



NZSTA
e tipu e rea

Governance support resources

Public excluded business

School board meetings are, generally open to the public, however, there are occasions when the board needs to conduct its business in private. This is usually when it needs to protect the privacy of individuals or discuss commercially sensitive issues. At this time the board is required to formally exclude the public. It does this by resolution according to [Section 48](#) of the Local Government Information and Meetings Act 1987 (LGOIMA). The correct phrase used to describe board work done when the public has been excluded is 'public excluded business' (PEB) although "in committee" is sometimes used.

Public excluded meeting minutes are treated as confidential but can be the subject of an information request under the Privacy Act 2020 or the Official Information Act 1982 (OIA).

Before the meeting

Any board papers that contain sensitive information (e.g. applications for leave, letters of complaint) should be dealt with in PEB. Boards will develop their own ways of distributing these papers safely and they should be clearly marked as confidential/PEB.

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:

- 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 presiding member. If the motion is passed by the majority of board members, the board moves into PEB and members of the public must leave the meeting room.

The LGOIMA allows for members of the public who have information that might help the board to remain in the PEB meeting to deliver that information. Again, the board needs to formalise allow this by resolution. 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 board member) 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. There should be an understanding that expectations around integrity and confidentiality apply to the minute secretary as much as they apply to board members.

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 or OIA

All papers relating to public excluded business should be treated as strictly confidential. They should be securely stored in either hardcopy or digital form with access restricted to the board and other authorised people.

If a request is made for access to PEB minutes or papers, the board must determine which piece of legislation applies - either the [Privacy Act 2020](#) or the [Official information Act 1982](#). Following the applicable, legislated process, the board will determine whether to release all, part or none of the information requested and its reasons for doing so. NZSTA is able to assist boards should they receive requests for access to PEB information. Otherwise they should be treated as confidential at all times.



nzsta.org.nz



facebook.com/NZSTA1



twitter.com/NZSchoolTrustee

For further advice please contact the Advisory and Support Centre on 0800 782 435, option 1 or email govadvice@nzsta.org.nz