

Access to Information Procedure Rules

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1. General Provisions

Status

- 1.1 These Rules are for the most part not laid down by the Council itself, but a summary of the effect of the legal provisions about access to information and a description of how the provisions operate in practice within the Council. In the event of any conflict between these Rules and the legal provisions, the legal provisions will prevail¹.

Scope

- 1.2 These Rules apply to all meetings of the Council, the Executive, Overview and Scrutiny Committees and other committees and sub-committees (together called meetings). Where additional Rules apply only to the Executive, these are clearly marked as such.
- 1.3 References to 'clear days' and 'clear working days' exclude both the day of the meeting and the day on which the meeting is called. For the purposes of calculating 'clear days', the Council shall not exclude weekends and bank holidays. However, for the purposes of calculating 'clear working days', the Council shall exclude weekends and bank holidays, thus extending the notice period.

Additional rights to information

- 1.4 These Rules do not affect or detract from any other, more specific rights to information contained elsewhere in this Constitution or the law, nor do they limit or diminish the Council's duties to protect certain information, including personal information.

¹ The legal provisions are to be found in the Local Government Act 1972; the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000; the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; and the Openness of Local Government Bodies Regulations 2014, all as variously amended.

2. General Access Rules

Rights to attend meetings

2.1 Members of the public may attend meetings, subject to the exceptions set out in these Rules.

Notices of meetings

2.2 Unless a meeting is called at shorter notice, the Council will give at least five clear working days' notice of any meeting by posting details of the meeting on its website and at its offices at 39 Castle Quay, Banbury, OX16 5FD ('the designated office').

Access to agenda and reports before meetings

2.3 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 working days before the meeting, except that:

2.3.1 Where the meeting is convened at shorter notice, copies of the agenda and report shall be published on the Council's website and open to inspection from the time the meeting is convened; and

2.3.2 Where reports are prepared after the summons has been sent out, the Governance and Elections Manager shall make each such report available to the public and publish it on the Council's website as soon as the report is completed and sent to councillors.

Items of business

2.4 An item of business may not be considered at a meeting unless either:

2.4.1 A copy of the agenda including the item is published on the Council's website and open to public inspection for at least five clear working days before the meeting or, where the meeting is convened at shorter notice, from the time the meeting is convened; or

2.4.2 By reason of special circumstances, which shall be specified in the minutes, the Chair of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency.

- 2.5 'Special circumstances' justifying an item being considered as a matter of urgency will relate to both why the decision could not be made by calling a meeting allowing the proper time for inspection as well as why the item or report could not have been available for five clear days before the meeting.
- 2.6 Where the item of business relates to a Key Decision, other Rules may also apply (see Section 3 – The Executive, below).

Supply of copies

- 2.7 On payment of a charge for postage and any other reasonable costs, the Council will supply to any person, copies of any agenda and reports that are open to public inspection.

Access to minutes etc after meetings

- 2.8 The Council will make available for public inspection copies of the following documents for six years after a meeting:
- 2.8.1 The minutes of the meeting or records of decisions taken, together with reasons, for Executive decisions, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
 - 2.8.2 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;
 - 2.8.3 The agenda for the meeting;
 - 2.8.4 Reports relating to items when the meeting was open to the public.

Background Papers

List of background papers

- 2.9 The report writer will set out in every report that is open to public inspection a list of those documents (called background papers) relating to the subject matter of the report which in their opinion:
- 2.9.1 Disclose any facts or matters on which the report or an important part of the report is based; and
 - 2.9.2 Which have been relied on to a material extent in preparing the report but does not include published works or those which disclose confidential or exempt information (as defined in Rules 2.13 and 2.16, below).

Public inspection of background papers

- 2.10 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.
- 2.11 As far as Executive decisions are concerned, the Council will also publish on its website any background papers that are included in the list.

Exclusion of Access by the Public to Meetings

Confidential information – requirement to exclude public

- 2.12 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.

Meaning of confidential information

- 2.13 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 because of a court order.

Exempt information – discretion to exclude public

- 2.14 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. Any resolution to exclude the public due to disclosure of exempt information must identify the proceedings, or the part of the proceedings, to which it applies and state, by reference to Schedule 12A to the Local Government Act 1972, the description of exempt information giving rise to the exclusion of the public.
- 2.15 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.

Meaning of exempt information

- 2.16 Exempt information means information falling within the following categories (subject to any condition):

Category & Description
1. Information relating to any individual.
2. Information which is likely to reveal identity of an individual.
3. Information relating to the financial or business affairs ² of any particular person (including the Council holding that information) ³ .
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter ⁴ arising between the Council or a Minister of the Crown and employees of, or office holders under, the Council.

² "Financial or business affairs" includes contemplated, as well as past or current, activities.

³ Information within this category is not exempt if it must be registered under various statutes, such as the Companies Act 1985, Charities Act 1993, Friendly Societies Acts 1974 and 1982, Industrial and Provident Societies Acts 1965 to 1978, or the Building Societies Act 1986.

⁴ "Labour relations matters" are as specified in section 218(1)(a)-(g) of the Trade Union and Labour

<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 Council 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 of crime.</p>

Qualifications to categories of exempt information

- 2.17 Information under any category is not exempt if it relates to a proposed development for which the Council as the Local Planning Authority may grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992 (as amended from time to time).
- 2.18 Information falling under any category 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 it (see Public Interest Test, below).
- 2.19 The specified categories of exemptions under the Access to Information Procedure Rules do not apply to Licensing Act 2003 hearings, as these are required to be open to the public.

Public Interest Test

- 2.20 All categories of the exemptions above are subject to a Public Interest Test. In determining whether information should remain exempt, the report writer and the decision-maker must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. If they determine that the document should not be published,

Relations (Consolidation) Act 1992, i.e. matters which may be the subject of a trade dispute.

they will need to give reasons why they consider the public interest is best served by the information remaining exempt.

- 2.21 Where the public may be excluded from a meeting or part of a meeting due to an exempt report being considered, the members of the meeting will need to consider the public interest test, having given due consideration to any legal advice provided.
- 2.22 There is no legal definition of 'public interest', but the following should be considered relevant considerations in favour of disclosure:
 - 2.22.1 The information would assist public understanding of an issue that is subject to current public debate.
 - 2.22.2 Proper debate cannot take place without wide availability of all the relevant information.
 - 2.22.3 The issue affects a wide range of individuals or companies.
 - 2.22.4 Facts, analysis and costings behind major policy decisions.
 - 2.22.5 Allowing individuals to understand Council decisions affecting their lives and, in some cases, assisting individuals to challenge those decisions.
 - 2.22.6 Accountability for proceeds of sale of assets in public ownership.
 - 2.22.7 Openness and accountability for tender processes and prices.
 - 2.22.8 Public health or public safety.
 - 2.22.9 Damage to the environment.
 - 2.22.10 Contingency plans in an emergency.
 - 2.22.11 Promoting accountability and transparency for decisions taken by the Council and the spending of public money.
- 2.23 A practice of applying 'Exempt' status to a report without reasons being set out and consideration of the public interest is not acceptable.

Exclusion of access by the public to reports

- 2.24 The Council may exclude access by the public to a report or a part of a report which in its opinion relates to an item during which the meeting is likely not to be open to the public. Every copy of such report must be marked “not for publication” and there must be stated on every copy of the whole or the part of the report:
- 2.24.1 That it contains confidential information; or
 - 2.24.2 By reference to the descriptions in Schedule 12A to the Local Government Act 1972, the description of exempt information by virtue of which the decision making body is likely to exclude the public during the item to which the report relates.

3. The Executive

- 3.1 In addition to Rules 1.1 - 2.24, the following Rules apply to the Executive (and to any committee of the Executive).
- 3.2 Executive meetings will be held in public, unless:
- 3.2.1 It is likely that exempt or confidential information would be disclosed during all or part of the meeting; or
 - 3.2.2 Procedures are exercised to exclude either an elected Member or a member of the public to maintain orderly conduct.
- 3.3 The public may only be excluded for those parts of the meeting during which it is likely that confidential information or exempt information would be disclosed.
- 3.4 Before meeting in private to consider either exempt or confidential information the Executive must follow the procedures under Rules 3.5 - 3.8, below.

Procedure prior to a private meeting of the Executive

- 3.5 A decision by the Executive to hold a meeting, or part of a meeting, in private may not be taken unless:
- 3.5.1 A notice has been published in the Executive Forward Plan at least 28 clear days before the meeting in question and made available on the

Council's website and at the designated office, which includes a statement of the reasons why the meeting, or part of the meeting, is to be held in private; and

3.5.2 A further notice will be published on the Council's website and at the designated office at least five clear working days before the meeting to include:

- (a) the reasons for the meeting to be held in private;
- (b) any representations received by the Executive about why the meeting should be open to the public; and
- (c) its response to any such representations.

3.6 Where the date by which an Executive meeting must be held makes compliance with Rule 3.5 impracticable, the meeting, or part of the meeting, may only be held in private where the Executive has obtained agreement that the meeting is urgent and cannot reasonably be deferred from the Chair of the Overview and Scrutiny Committee or, in their absence, from the Chair of the Council or, in the absence of both the Chair of the Overview and Scrutiny Committee and the Chair of the Council, from the Vice Chair of the Council.

3.7 As soon as reasonably practicable after the Executive has obtained agreement to hold a private meeting, a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred must be made available at the designated office and published on the Council's website.

3.8 Members other than Executive Members will not be entitled to attend private meetings of the Executive.

Executive Forward Plan - Notice of Key Decisions

3.9 The Executive Forward Plan contains matters that the Leader believes will be the subject of a Key Decision to be taken by the Executive, a committee of the Executive, individual Executive Members or officers in the course of the discharge of an Executive function. It will provide the following details:

3.9.1 That a Key Decision is to be made on behalf of the Council;

3.9.2 The matter in respect of which a decision is to be made;

3.9.3 Where the decision-maker is an individual, their name and title, and

- where the decision-maker is a body, its name and a list of its members;
- 3.9.4 The date on which, or the period within which, the decision is to be made;
- 3.9.5 A list of the documents submitted to the decision-maker for consideration in relation to the matter;
- 3.9.6 The address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
- 3.9.7 That other documents relevant to those matters may be submitted to the decision-maker;
- 3.9.8 The procedure for requesting details of those documents (if any) as they become available.
- 3.10 The Executive Forward Plan must be published on the Council's website and made available at the designated office at least 28 clear days before a Key Decision is made.
- 3.11 Where in relation to any matter, the public may be excluded from the meeting at which the matter is to be discussed, or the documents relating to the decision need not be disclosed to the public, the Executive Forward Plan must contain particulars of the matter but may not contain any confidential or exempt information.

Meaning of 'Key Decision'

- 3.12 Certain Executive decisions are 'Key Decisions' by law. These are decisions which are likely either:
- 3.13 To result in the Council incurring expenditure or making savings that are significant, having regard to the Council's budget for the service or function to which the decision relates, which the Council has currently determined to be:
- 3.13.1 incurring potential revenue expenditure or savings above an amount to be determined by council annually (currently £250,000); or
- 3.13.2 incurring potential capital expenditure or savings above an amount to be determined by council annually (currently £250,000); or

3.13.3 procuring or awarding any contract having a total value exceeding £500,000.

or:

3.14 To be significant in its effects on communities living or working in an area comprising two or more Wards in the area of the Council. That is a decision where:

3.14.1 a significant number of users of the service in the ward(s) will be affected; and/or

3.14.2 an impact that will last for a number of years, or be permanent; and/or

3.14.3 a significant impact on communities in terms of environmental and social well-being.

3.15 The following are not regarded by the Council to constitute Key Decisions:

3.15.1 Implementing approved budgets or policies and strategies where there is little or no further choice involved and the main decision has already been taken by the Council in agreeing the budget and policy framework.

3.15.2 Implementing approved actions and targets in annual service plans.

3.15.3 Decisions by the Assistant Director Finance which are part of the ordinary financial administration of the Authority, notably those relating to investments, within the agreed Treasury Management policy.

3.15.4 Implementing projects for which specific conditions have been attached by external funders, such as the Government.

3.15.5 The award of contracts for the provision of works, goods and services, within an agreed policy and budget and where a decision has been made.

3.15.6 Changes arising from amendments to statute where there is no discretion.

Key Decisions – General Exception

- 3.16 Subject to Rules 3.19 - 3.20 (special urgency), where the publication of the intention to make a Key Decision under Rules 3.9 - 3.10 is impracticable, that decision may only be made:
- 3.16.1 where the Chief Executive (or their nominee) has informed the Chair of the Overview and Scrutiny Committee or, in their absence, the Vice-Chair of the Overview and Scrutiny Committee, or if there is no such person, each member of that committee in writing, by notice in writing of the matter about which the decision is to be made;
 - 3.16.2 where the Chief Executive (or their nominee) has made a copy of the notice given pursuant to sub-paragraph 3.16.1 available for inspection on the Council's website and at the designated office; and
 - 3.16.3 after five clear working days have elapsed following the day on which the Chief Executive (or their nominee) made available the notice referred to in sub-paragraph 3.16.2.
- 3.17 Where Rule 3.16 applies to any matter, Rules 3.9 - 3.10 need not be complied with in relation to that matter.
- 3.18 As soon as reasonably practicable after the Chief Executive has complied with Rule 3.16, they must make available at the designated office a notice setting out the reasons why compliance with Rules 3.9 - 3.10 is impracticable and publish that notice on the Council's website.

Key Decisions – Special Urgency

- 3.19 Where the date by which a Key Decision must be made makes compliance with Rule 3.16 impracticable, the decision may only be made where the decision maker has obtained agreement from the Chair of the Overview and Scrutiny Committee; or in their absence from the Chair of the Council; or in the absence of both the Chair of the Overview and Scrutiny Committee and the Chair of the Council, from the Vice Chair of the Council that the making of the decision is urgent and cannot reasonably be deferred.
- 3.20 As soon as reasonably practicable after the decision-maker has obtained agreement under Rule 3.19 that the making of the decision is urgent and cannot reasonably be deferred, a notice setting out the reasons that the meeting is urgent and cannot reasonably be deferred must be made available at the designated office and published on the Council's website.

Key Decisions – Contraventions

3.21 Where an Executive decision has been made and:

3.21.1 Was not treated as a Key Decision; and

3.21.2 The Overview and Scrutiny Committee is of the opinion that the decision should have been treated as a Key Decision, the Overview and Scrutiny Committee may require the Executive decision-maker to submit a report to Council within such reasonable period as the committee may specify.

3.22 The power to require a report rests with the committee, but is also delegated to the Chief Executive (or their nominee), who shall require such a report on behalf of the committee when so requested by the Chair or any member of the committee. Alternatively, the requirement may be raised by resolution passed at a meeting of the Overview and Scrutiny Committee.

3.23 Any report prepared by the Executive under these provisions shall set out particulars of the decision, the individual or body making the decision and, if the Executive is of the opinion that it was not a Key Decision, the reasons for that opinion.

Reports on general exception and special urgency decisions

3.24 The Leader will submit to the Council reports containing details of each Executive decision taken during the period since the last report was submitted to the Council where the making of the decision was taken either as a matter of general exception or special urgency.

Record of Executive decisions made at meetings

3.25 As soon as reasonably practicable after any meeting of a decision-making body at which an Executive decision was made, the Chief Executive, or if the Chief Executive was not present at the meeting, the person presiding, must ensure that a written statement is produced and published on the Council's website for every Executive decision made, which includes:

3.25.1 The decision, including the date;

3.25.2 Reasons for the decision;

3.25.3 Details of alternative options considered;

3.25.4 Any conflict of interest declared; and

3.25.5 Any dispensation granted by the Monitoring Officer or Standards Committee, where appropriate.

Record of Executive decisions made by Individual Executive Members and officers

3.26 The Leader may delegate Executive decision-making to an individual Executive Member or an officer. Where an individual Executive Member receives a report which they intend to take into account when making a Key Decision, they shall not make that decision until the report has been available for public inspection for five clear days.

3.27 As soon as reasonably practicable after an Executive decision has been taken by an individual Member or an officer, a written statement must be produced and published on the Council's website, which includes:

3.27.1 The decision, including the date;

3.27.2 Reasons for the decision;

3.27.3 Details of alternative options considered;

3.27.4 Any conflict of interest declared; and

3.27.5 Any dispensation granted by the Monitoring Officer or relevant committee, where appropriate.

3.28 The provisions of Rule 2.8 (inspection of documents after meetings) will also apply to the making of decisions by individual Members and officers.

3.29 All Executive decisions must be published and will be subject to Call-In.

3.30 Nothing in these Rules relating to the taking of decisions by individual Executive Members or officers requires them to disclose confidential or exempt information.

Recording and Filming of Meetings

- 3.31 The Council Procedure Rules relating to use of social media and the recording and filming of public meetings apply to the Executive.

Rights of access to documents for Members

- 3.32 Any document that is in the possession or under the control of the Executive and contains material relating to any business to be transacted at a public meeting, must be available for inspection by any Member of the Council for at least five clear working days before the meeting. Where the meeting is convened at shorter notice, the document must be available for inspection when the meeting is convened or where in conjunction with an item added to the agenda at shorter notice, it must be available for inspection when the item is added to the agenda.
- 3.33 Any document that is in the possession or under the control of the Executive and contains material relating to any business transacted at a private meeting must be available for inspection by any Member of the Council when the meeting concludes or where an Executive decision is made by an individual Member or an officer immediately after the decision has been made, unless it contains exempt information (except to the extent that the information relates to any items proposed or to be proposed by or to the Council in the course of negotiation of a contract)⁵.
- 3.34 Any document that is required to be available for inspection by any Member of the Council must be available for inspection, in any event, within 24 hours of the conclusion of the meeting or the decision being made, as the case may be.
- 3.35 Nothing requires a document to be available for inspection if it appears to the Chief Executive (or other designated officer) that it discloses exempt or confidential information.
- 3.36 These rights are in addition to any other rights that a Member may have.

⁵ See the Local Authorities (Executive Arrangements)(Access to Information)(Amendment)(England) Regulations 2006.

Additional rights of access to documents for Overview and Scrutiny Committee members

- 3.37 An Overview and Scrutiny Committee member is entitled to a copy (within 10 clear working days of making a request) of any document that is in the possession or control of the Executive and which contains material relating to:
- 3.37.1 Any business transacted at a meeting of the Executive or any of its committees; or
 - 3.37.2 Any decision taken by an individual Executive Member; or
 - 3.37.3 Any Executive decision that has been taken by an officer
- 3.38 No member of an Overview and Scrutiny Committee is entitled to a copy of any such document or part of a document that is in draft form or which contains exempt or confidential information, unless that information is relevant to an action or decision that Member is reviewing or scrutinising, or to any review contained in any programme of work of the committee.
- 3.39 Where the Executive determines that an Overview and Scrutiny Committee member is not entitled to a copy of a document or part of any such document, it must provide the Overview and Scrutiny Committee with a written statement setting out the reasons.
- 3.40 The same rights to access documents apply in relation to Non-Executive functions and any Regulatory Committees or sub-committees.