

Part 4

Section 5

Access to Information Procedure Rules

1. **Scope**

- 1.1 These rules apply to all meetings of the Council, Overview and Scrutiny Committees, Area Committees (if any), the Audit and Governance Committee, Regulatory Committees and public meetings of the Executive (together called 'Meetings').

2. **Additional rights to information**

- 2.1 These rules do not affect any more specific rights to information contained elsewhere in this Constitution or provided by the law.

3. **Rights to attend meetings**

- 3.1 Members of the public may attend all meetings subject only to the exceptions in these rules.

4. **Notice of meeting**

- 4.1 The Council will give at least five working days notice of any meeting by posting details of the meeting at the Council offices and on its website.

5. **Access to agenda and reports before the meeting**

- 5.1 The Council will make copies of the agenda and reports open to the public available for inspection at the Council offices at least five working days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the agenda.
- 5.2 Where reports are prepared after the summons has been sent out, the Head of Resource Management shall make each such report available to the public as soon as the report is completed and sent to Councillors.

6. **Supply of copies**

- 6.1 The Council will supply copies to any person on payment of a charge for postage and any other costs:
- (a) any agenda and reports which are open to public inspection;
 - (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and

- (c) if the Head of Resource Management thinks fit, copies of any other documents supplied to Councillors in connection with an item.

7. Access to Minutes after the meeting

7.1 The Council will make available copies of the following for six years after a meeting:

- (a) the Minutes of the meeting or records of decisions taken together with reasons, for all meetings of the Executive, excluding any part of the Minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- (b) a summary of any proceedings not open to the public where the Minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the Agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

8. Background papers

8.1 List of background papers

8.1.1 The Head of Resource Management will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his or her opinion:

- (a) discloses any facts or matters on which the report or an important part of the report is based; and
- (b) which have been relied on to a material extent in preparing the report.

8.1.2 The documents referred to in (a) and (b) above do not include published works or those which disclose exempt or confidential information.

8.2 Public inspection of background papers

8.2.1 The Council will make available for public inspection for six years after the date of the meeting one copy of each of the documents on the list of background papers.

9. **Summary of the public's rights**

9.1 A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and be available to the public at the Council's main offices.

10. **Exclusion of access by the public to meetings**

10.1 Confidential information - requirement to exclude public

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

10.2 Exempt information – discretion to exclude public

10.2.1 The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.

10.2.2 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in that Article 6.

10.3 Meaning of confidential information

10.3.1 Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.

10.4 Meaning of exempt information

10.4.1 Exempt information means information falling within one of the following 7 categories (subject to any condition).

CATEGORY
1. Information relating to any individual
2. Information which is likely to reveal the identity of an individual
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)

4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings
6. Information which reveals that the authority proposes – (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
QUALIFICATIONS
Information relating to the financial or business affairs of any particular person is not exempt if it is required to be registered under: the Companies Act 1985; the Friendly Societies Act 1974; the Friendly Societies Act 1992; the Industrial and Provident Societies Acts 1965 to 1978; the Building Societies Act 1986; or the Charities Act 1993. Information relating to proposed development for which the local planning authority may grant itself planning permission under regulation 3 of the Town and Country Planning General Regulations 1992 is not exempt. Information in one of the seven categories of exempt information which is not prevented from being exempt by either of the two points described above is exempt if the public interest in maintaining the exemption outweighs the public interest in disclosing it.

11. Exclusion of access by the public to reports

- 11.1 If the Head of Resource Management considers that a report or document contains confidential or exempt information he or she must mark the report or document 'Not for Publication' – together with the category of information likely to be disclosed.

12. Application of rules to the Executive

- 12.1 Rules 13-22 apply to the Executive and its committees. If the Executive or its committees meet to take a Key Decision then it must also comply with

Rules 1-11, unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A Key Decision is as defined in Article 11 of this Constitution.

This requirement does not include meetings, whose sole purpose is for officers to brief Councillors.

13. Procedure before taking Key Decisions

13.1 Subject to Rule 15 (general exception) and Rule 16 (special urgency), a Key Decision may not be taken unless:

- (a) a notice has been published on the List of Forthcoming Decisions in connection with the matter in question;
- (c) where the decision is to be taken at a meeting of the Executive or its committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

14. Forward Plan – The List of Forthcoming Decisions

14.1 Frequency and Timescale

The List of Forthcoming Decisions is prepared by the Leader and is published on a 4-weekly basis. Notice of a 'forthcoming decision' is required to be published on the List of Forthcoming Decisions at least 28 days prior to when the decision is due to be taken.

14.2 Contents

The List of Forthcoming Decisions will contain matters which the Leader has reason to believe will be subject of a Key Decision to be taken by the Executive, a committee of the Executive, individual members of the Executive, officers, area committees or under joint arrangements in the course of a discharge of an Executive function. It will also contain matters that may involve consideration of information of a confidential or exempt nature.

Each matter on the List of Forthcoming Decisions will comprise the following particulars in so far as the information is available or might reasonably be obtained:

- (a) the matter in respect of which a decision is to be made;

- (b) where the decision taker is an individual, his/her name and title, if any and where the decision taker is a body, its name and details of membership;
- (c) the date on which, or the period within which, the decision will be taken;
- (d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
- (e) the means by which any such consultation is proposed to be undertaken;
- (f) the steps any person might take who wishes to make representations to the Executive or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
- (g) a list of the documents submitted to the decision taker for consideration in relation to the matter.

15. **General exception**

- 15.1 If a matter which is likely to be a Key Decision or contain confidential or exempt information has not been published on the List of Forthcoming Decisions at least 28 days prior to when the decision is to be taken, then subject to Rule 16 (special urgency), the decision may still be taken if:
- (a) the decision must be taken by such a date that it is impracticable to defer the decision until it has been included on the next List of Forthcoming Decisions;
 - (b) the Proper Officer has informed the Chairman of a relevant Overview and Scrutiny Committee, or if there is no such person, each member of that Committee in writing, by notice, of the matter to which the decision is to be made;
 - (c) the Proper Officer has made copies of that notice available to the public at the offices of the Council; and
 - (d) at least 5 clear days have elapsed since the Proper Officer complied with (a) and (b).

Where such a decision is taken collectively, it must be taken in public.

16. **Special urgency**

- 16.1 If by virtue of the date by which a decision must be taken Rule 15 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the Chairman of a body making the decision, obtains the agreement of the Chairman of a relevant Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chairman of the Overview and Scrutiny Committee, or if the Chairman of the Overview and Scrutiny Committee is unable to act, then the agreement of the Chairman of the Council, or in his/her absence the Vice Chairman will suffice.

17. **Report to Council**

17.1 **When the Overview and Scrutiny Committee can require a report**

If the Overview and Scrutiny Committee thinks that a Key Decision has been taken which was not:

- (a) included on the List of Forthcoming Decisions; or
- (b) the subject of the general exception procedure; or
- (c) the subject of an agreement with a relevant Overview and Scrutiny Committee Chairman under Rule 16

the Committee may require the Executive to submit a report to the Council within such reasonable time as the Committee specifies. The power to require a report rests with the Committee.

17.2 **Executive's report to Council**

The Executive will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the written notice, or the resolution of the Committee, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual or body making the decision, and if the Leader is of the opinion that it was not a Key Decision the reasons for that opinion.

17.3 **Quarterly reports on special urgency decisions**

In any event the Leader will submit quarterly reports to the Council on the Executive decisions taken in the circumstances set out in Rule 16 (special urgency) in the preceding three months. The report will include the

number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

18. Record of decisions

18.1 After any meeting of the Executive or any of its committees, whether held in public or private, the Proper Officer or, where no officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as practicable. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

19. Executive meetings relating to matters which are not Key Decisions

19.1 The Executive will decide whether meetings relating to matters that are not Key Decisions will be held in public or private.

20. Decisions by individual members of the Executive

20.1 Reports intended to be taken into account

Where an individual member of the Executive receives a report that he/she intends to take into account in making any Key Decision, then he/she will not make the decision until at least 3 clear days after receipt of that report.

20.2 Record of individual decision

As soon as reasonably practicable after an Executive decision has been taken by an individual member of the Executive or a Key Decision has been taken by an officer, a record of the decision shall be made together with a statement of reasons for the decision and any alternative options considered and rejected. The provisions of Rules 7 and 8 (inspection of documents after meetings) will also apply to the making of decisions by individual members of the Executive.

21. Overview and Scrutiny Committees access to documents

21.1 Rights to copies

Subject to Rule 22.2 below, an Overview and Scrutiny Committee (including its Sub Committees) will be entitled to copies of any document which is in the possession or control of the Executive or its committees and which contains material relating to:

- (a) any business transacted at a public or private meeting of the Executive or its committees; or
- (b) any decision taken by an individual member of the Executive.

21.2 Limit on rights

An Overview and Scrutiny Committee will not be entitled to:

- (a) any document that is in draft form;
- (b) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise.

22. Additional rights of access for Councillors

22.1 Material relating to previous business

All Councillors will be entitled to inspect any document which is in the possession or under the control of the Executive or its committees and contains material relating to any business previously transacted at a private meeting unless (a) below applies.

- (a) it contains exempt information.

22.2 Material relating to Key Decisions

All members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Executive or its committees which relates to any key decision unless paragraph 22.1 (a) above applies.

22.3 Nature of rights

These rights of a Councillor are additional to any other right he/she may have.

22.4 Other rights to access information

Councillors do not have an automatic right to request to see any other information held by the Council but can usually make requests to see most other information that they are likely to want to see in accordance with following provisions set out in paragraphs 22.5 to 22.8 inclusive.

22.5 An information request equivalent to a request under the Freedom of Information Act 2000

- (a) Councillors have the same rights to the public to request certain recorded information from the Council. Councillors do not have to give a reason if making an equivalent request.
- (b) Only recorded information will be supplied and where the information requested is within the Council's possession or control. An information request does not mean that officers must present the data in any other alternative format or answer questions about the recorded information.
- (c) Exemptions under the Freedom of Information Act may apply to sensitive information and where applicable these exemptions will be maintained, subject to the provisions regarding statutory rights and common law 'Need to Know' access arrangements set out below.
- (d) If the information requested is available under Freedom of Information provisions and within the relevant costs limit for gathering the information (currently £450) then a Councillor will be provided with a copy for their personal use within the usual time limit for dealing with such requests.
- (e) Photocopying charges will be waived for Councillors if the Councillor certifies that their reason for their request is reason is connected with their councillor duties. This does not extend to Councillors making a request on behalf of their constituents.

22.6 A request made under a Councillor's Statutory Rights as a Councillor

- (a) All Councillors have a legal right to inspect Council documents relating to any business to be conducted at any meeting of the Council, Executive or Council committees.
- (b) All Councillors have this right, whether a Member of the Executive or committee or not. Councillors are entitled to documents which contain information which may includes some papers relating to the closed agenda, but not exempt information which generally applies to information about individuals or contractual matters, or industrial relations matters or legal advice.

22.7 A request under the “Need to Know” common law entitlement

- (a) Councillors also have a right under the common law to see Council documents if they have a reasonable ‘Need to Know’ in order to perform their duties as a Councillor. This right does not automatically extend to a right to be provided with a photocopy of all or part of any document.
- (b) These common law rights under ‘Need to Know’ do not amount to a roving commission for any Councillor to seek any document merely out of curiosity nor are Councillors entitled to any document if their motives are improper, ulterior or indirect, or if they are not asking for them in their capacity as Councillor.
- (c) A Councillor, as an elected representative, has a right to be kept informed of Council business and therefore has a prima facie right to inspect documents in the possession of the Council and has a ‘Need to Know’ in order to perform that role. The following ‘tests’ may prove helpful in establishing whether a Councillor has a ‘Need to Know’:
 - i) If the request is for a document relating to a matter likely to impact upon their ward where a Councillor has specified their reasons for believing that there could be an impact;
 - ii) If the request is for a document that relates to a report or the approved work programme of a particular committee to which the Councillor has been appointed and where the Councillor has specified the reason why they ‘Need to Know’. If a Councillor is not a committee member then s/he would need to demonstrate why sight of the document(s) is necessary to enable the performance of his/her duties as a Councillor.
- (d) Councillors must disclose any personal or prejudicial interests (as defined in the Code of Conduct) they may have in any related business matter when asking for documents under this provision.
- (e) ‘Need to Know’ requests will be considered by the Chief Executive/Chief Operating Officer and dealt with in accordance with the following process:
 - i) All requests from Councillors for documentation should be routed through the Chief Executive/Chief Operating Officer.

- ii) Councillors are requested to:-
- Be as specific as possible about the documentation that they wish to see;
 - Normally make the request in writing; and
 - State the reason for wanting the information, and the purpose to which it will be put.

[Note: This procedure is without prejudice to a Councillor's right under the Freedom of Information 2000.]

- iii) If appropriate, the Chief Executive/Chief Operating Officer will arrange for the information to be supplied as soon as possible. However, if the Chief Executive/Chief Operating Officer considers that to meet the request would not be justified because, the administrative cost would exceed the usual cost threshold applicable to the Freedom of Information Act, e.g. would require extensive and continuing computer runs, then alternative arrangements to try to meet the request will be considered. For instance, Councillors could be invited to inspect the relevant documents and the Councillor should indicate any part of a document requiring photocopying.
- iv) In circumstances where there are reasons why the Chief Executive/Chief Operating Officer considers that documents should not be disclosed and wishes confirmation of that view, then the matter should be referred to the Chief Executive.
- v) Where the Chief Executive/Chief Operating Officer has refused any 'Need to Know' request, the Councillor making the request shall have right to appeal to the Monitoring Officer for a review of the Chief Executive's/Chief Operating Officer's decision and the Monitoring Officer will conduct a review promptly and notify the Councillor of the outcome. In order to carry out the review the Monitoring Officer may make additional enquires of any Councillor, Chief Executive, Chief Operating Officer, other officer or affected external party.

22.8 Requirement to maintain Confidentiality of Information

- (a) All Councillors must acknowledge that the need to protecting the Council's interest is essential and therefore access to confidential

information must be controlled and restricted. All Councillors are bound by the Members Code of Conduct to comply with confidentiality rules set out in rule 3 of the Code.

- (b) The Code entitles the Council to impose its 'reasonable requirements' that will normally apply when a Councillor is given access to confidential or exempt information. The Monitoring Officer will determine the reasonable requirements that will apply and will issue guidance.
- (c) In most cases a requirement will be imposed that any copy of confidential or exempt information provided to an individual Councillor may not be removed from the Council's premises nor any further copy made or disclosed any other person.
- (d) In the event that a complaint is received that any Councillor has disclosed confidential or exempt information, the right to make any further requests under the 'Need to Know' provisions may be suspended by the Chief Executive in consultation with the Monitoring Officer pending the outcome of the determination of such complaint.

22.9 Complaints about breaches of confidentiality

If a complaint is received that a Councillor has disclosed confidential information, then the Council's Monitoring Officer shall be responsible for instigating appropriate procedures to determine whether there has been a breach of the Code of Conduct and the appropriate course of action to be taken against the Councillor.