all members of the public present (including staff) must leave the room unless he/she is specifically named in the resolution as being entitled to remain in the meeting.
- 2.1.6 If the Board intends to consider multiple items in confidence, then the meeting must apply sections 90(2) and 90(3) on an item-by-item basis.
- 2.1.7 Once the Board finalises its consideration of a particular matter in respect of which it has resolved to consider in confidence, the public are permitted to re-enter the meeting. If there is a further matter that needs to be considered in confidence it is necessary to again undertake the process described above.
- 2.1.8 If the Board resolves to exclude the public in order to consider an agenda item in confidence this must be recorded in the minutes of the meeting. Pursuant to clause 3.10 of the Charter, the minutes must record the resolution relied upon to move into confidence and include reference to the specific ground(s) under section 90(3) of the Act that were relied upon for this purpose and the factual reasons relevant to the application of the ground(s) in the circumstances.

2.2 Public access to EHA Documents

- 2.2.1 Clause 3.11 of the Charter addresses public access to EHA's documents. It provides that a person is entitled to inspect (and to obtain a copy of for a fee) minutes of Board meetings, reports received by the Board and recommendations presented to the Board in writing and adopted by the Board but excluding any document (or part thereof) that:
 - 2.2.1.1 relates to a matter considered in confidence at a Board meeting; and
 - 2.2.1.2 the Board has ordered to be kept confidential.
- 2.2.2 The above provisions operate such that the Board can only resolve to keep documents confidential under clause 3.11 of the Charter where it has first resolved to consider them in confidence in reliance upon a ground under section 90(3) of the Act (i.e. a "two-step" process is required where the Board wishes to maintain documents considered in confidence at a Board meeting as confidential).
- 2.2.3 For the avoidance of doubt, the Board can simply resolve to consider a matter in confidence for discussions to take place, and may determine not to resolve to maintain the related documentation considered at the meeting as confidential.

2.3 Procedure for Ordering Documents to be Maintained as Confidential

- 2.3.1 Once discussion of a confidential matter has concluded, the Board will consider if it is necessary to make an order that a document associated with the particular matter (including minutes) remain confidential. If the Board determines this is appropriate it will resolve to make a confidentiality order to this effect in accordance with clause 3.11(c) of the Charter.
- 2.3.2 The resolution will include:

- 2.3.2.1 reference to the fact it is made under clause 3.11 of the Charter and the grounds under section 90(3) of the Act initially relied upon by the Board to consider the relevant matter in confidence;
 - 2.3.2.2 the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed; and
 - 2.3.2.3 where applicable, whether the power to revoke that particular order will be delegated to an employee of EHA and if so who or, whether the order may only be revoked by the Board.
- 2.3.3 For the purposes of fulfilling the requirements under paragraphs 3.5.2 and 3.5.3, the Board may simply resolve (on a case-by-case basis where it sees fit) that *“the power to revoke this order is delegated to the Chief Executive Officer of EHA (including any person acting in that office) and that the order will apply until the Chief Executive Officer (or any person acting in that office) determines to revoke the order”*.
- 2.3.4 Any order that has a duration of or continues in operation for more than 12 months will be reviewed at least once annually.
- 2.3.5 A confidentiality order made pursuant to clause 3.11 of the Charter will automatically lapse if the time or event specified in the order has elapsed or occurred (i.e. in these circumstances there is no need for the Board to resolve for the confidential order to be lifted).
- 2.3.6 Once an order has lapsed, the minutes and/or documents automatically become public and EHA will make this information publicly available as soon as practicable. This includes, where applicable, updating public minutes as necessary to include the portion of the minutes subject of the order to ensure access to it by members of the public in accordance with the Charter.
- 2.3.7 The Chief Executive Officer is responsible for ensuring all necessary steps are taken to ensure information that is subject of a confidentiality order that has lapsed or has otherwise been revoked is made accessible to the public.

2.4 Annual Review of Confidentiality Orders and Delegation to Revoke Order

- 2.4.1 EHA will undertake a review of confidentiality orders annually. For this purpose, EHA will maintain a register detailing all confidentiality orders made by the Board from time to time that specifies (where applicable):
- 2.4.1.1 the matter to which the order relates (including the relevant agenda item reference);
 - 2.4.1.2 the date the order was made;
 - 2.4.1.3 the grounds under section 90(3) of the Act initially relied upon by the Board to move into confidence to consider the matter;
 - 2.4.1.4 the duration of the order;
 - 2.4.1.5 the last review date and outcome;
 - 2.4.1.6 the next review date; and

- 2.4.1.7 the expiry date of the order or the date that the order is otherwise revoked and by whom (where applicable).
- 2.4.2 The purpose of the annual review is to:
 - 2.4.2.1 assess whether the grounds to maintain confidentiality in respect of a document are still relevant and if so, to record why and if not, to consider whether the order should be revoked (i.e. which is relevant if the terms of the order are that it operates until such time as it is revoked by the Chief Executive Officer); and
 - 2.4.2.2 determine, prior to the expiry of existing confidentiality orders, whether there is a need for a new confidential order to be made by the Board in relation to the information subject of the order (or part of it) and if so, to facilitate this occurring; and
 - 2.4.2.3 ensure information subject of a lapsed (or expired) order is accessible to the public.
- 2.4.3 If it is determined during an annual review that there are any items that require a new confidentiality order because the original order is about to expire, then the reviewer will prepare a report to the Board making recommendations with respect to each item to be retained in confidence. The Board must then determine (on an item by item basis) whether to remake a confidentiality order having regard to the grounds under section 90(3) of the Act. For this purpose, the Board must first resolve to move into confidence to consider the matter and where it determines to remake a confidentiality order to maintain the documents as confidential beyond the expiry date of the original order, the Board must resolve to make a new order to this effect in accordance with clause 3.11(c) of the Charter (as per the procedure set out in paragraphs 3.4 and 3.5 above).
- 2.4.4 For the avoidance of doubt, the Board can only make a new order to maintain documents as confidential provided that the original confidentiality order that applies to the document has not lapsed or been revoked.

2.5 Delegations Relating to Review of Confidentiality Orders

- 2.5.1 By adopting these Guidelines, EHA hereby resolves to delegate the following powers to the Chief Executive Officer of EHA (including any person acting in that office):
 - 2.5.1.1 the power to conduct the annual review of confidentiality orders made by the Board; and
 - 2.5.1.2 the power to revoke a confidentiality order made by the Board where the Chief Executive Officer sees fit, unless the terms of the order specifies that only the Board may revoke the order.

- 2.6 The Chief Executive Officer may subdelegate these powers to an employee of EHA where he sees fit.

3 Review and evaluation

These Guidelines will be reviewed at least once every two years. However, EHA may revise or review these Guidelines at any time (but not so as to affect any process that has already commenced).

4 Statement of Adoption

These Guidelines were adopted by the Board of EHA on 20 February 2019.