

PART 4B - ACCESS TO INFORMATION - PROCEDURE RULES

CONTENTS

This section includes changes approved by Council on. 18/06/15.

Future variations:

- a) These Rules may be changed by the Council to meet future legal requirements.
- b) The Council may designate alternative officer(s) to perform the duties and responsibilities referred to in these rules.

RULE 1 - Scope

These rules apply to all meetings of the Council, Public Executive, Area Committees (if any), the Standards Committee, Regulatory and other Committee and Sub-Committees of the Council, Scrutiny Committees and their sub-committees, ("meetings.")

They also apply, where indicated, to decision-making by members/Officers where they act with individual authority

For these purposes "briefings" are not "meetings"

For these purposes references to "reports" and "documents" does not include those in draft form.

RULE 2 – Additional rights to Information

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

RULE 3 – Rights to attend meetings

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

RULE 4 – The Forum for Executive decision-making

- a) "Meetings" of the Executive and its committees may be in the form of public meetings or private meetings. A public meeting will be open to members of the public, subject to Rule 11. Not all Executive decision-making is undertaken at "meetings". Executive decision-making can be undertaken on an "individual" basis by an Executive Member or by an Officer outside of a public or private meeting.
- b) The City Mayor will determine what matters will be considered at public meetings or private meetings, or individually by Executive decision-makers outside of meetings
- c) This rule does not apply to meetings, the sole purpose of which is for officers to brief members. For the purpose of this rule such a briefing is not a 'meeting (see Note to Rule 4)'.
- d) Where it is proposed to make a Key Decision at a meeting (rather than individually), that meeting shall be conducted in public, subject to Rule 12.

- e) As soon as is reasonably practicable after an Executive decision is made (at a public meeting, a private meeting or individually by Members or Officers) it shall be communicated to the proper officer, unless the proper officer is already present, who will be responsible for recording and publishing it in accordance with Rule 18.
- f) The Head of Paid Service, the Director of Finance and the Monitoring officer and their nominees are entitled to attend any meeting of the Executive and its Committees. The Head of Paid service will be given reasonable notice that a private or public Executive meeting is to take place.

Note to Rule 4:

A 'meeting' under this rule does not include 'briefings' which are convened by Members of the Executive for the sole purpose for being briefed on a particular issue by an officer. Thus for example, where one or more Members for the Executive meet with an officer merely to seek clarification of a particular matter, that briefing need not be in public.

RULE 5 – Notices of public and private meetings

- (1) The Council will give at least five clear days' notice of any meeting the public are entitled to attend by posting details of the meeting on the Council's Internet site and at the Council's Offices. See Rule 11 where it is proposed to take decisions at private meetings
- (2) Where the Council intends to take an Executive decision at a private meeting, it shall publish its intention to do so at least 28 clear days beforehand and comply with the provisions set out in Regulation 5 Local Authorities (Executive Arrangements)(Meetings & Access to Information)(England) Regulations 2012

RULE 6 – Access to Agenda and Reports before public meetings

The Council will make copies of the agenda and reports open to the public available at Council's Internet site and at the Council's Offices at least five clear 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. Where reports are prepared after the summons has been sent out the Monitoring Officer shall make each such report available to the public as soon as the report is completed and sent to the City Mayor and Councillors.

RULE 7 – Supply of copies

The Council will, on payment of a charge for postage and any other costs, 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, any other documents supplied to the City Mayor or Councillors in connection with an item to any person;

RULE 8 – Access to minutes and reports etc after the meeting

The Council will make available copies of the following, and retain the same, 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 City Mayor and 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.

RULE 9 – Background papers

- (1) The officer writing the report will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in her/his 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; and
 - (c) do not include published works or those which disclose exempt or confidential information (as defined in Rule 11) and in respect of Executive reports, the advice of a political adviser (if any has been appointed).
- (2) The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

RULE 10 – Summary of the 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 Council's Internet site and at the Council's City Hall Offices. This Constitution constitutes the written summary.

RULE 11 - Exclusion of access by the public to meetings

For Executive Meetings:

Where it is intended to take an Executive decision at a private meeting, the Council shall publish its intention to do so at least 28 clear days beforehand and comply with the provisions set out in Regulation 5 Local Authorities (Executive Arrangements)(Meetings & Access to Information)(England) Regulations 2012.

For all meetings:

- (1) 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.
- (2) 'Confidential information' means 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.
- (3) 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.
- (4) 'Exempt information' means information falling within the statutory categories (subject to any condition) described in the Schedule to these Rules. Information is not exempt by virtue of falling within any of the statutory categories if the information relates to proposed developments for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.
- (5) Guidance has been produced: see Appendix 1 to these Rules.

RULE 12 - Exclusion of access by the public to reports

- (1) If the Monitoring Officer thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with Rule 11, the meeting is likely not to be open to the public.
- (2) Such reports will be marked 'Not for Publication' together with the category of information likely to be disclosed.
- (3) There may be occasions where a public meeting of the Council or its committees/commissions considers a report, or part thereof, which is 'Not for Publication' as part of a discussion, but does not specifically refer to that report during the discussion. In these circumstances it will not be necessary to exclude the public from part or all of the discussion/meeting. . In relation to public meetings of the Executive this provision applies subject to Regulation 4 LA(EA)(M&AI)(Eng)Regulations 2012] which may compel removal of the public for all/part of the meeting, where confidential information might be disclosed

RULE 13 - Procedure before taking Key Decisions

The definition of a 'Key Decision' is defined in Article 6 of this Constitution. :

- 1) Subject to Rule 15 (general exception) and Rule 16 (special urgency), a Key Decision may not be taken unless:
 - (a) Rule 14 has been complied with; and
 - (b) Where the City Mayor, the Deputy City Mayor or an Assistant City Mayor or an officer receives a report which s/he intends to take into account in making any Key Decision, then s/he will not make the decision until at least five clear days after receipt of that report.; and
 - (c) On giving of such a report to an individual decision maker, the person who prepared the report will give a copy of it to the Chair and Vice-Chair of every relevant Scrutiny Committee as soon as reasonably practicable, and
 - (d) the individual decision maker shall ensure that the Monitoring Officer makes the report available for inspection by the public as soon as is practicable after that individual decision maker receives it provided that nothing in this Rule shall require the disclosure of confidential or exempt information or the advice of a political advisor or assistant; and
 - (e) where the decision is to be taken at a meeting of the Executive or its committees (if any), notice of the meeting has been given in accordance with Rule 5 (notice of meetings).
- 2) Where compliance with Rule 13 (1)(b) to (e) is not possible due to exceptional urgency [but Rule 13(1) (a) has been complied with] the Key Decision may still be made if the decision-maker has obtained the consent of the Chair of the relevant Scrutiny Commission, or in his/her absence, the Lord Mayor or

Deputy Lord Mayor. The reason for exceptional urgency will be detailed in the decision notice.

RULE 14 - The Plan of Key Decisions

- (1) A Plan of Key Decisions will be prepared by the City Mayor on a rolling basis.
- (2) The Plan of Key Decisions will contain matters which the City Mayor has reason to believe will be subject of a Key Decision to be taken by the City Mayor, the Executive, a Committee of the Executive, individual Members of the Executive, Officers, Area Committees or under Joint Arrangements 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 the decision is to be made;
 - (b) where the decision maker is an individual, that individual's name, and title if any and, where the decision maker is a decision-making body, its name and a list of its members;
 - (c) the date on which, or the period within which, the decision is to be made;
 - (d) a list of the documents submitted to the decision maker for consideration in relation to the matter in respect of which the key decision is to be made;
 - (e) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
 - (f) that other documents relevant to those matters may be submitted to the decision maker; and
 - (g) the procedure for requesting details of those documents (if any) as they become available.
- (3) The Plan of Key Decisions must be published at least 28 days before any proposed Key Decision contained within it is taken, subject to Rules 15 and 16.
- (4) Exempt information need not be included in a Plan of Key Decisions and confidential information cannot be included.
- (5) Where a decision maker takes a decision relating to an item on the current Plan of Key decisions, but is of the opinion that upon having received final officer advice, it isn't a key decision, reasons shall be specified in the record of the decision for this re-classification.

RULE 15 - General Exception

- (1) If a matter which is likely to be a Key Decision has not been included in the Plan of Key Decisions, 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 published on a Plan of Key Decisions for 28 days;
 - (b) the Monitoring Officer has informed the Chair of a relevant Scrutiny Committee, or if there is no such person, each member of that committee by notice in writing of the matter on which the decision is to be made;
 - (c) The Monitoring Officer has made copies of that notice available to the public at the relevant Council offices and on its website; and
 - (d) at least five clear days have elapsed since the Monitoring Officer complied with (b) and (c).
- (2) Where such a decision is taken collectively, it must be taken in public.

RULE 16 - Special Urgency

- (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 Chair of the relevant Scrutiny Committee(s) agree(s) that the taking of a decision cannot be reasonably deferred.
- (2) If there is no Chair of the relevant Scrutiny Committee(s), or if the Chair of each relevant Scrutiny Committee is unable to act, then the agreement of the Lord Mayor, or in her/his absence the Deputy Lord Mayor.
- (3) As soon as the decision-maker has obtained agreement in line with Rule 16 (1) and (2) above, they shall make available at the relevant Council offices and its website a notice setting out the reasons for applying Rule 16.

RULE 17 - Report to Council

- (1) If it is believed that an Executive decision has been taken which was :
 - (a) not treated as a Key Decision when it should so have been treated
 - (b) a Key Decision which was not included in the Plan of Key Decisions under Rule 14; or
 - (c) a Key Decision which was not properly the subject of the general exception procedure under Rule 15; or
 - (d) a Key Decision which was not properly the subject of the special urgency procedure under Rule 16;
 - (e) a key decision which was not properly the subject of the exception under Rule 13(2).a Scrutiny Committee, , may require the City Mayor or Executive to submit a report to the Council within such reasonable time as specified in the request. This is in addition to the right of call-in for any Executive decision provided for by Rule 12 pf Part 4D (City Mayor & Executive Procedure Rules)

- (2) Any request under this Rule for call-in of a City Mayor & Executive decision must:
 - (a) be in writing (all Members signing such a notice should sign and print their name on the notice in the interests of clarity).
 - (b) specify reasons for the call-in
 - (c) specify a reasonable deadline for reporting to Council, and
 - (d) be submitted to the Monitoring Officer within five working days of the decision, the deadline for receipt being 5pm on the fifth working day after the date of the publication of the Executive decision.
- (3) Pending Council consideration of the report in accordance with this Rule, a call-in of a decision can be withdrawn by:
 - (a) resolution of the relevant Scrutiny Committee, or
 - (b) unanimous agreement of the Scrutiny Committee's Chair and Vice Chair.
- (4) The City Mayor & 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 City Mayor is of the opinion that it was not a Key Decision the reasons for that opinion.
- (5) In any event the City Mayor will submit quarterly reports to the Council on the Executive decisions taken in the circumstances set out in Rule 15 (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.

RULE 18 - Record of decisions

- (1) The record of an Executive decision produced by the proper officer under Rule 4(e) shall comprise:
 - i. a record of the decision including the date on which it was made
 - ii. a record of the reasons for the decision
 - iii. details of any alternative options considered and rejected by the decision-maker
 - iv. a record of any conflict of interest declared by the decision-makers and
 - v. a note of any relevant dispensation granted.
- (2) All officer decision-making which falls within Regulation 7 of the Openness of Local Government Bodies Regulations 2014 shall be published in line with those statutory requirements.

RULE 19 - Attendance by Councillors who are not members of the Executive or relevant Committee of Council

A Councillor may attend a public meeting of the City Mayor and Executive or any of its subcommittees, or a Committee/subcommittee meeting of the Council in accordance with this Rule.

The right to attend for an “exempt” item requires a ‘need to know’ (as defined in the Political Conventions) and 24 hours’ notice to the Monitoring Officer, with reasons, and a declaration of any interest.

The City Mayor (or Committee) must decide whether to allow attendance, taking into account the nature of the ‘need to know’, any interest declared and the nature and sensitivity of the confidential business.

The Councillor must declare any interest in an item of business and follow the relevant procedure as if a member of the Executive (or Committee)

The Councillor may not vote on any item.

The Chair may, at her/his discretion, invite the Councillor to speak.

RULE 20 - Additional rights of access for Councillors

(1) Material relating to previous decisions

In addition to Rule 8, all Councillors will be entitled to inspect any document which is in the possession, or under the control of the Executive and contains material relevant to any business previously transacted at a private meeting or any decision made by an officer or Member discharging Executive decision-making functions, unless;

- a) it contains exempt information falling within the categories of exempt information as defined in Appendix 1; or
- b) it contains the advice of a political adviser.

Any such document shall be made available for inspection within 24 hours of the making of the decision

*Please also see the Note to Procedure Rule 4 for the definition of ‘meeting’.

(2) Material relating to future decisions

In addition to Rule 6, all Councillors will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Executive which relates to any business to be transacted at a public meeting

Any such document shall be made available for inspection at least 5 clear days before the meeting, or as soon as is reasonably practicable (where the meeting is convened at short notice) unless:

- a) it contains exempt information falling within the categories of exempt information as defined in Appendix 1; or
- b) it contains the advice of a political adviser.

(3) Political Conventions

Practical application of Councillors' rights set out in this Rules is supported by the Council's Political Conventions which are included in Part 5 of this Constitution.

RULE 21 - Access to documents by Members of Scrutiny Committees

(1) In addition to to Rule 20 above, a member of a Scrutiny Committee will be entitled to copies of any documents which are in the possession or control of the Executive and which contains material relating to:

- a) any previous business transacted at a decision-making meeting of the City Mayor and Executive or its Committees; or
- b) any individual Executive decision taken by the City Mayor, Deputy City Mayor or an Assistant City Mayor
- c) any Executivedecision that has been made by an officer of the Council under Executive arrangements.

(2) Limit on rights.

A 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 is to be reviewed in accordance with its Work Programme; or
- c) advice of a political adviser.

(3) The Executive shall provide the document(s) as soon as is reasonably practicable and in any case no later than 10 days after receipt of the request

(4) Political Conventions

Practical application of these and members' other rights to access information are supported by the Council's Political Conventions for the time being which are included in Part 5 of this Constitution.

APPENDIX 1

GUIDANCE: ACCESS TO INFORMATION

Rules contained in Schedule 12A of the Local Government Act, 1972 describe the categories of information which may be considered exempt from the requirement to provide the public with papers relating to local authority meetings and access to those meetings.

Schedule 12A has been amended to rationalise and simplify categories of exempt information and to harmonise the rules with data protection law and the Freedom of Information Act, 2000. Fourteen categories of exempt information have been reduced to seven.

PUBLIC INTEREST TEST

The most significant change is that in all cases information can be treated as exempt information if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The term 'public interest' is not defined but, put simply, the test is whether it "serves the interests of the public better to maintain the exemption or to disclose the information".

There is a presumption running through the Freedom of Information legislation; that openness is in itself to be regarded as something which is in the public interest. The Information Commissioner has identified a number of public interest factors which encourage the disclosure of information, including the following:

- Furthering the understanding of and participation in the public debate of current issues
- Promoting accountability and transparency by public authorities for decisions taken by them.
- Promoting accountability and transparency in the spending of public money.

There may be other factors to be taken into account when considering whether it is in the public interest for an exemption to be maintained.

Report authors must first identify if information falls within an exempt category and then apply the Public Interest Test. Democratic Support must be notified so as to ensure that an appropriate exempt category has been identified and applied.

The Public Interest Test must also be applied by the Council Committee / Sub-Committee / Executive when considering whether or not to move into closed session. The decision making body must be satisfied that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information and the resolution should include words to reflect this. This

Authority has already adopted the convention that as much information as possible should be disclosed unless there is a good public interest reason for not doing so.

EXEMPT INFORMATION

(NB: Paragraph numbers of the categories mirror those contained in Schedule 12A of the Local Government Act 1972)

NOTE: all categories are subject to the application of a Public Interest Test
- see note at the end of this Schedule

CATEGORY	QUALIFICATIONS/DEFINITIONS
1 Information relating to any individual.	
2 Information which is likely to reveal the identity of an individual.	
3 Information relating to <u>the financial or business affairs</u> of any particular person <u>(including the authority holding that information)</u> .	<p>Information is not exempt information if it is required to be registered under –</p> <ul style="list-style-type: none">(a) the Companies Act 1985;(b) the Friendly Societies Act 1974;(c) the Friendly Societies Act 1992;(d) the Industrial and Provident Societies Acts 1965 to 1978;(e) the Building Societies Act 1986; or(f) the Charities Act 2011 <p>‘financial or business affairs’ includes contemplated, as well as past or current, activities</p> <p>‘registered’ in relation to information required to be registered under the Building Societies Act 1986 means recorded in the public file of any building society (within the meaning of that Act)</p>

<p>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.</p>	<p>'employee' means a person employed under a contract of service</p> <p>'labour relations matter' means –</p> <p>(a) any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act); or</p> <p>(b) any dispute about a matter falling within paragraph (a) above;</p>
CATEGORY	QUALIFICATIONS/DEFINITIONS
	<p>and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to employees of the authority;</p> <p>'office-holder', in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by 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;</p>
<p>5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>	
<p>6 Information which reveals that the authority proposes –</p> <p>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) to make an order or direction under any enactment</p>	
<p>7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution</p>	

of crime.	
7A Information which is subject to any obligation of confidentiality.	Applies to Standards Committee only
7B Information which relates in any way to matters concerning national security.	Applies to Standards Committee only
7C The deliberations of a standards committee or of a sub-committee of a standards committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.	Applies to Standards Committee only
Generally.	Information is not exempt information 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.

Public Interest test

In respect of all the above categories, information is only 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.