

# Part 4(b) – Access to Information Procedure Rules

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## **Part 4(b) – Access to Information Procedure Rules**

### **1. Scope**

These rules apply to all meetings of the Council, Scrutiny Committees, the Standards Committee, the Audit Committee and Regulatory Committees (i.e. Development Control, Licensing, Appointments and Disciplinary, Appeals) and public meetings of the Executive (together called meetings).

### **2. Additional rights to information**

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

### **3. Rights to attend meetings**

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

### **4. Notices of meeting**

The Council will give at least five clear days notice of any meeting by posting details of the meeting at the Civic Centre, Southend-on-Sea the designated office.

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

The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least five clear days before the meeting. If an item is added to the agenda later, the revised agenda (where reports are prepared after the summons has been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to Councillors) will be open to inspection from the time the item was added to the agenda.

### **6. Supply of copies**

The Council will supply copies of:

- (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 Monitoring Officer thinks fit, copies of any other documents supplied to Councillors in connection with an item to any person on payment of a charge for postage and any other costs.

### **7. Access to minutes etc after the meeting**

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**

The report author 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/her opinion:

- (a) disclose 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 but does not include published works or those which disclose exempt or confidential information (as defined in Paragraph 10 below) and in respect of Executive reports, the advice of a political advisor.

### **8.2 Public inspection of background papers**

Background papers will remain available for public inspection for four years after the date of the meeting. Background papers for meetings of the Cabinet and its Committees will be published on the Council's website.

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

A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and available to the public at the Civic Centre.

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

### **10.1 Notice of Private Meetings of the Executive**

When the public are to be excluded from a meeting (or part of a meeting) of the Cabinet or a Cabinet Committee, a notice of intention to hold a meeting in private will be published on the Council's website (as part of the Forward Plan) at least 28 days before the date of the meeting.

The notice will state the reasons why the meeting (or part of the meeting) is to be held in private and how to make objections to this.

If objections are received then these will be considered by the Chief Executive in consultation with the Leader and a decision made whether the meeting (or part of the meeting) will be held in private. In the absence of the Chief Executive the matter will be dealt with by the Monitoring Officer. In the absence of the Leader the consultation will be with the Deputy Leader.

If the meeting (or part of the meeting) will be held in private then at least five days before the meeting a further notice will be published of the Council's intention so to do. The notice, which will go out with the agenda, will include a statement of the reasons why the meeting (or part of the meeting) is to be held in private, details of any objections made and the response to those objections.

### **10.2 Urgent Items at Private Meetings of the Executive**

If the urgency of a decision makes compliance with **10.1** impracticable, agreement will be sought from the Chair of the relevant scrutiny committee that the meeting is urgent and cannot reasonably be deferred. In the absence of the Chair of the scrutiny committee, the Mayor shall be asked for their agreement and, in their absence, the Deputy Mayor. If agreement is granted, a notice will be published on the Council's website and made available at the Council offices setting out why the meeting is urgent and cannot reasonably be deferred.

### 10.3 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.

### 10.4 Exempt information – discretion to exclude public

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.

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 Article 6 of the European Convention on Human Rights.

### 10.5 Meaning of confidential information

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.

### 10.6 Meaning of exempt information

Subject to the **conditions** detailed in 10.7 below, exempt information is defined in the Local Government (Access to Information) (Variation) Order 2006 (as amended) as information falling within any of the following categories:

	<b>Category</b>	<b>Conditions / Definitions</b>
<b>1</b>	Information relating to any individual	Conditions – see 10.7 below
<b>2</b>	Information which is likely to reveal the identity of an individual	Conditions – see 10.7 below
<b>3</b>	Information relating to the financial or business affairs of any particular person (including the authority holding that information).	1. Conditions – see 10.7 below. 2. Definitions – “financial or business affairs” includes contemplated as well as past or current activities.
<b>4</b>	Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or officer-holders under, the authority	1. Conditions – see 10.7 below 2. Definitions – “employee” means a person employed under a contract of service. “officeholder” means the holder of any paid office appointments to which are or may be made or confirmed by the authority or any Joint Board on which the authority is represented or by any person who holds any such office or is an employee of the authority “labour relations matters” are as specified in paragraphs (a) to (g) of section 218 (1) of the Trade Union and Labour Relations (Consolidation) Act 1992, i.e. matters which may be the subject of a trade dispute.

	<b>Category</b>	<b>Conditions / Definitions</b>
<b>5</b>	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	Conditions – see 10.7 below.
<b>6</b>	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.	Conditions – see 10.7 below.
<b>7</b>	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	Conditions – see 10.7 below.

## **10.7 Exempt Information – Conditions**

- (a) Information falling within Category 3 in 10.6 is not exempt information if it is required to be registered under
- the Companies Acts (as defined in Section 2 of the Companies Act 2006);
  - the Friendly Societies Act 1974;
  - the Friendly Societies Act 1992;
  - the Industrial and Provident Societies Acts 1965 (Co-operative and Community Benefit Societies & Credit Unions Act 1965) to 1978;
  - the Building Societies Act 1986 (and in this context, “registered” means recorded in the public file of the Building Society); or
  - the Charities Act 2011;
- (b) Information is not exempt information under any category in 10.6 if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.
- (c) Exempt information under any category in 10.6 (and which is not prevented from being exempt by virtue of (a) or (b) above) is exempt information if and so long, as in all the circumstances of the case, **the public interest in maintaining the exemption outweighs the public interest in disclosing the information.**

## **11. Exclusion of access by the public to reports**

If the monitoring officer thinks fit, the Council may exclude access by the public to reports which in their opinion relate to items during which, in accordance with Rule 10, the meaning is likely not be open to the public. Such reports will be marked “Not for publication” together with the category of information likely to be disclosed.

## **12. Application of rules to the Executive**

Rules 1 – 19 apply to the Executive and its committees (whether taking a key decision or any other decision) unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is as defined in Article 13.03 of this Constitution.

The Council's policy is that as far as reasonably possible meetings should be open to the public. It expects the Executive normally to follow this principle. This requirement does not include meetings, whose sole purpose is for officers to brief Cabinet Members.

## **13. Procedure before taking key decisions**

Subject to Rule 15 (general exception) and Rule 16 (special urgency), a key decision (see Article 13) may not be taken unless:

- (a) a notice (called here a Forward Plan) has been published in connection with the matter in question;
- (b) at least 28 days have elapsed since the publication of the Notice; and
- (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. The Forward Plan**

### **14.1 Period of Forward Plan**

Forward Plans will be prepared by the Leader to cover a period of four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.

### **14.2 Contents of Forward Plan**

The Forward Plan 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, or officers in the course of the discharge of an Executive function during the period covered by the plan. It will describe 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, their 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 is to be made;
- (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;
- (g) a list of the documents submitted to the decision taker for consideration in relation to the matter on which a key decision is to be made;
- (h) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from any document listed is available;

- (i) that other documents related to these matters may be submitted to the decision maker; and
- (j) the procedure for requesting details of those documents (if any) as they become available.

The Forward Plan must be published at least 28 days prior to the meeting of the Executive and will be published on the Council's website.

## **15. General Exception**

If a matter which is likely to be a key decision has not been included in the Forward Plan, 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 in the next Forward Plan and until the start of the first month to which the next Forward Plan relates;
- (b) the Monitoring Officer has informed the chair of a relevant scrutiny committee, and each member of that committee in writing, by notice, of the matter about which the decision is to be made;
- (c) the Monitoring Officer has made copies of that notice available to the public at the offices of the Council and on the Council's website; and
- (d) at least five clear days have elapsed since the Monitoring Officer complied with (a) and (b).

## **16. Special Urgency**

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 chair of the body making the decision, obtains the agreement of the chair of a relevant scrutiny committee that the taking of the decision is urgent and cannot be reasonably deferred. If there is no chair of a relevant scrutiny committee, or if the chair of each relevant scrutiny committee is unable to act, then the agreement of the Mayor, or in their absence the Deputy Mayor will suffice.

As soon as reasonably practicable after the decision maker has obtained agreement, in accordance with the above procedure, that the decision is urgent and cannot reasonably be deferred, the decision maker must make available a notice at the Council offices setting out the reasons that the meeting is urgent and cannot reasonably be deferred and publish the notice on the Council's website.

## **17. Report to Council**

### **17.1 When a Scrutiny Committee Can Require a Report**

If a scrutiny committee thinks that a key decision has been taken which was not:

- (a) included in the Forward Plan; or
- (b) the subject of the general exception procedure; or
- (c) the subject of an agreement with a relevant scrutiny committee chair, or the Mayor / Deputy Mayor of the Council under Rule 16

then 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, but is also delegated to the Monitoring Officer, who shall require such a report on behalf of the committee when so requested by the chair or any five members. Alternatively the requirement may be raised by resolution passed at a meeting of the relevant scrutiny 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 seven 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**

After any meeting of the Executive or any of its committees, whether held in public or private, the Chief Executive or their representative, or in default the Monitoring Officer, 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, any alternative options considered and rejected at that meeting, a record of any conflict of interest relating to the matter decided which is declared by a member of the decision making body and a note of any dispensation granted in respect of such interest.

A record of decision shall be produced in the same manner in respect of an executive decision taken by a senior officer under the Standing Order 46 procedure.

## **19. Scrutiny Committee's access to documents**

### **19.1 Rights to copies**

Subject to Rule 19.2 below, a member of a scrutiny committee will be entitled to copies of any document which is in the possession or control of the Executive or the Cabinet Committee and which contains material relating to:

- (a) any business that has been transacted at a meeting of the Executive or the Cabinet Committee; or
- (b) any decision made by an officer of the Authority in accordance with the executive arrangements.

### **19.2 Limit on rights**

No member of a scrutiny committee will be entitled to any document that is in draft form (although the Executive may accede to such a request).