

Part 4 B

Access to Information Procedure Rules

Part 4B - Access to Information Procedure Rules

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[Note: in various Rules in this Part, there are references to a period of notice for meetings, which is presently five days. The Government may make statutory regulations amending this period; if such regulations are made, then the relevant Rules will need to be read in the light of any changes brought about by those regulations. Similarly, the Government may amend the statutory definition of exempt information, which appears in the Schedule to these Rules; if such changes are made then the Schedule will be amended.]

The Government makes reference to clear days. Case law defines this as meaning, in effect, working days. Thus weekends and other days on which the Council's offices are closed are excluded as are the day of despatch and the day of the meeting.]

Part 4B - Access to Information Procedure Rules

RULE 1

Scope

These rules apply to all meetings of the County Council, overview and scrutiny committees, area committees (if any), the Member Conduct Panel and Regulatory boards and committees, and public meetings of the Executive (together called “meetings”).

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

- (1) Members of the public may attend all meetings subject only to the exceptions in these Rules.
- (2) Members of the public attending meetings not covered by the exceptions in these rules shall be permitted to report on the proceedings of such meetings. Such reporting shall include filming or providing a commentary on proceedings using social media tools, providing that any such reporting does not cause obstruction so as to render the due and orderly despatch of business impossible.

RULE 4

Notices of meeting

The County Council will give at least five clear days notice of any meeting by posting details of the meeting at County Hall. It will also publish such details on its website.

RULE 5

Access to agenda and reports before the meeting

- (1) The County Council will make copies of the agenda and reports open to the public available for inspection at County Hall at least five clear days before the meeting and will publish these on its website. 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 Chief

Executive shall make each such report available to the public as soon as the report is completed and sent to County Councillors.

- (2) Where it is proposed to consider a matter in private at a meeting of the Executive, the agenda for that meeting will include:-
- (a) a statement of the reasons for the matter being considered in private;
 - (b) details of any representations received about why the matter should be considered in public;
 - (c) a statement of the response to any such representations;
 - (d) where the item has not been included on the Forward Plan and the agreement of the relevant persons has been obtained to enable the matter to be considered in accordance with Rule 16, a statement as to why the matter is urgent and cannot reasonably be deferred.
- (3) As the agenda for meetings of the Executive must be made available to the public and published on the Council's website, that document will constitute the necessary notices required under Section 5 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

RULE 6 ***Supply of copies***

The County Council will supply copies of:

any agenda and reports which are open to public inspection;
any further statements or particulars necessary to indicate the nature of the items in the agenda; and
if the Chief Executive thinks fit, any other documents supplied to County Councillors in connection with an item to any person;

on payment of a charge for postage and any other costs.

RULE 7 ***Access to minutes and decisions***

The County 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.

RULE 8

Background papers

The Proper Officer (in this context, 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 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 Rule 10) and in respect of Executive reports, the advice of a political adviser (if any has been appointed).

The County 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. In the case of reports submitted to the Executive, background papers will also be published on the County Council's website.

RULE 9

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 County Hall. As the Constitution must be available to the public, then these Rules constitute the written summary.

RULE 10

Exclusion of access by the public to 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) 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.

- (3) “Confidential information” means information given to the County Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.
- (4) “Exempt information” means information falling within the statutory categories (subject to any qualification) described in the schedule to these Rules. Information is not exempt if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992. 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.

RULE 11

Exclusion of access by the public to reports

If the Chief Executive thinks fit, the County Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked “Not for publication” together with the category of information likely to be disclosed.

RULE 12

Application of Rules to the Executive

- (1) Rules 13 to 25 apply to the Executive and its committees (if any). If the Executive or its committees meet to take a Key Decision then it must also comply with Rules 1 to 11 unless Rule 15 (general exception) or Rule 17 (special urgency) apply. A Key Decision is as defined in Article 13.03 of this Constitution.
- (2) If the Executive or its committees (if any) meet to discuss a Key Decision, with an officer other than a political assistant present, within 28 days of the date according to the Forward Plan by which it is to be decided, then it must also comply with Rules 1 to 11 unless Rule 15 (general exception) or Rule 17 (special urgency) apply. This requirement does not include meetings, whose sole purpose is for officers to brief members.

RULE 13

Procedure before taking Key Decisions

Subject to Rule 15 (general exception) and Rule 17 (special urgency), a Key Decision 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 clear days have elapsed since the publication of the Forward Plan; and
- (c) 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 4 (notice of meetings).

[Note: a Key Decision is defined, in principle, in Article 13.03 in Part 2 (Articles). The local working definition of a Key Decision is in Rule 8 in Part 4D (Executive Procedure Rules)]

RULE 14 ***The Forward Plan***

- (1) At least 28 clear days before decisions of the nature set out in paragraph (2) are to be taken by a decision making body exercising executive functions the Chief Executive will produce a Forward Plan setting out the details. The Forward Plan will be published on the County Council's website and made available for inspection by members of the public.
- (2) The Forward Plan will contain matters which are considered to involve:-
 - (a) a key decision, and/or
 - (b) a matter where it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential or exempt information would be disclosed and therefore it is proposed that the public be excluded from the meeting (i.e. the matter will be considered in private).
- (3) Where a decision maker intends to make a key decision the Forward Plan will describe the following particulars in so far as the information is available or might reasonably be obtained:-
 - (a) that a key decision is to be made on behalf of the County Council
 - (b) the matter in respect of which the decision is to be made;
 - (c) where the decisions 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;
 - (d) the date on which, or the period within which, the decision is to be made;
 - (e) 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;
 - (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;

- (g) that other documents relevant to those matters may be submitted to the decision maker; and
 - (h) the procedure for requesting details of those documents (if any) as they become available.
- (4) Where a matter is to be considered in private the Forward Plan will give notice of the Authority's intentions and will give a statement of the reasons for doing so.

RULE 15

General exception

- (1) If a matter which is likely to be a Key Decision has not been included in the Forward Plan, then subject to Rules 16 (confidential and exempt items) and 17 (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;
 - (b) the Chief Executive 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 on which the decision is to be made and the reasons why inclusion on the Forward Plan is impractical;
 - (c) the Chief Executive has made copies of that notice available to the public at County Hall and the notice has been published on the Council's website; and
 - (d) at least five clear days have elapsed since the Chief Executive complied with (b) and (c).

RULE 16

Confidential and Exempt Items

Where confidential or exempt items have not been included on the Forward Plan in accordance with Rule 14 the matter may still be considered where agreement that the matter is urgent and cannot reasonably be deferred has been obtained from:-

- (a) the chairman of the relevant overview and scrutiny committee; or
- (b) if there is no such person, or if the chairman of the relevant overview and scrutiny committee is unable to act, the agreement of the chairman of the County Council or in his/her absence the vice-chairman will suffice.

RULE 17
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 decision taker (if an individual) or the chairman of the 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.
- (2) If there is no chairman of a relevant overview and scrutiny committee, or if the chairman of each relevant overview and scrutiny committee is unable to act, then the agreement of the Chairman of the County Council, or in his/her absence the Vice-chairman will suffice.
- (3) The decision taker must make available to the public a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred and must publish that notice on the County Council's website.

RULE 18
Report to County Council

- (1) If an overview and 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 overview and scrutiny committee chairman, or the chairman / vice-chairman of the County Council under Rule 17;

the committee may require the Executive to submit a report to the County 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 Chief Executive, who shall require such a report on behalf of the committee when so requested by its chairman or any four of its members. Alternatively, the requirement may be raised by resolution passed at a meeting of the relevant overview and scrutiny committee.

- (2) The Executive will prepare a report for submission to the next available meeting of the County Council. However, if the next meeting of the County 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 County 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.

- (3) In any event the Leader will submit annual reports to the County Council on any Executive decisions taken in the circumstances set out in Rule 17 (special urgency) in the preceding twelve 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 19

Record of decisions

After any meeting of the Executive or any of its committees, whether held in public or private, the Chief Executive or, where no officer was present, the person presiding at the meeting will as soon as practical produce a statement of every decision taken at the meeting. The statement will include:-

- (a) a record of the decision including the date it was made;
- (b) a record of the reasons for the decision;
- (c) details of any alternative options considered and rejected by the decision-making body at the meeting at which the decision was made;
- (d) a record of any conflict of interest relating to the matter decided which is declared by any member of the decision-making body which made the decision; and
- (e) in respect of any declared conflict of interest, a note of dispensation granted by the Chief Executive.

RULE 20

Executive meetings relating to matters which are not Key Decisions

Subject to Article 7.06(a) in Part 2 of this Constitution, the Executive will decide whether meetings relating to matters which are not Key Decisions will be held in public or private.

[Note: in Rules 21, 22 and 25(1) "private meeting of the Executive" means a meeting of the Executive at which decisions which are not Key Decisions are taken and which the Executive has decided should be held in private, as permitted by the Local Government Act 2000. Rule 20 restates the powers given to the Executive to do this by the Local Government Act 2000. However, in adopting this Constitution the County Council decided, with the concurrence of the then Executive, that all meetings of the Executive where any executive decisions (of whatever kind) are to be taken will be held in public, except where the public may be excluded in accordance with Rule 10. Therefore, while that County Council decision remains in operation and is reflected in Article 7.06(a), Rule 20 is effectively suspended and the provisions relating to "private meeting of the Executive" in Rules 21, 22 and 25(1) are of no practical effect]

RULE 21***Notice of private meeting of the Executive***

Members of the Executive or its committees will be entitled to receive three clear working days notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.

RULE 22***Attendance at meetings of the Executive and its committees***

- (1) All members of the Executive will be served notice of a private meeting of a committee of the Executive (if any), whether or not they are members of that committee, and will be entitled to attend and speak at that meeting.
- (2) Members other than Executive members will not be entitled to attend private meetings of the Executive, and its committees.
- (3) In accordance with Standing Order 34(3) in Part 4A, any Council member may attend as an observer at decision-making meetings of the Executive, including meetings or items of business from which the public has been excluded. If given permission by the chairman of the meeting, a member attending as an observer may speak (but not vote) on any matter.
- (4) The Chief Executive as Head of the Paid Service, the Chief Financial Officer, and the Director of Law and Governance as Monitoring Officer (and their nominees) are entitled to attend any meeting of the Executive and its committees where any executive decisions are to be taken.
- (5) Where the Executive meets in private and without an officer being present, the person presiding will have responsibility for compliance with any relevant requirements of Rule 19 (recording and publicising decisions).

RULE 23***Decisions by individual members of the Executive and officers***

- (1) Where an individual member of the Executive receives a report which he/she intends to take into account in making any Key Decision, then he/she will not make the decision until at least 28 clear days notice has been given.
- (2) 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 chairman of every

relevant overview and scrutiny committee as soon as reasonably practicable, and make it publicly available at the same time.

- (3) As soon as reasonably practicable after an executive decision has been taken by an individual member of the Executive, he/she will prepare, or instruct the Chief Executive to prepare, a record of the decision, a statement of the reasons for it, any alternative options considered and rejected, a record of any conflict of interest declared by any executive member who is consulted by the officer which relates to the decision and, in respect of any declared conflict of interest, a note of dispensation granted by the Head of Paid Service.
- (4) As soon as reasonably practicable after an officer has made a relevant executive decision, he/she must produce a written statement which includes a record of the decision including the date it was made, a record of the reasons for the decision, details of any alternative options considered and rejected by the officer when making the decision, a record of any conflict of interest declared by any executive member who is consulted by the officer which relates to the decision and in respect of any declared conflict of interest, a note of dispensation granted by the Head of Paid Service.
- (5) 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. This does not require the disclosure of exempt or confidential information or advice from a political assistant (if any).

[Note: in adopting this Constitution the County Council decided, with the concurrence of the Executive, that no executive decisions will be taken by individual members of the Executive. Therefore, while that decision remains effective and is reflected in Article 7.08, those parts of Rule 23 which relate to such decisions have no practical effect]

RULE 24

Overview and scrutiny committees access to documents

- (1) Subject to paragraph (2) of this Rule, 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;
 - (b) any decision taken by an individual member of the Executive; or
 - (c) any decision taken by an officer of the authority in accordance with executive arrangements.
- (2) 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; or
- (c) the advice of a political adviser (if any).

RULE 25***Additional rights of access for members***

- (1) All members of the County Council 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 either (a), (b) or (c) below applies:
 - (a) It contains exempt information falling within paragraphs 1, 2, 4, 5 and 7 of the categories of exempt information; or
 - (b) It contains information falling within paragraph 3 of the categories of exempt information and that information relates to any terms proposed or to be proposed by or to the Authority in the course of negotiations for a contract.
 - (c) It contains the advice of a political adviser.
- (2) All members of the County 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 (a) or (b) above applies.
- (3) These rights of a member are additional to any other right he/she may have.

**SCHEDULE
EXEMPT INFORMATION (RULES 10 AND 24)**

**(N.B. 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 the financial or business affairs of any particular person (including the authority holding that information).	Information is not exempt information if it is required to be registered under – (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 1993 ‘financial or business affairs’ includes contemplated, as well as past or current, activities ‘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)
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.	‘employee’ means a person employed under a contract of service ‘labour relations matter’ means – (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 (b) any dispute about a matter falling within paragraph (a) above;

CATEGORY	QUALIFICATIONS/DEFINITIONS
	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; ‘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
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.	

Public Interest Test – Paragraph 10

The above 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.

Town and Country Planning

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.

[end of Access to Information Procedure Rules]

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