



# **Part 4**

## **Access to Information Procedure Rules**

# Access to Information Procedure Rules

## 1. SCOPE

These rules apply to all meetings of the Council and its various bodies (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 formal meetings ~~which are open to the public~~ **all meetings** ~~of the Council and its Committees~~ (subject only to the exceptions in these rules).

## 4. NOTICES OF MEETING

The Council will give at least five clear working days notice of any meeting by posting details of the meeting ~~at its offices at Follaton House, Plymouth Road, Totnes, Devon and~~ on its website.

## 5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

The Council will make copies of the agenda and reports of meetings open to the public available for inspection at the designated office at least five clear working days before the meeting. If an item is added to the agenda later, ~~the revised agenda or 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 by uploading onto the Council website. ~~The report will also be sent to councillors and will be open to inspection for 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 Head of Paid Service or 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 in the opinion of the Monitoring Officer is likely to disclose exempt or confidential information;
- (b) 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 relevant 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.

### 8.2 Public inspection of background papers

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

**Comment [KT1]:** I know I am creating work but should we not have a copy of all background documents, or at least an index of background documents/links?

## ~~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 Follaton House, Plymouth Road, Totnes, Devon.~~

## 10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

### 10.1 Confidential information – requirement to exclude public

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

### 10.2 Exempt information – discretion to exclude public

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.~~

### 10.3 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.

### 10.4 Meaning of exempt information

Exempt information means information falling within the following categories (as defined by Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) Order 2006) and the Standards Committee (England) Regulations 2008):

1. Information relating to any individual;
2. Information which is likely to reveal the identity of an individual;
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information);
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the Authority;
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings;

6. Information which reveals that the authority proposes:-
  - a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person or
  - b) to make an order or direction under any enactment;
7. Information relating to any action taken, or to be taken, in connection with the prevention, investigation or prosecution of crime.
  - (a) Information which is subject to any obligation of confidentiality;
  - (b) Information which relates in any way to matters concerning national security;
  - (c) Information presented to a Standards Committee or to a Sub-Committee of a Standards Committee set up to consider any matter under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008, or referred under section 58(1)(c) of the Local Government Act 2000.

Note: Information falling within paragraph 10.4 (3) above is not exempt information by virtue of that paragraph if it is required to be registered under:

the Companies Act 1985;  
the Friendly Societies Act 1974;  
the Friendly Societies Act 1992;  
the Industrial and Provident Societies Acts 1965 to 1978;  
the Building Societies Act 1986; or  
the Charities Act 1993.

- (d) Information falling within any of paragraphs 1-7 is not exempt by virtue of that paragraph 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 which

- (i) falls within any of paragraphs 1 to 7 above and
- (ii) is not prevented from being exempt by virtue of sub paragraphs (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.

NB: 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.

## 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 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.

## 12. APPLICATION OF RULES TO THE EXECUTIVE

Rules 13 – 24 apply to the Executive. If the Executive meets to take a key decision then it must also comply with Rules 1 – 11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is as defined in Article 11.03 of this Constitution.

If the Executive meets to discuss a key decision to be taken collectively, with an officer 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 – 11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is as defined in Article 11.03 of this Constitution. This requirement does not include meetings, whose sole purpose is for officers to brief councillors.

Comment [KT2]:

## 13. PROCEDURE BEFORE TAKING KEY DECISIONS

Subject to Rule 15 (general exception) and Rule 16 (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 3 clear working 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, 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 of the Council to cover a period of four months, ~~beginning with the first day of any month~~. They will be updated on a ~~regular-monthly~~ basis and a new forward plan produced ~~at least~~

~~28~~14 days prior to the first day upon which the forward plan will come into effect.

## 14.2 Contents of forward plan

The forward plan will contain matters which the Leader of the Council has reason to believe will be subject of a key decision to be taken by the Executive, officers, 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 a decision is to be made;
- (b) where the decision taker is an individual, his/her name and title, if any and where the decision taker is a body, its name and details of membership;
- (c) the date on which, or the period within which, the decision will be taken;
- (d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;

## ~~14.2 Contents of forward plan~~

- (e) the means by which any such consultation is proposed to be undertaken;
- (f) the steps any person might take who wishes to make representations to the Executive or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
- (g) a list of the documents submitted to the decision taker for consideration in relation to the matter.

## 14.3 Publication of forward plan

Each forward plan must be published on the Council website and the document to be published shall state:

- (a) that key decisions are to be taken on behalf of the Council;
- (b) that a forward plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;
- (c) that the plan will contain details of the key decisions to be made for the four month period following its publication;
- (d) that each plan will be available for inspection at reasonable hours free of charge at the Council's offices;

(e) that each plan will contain a list of the documents submitted to the decision takers for consideration in relation to the key decisions on the plan;

- (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the forward plan is available;
- (g) that other documents may be submitted to decision takers;
- (h) the procedure for requesting details of documents (if any) as they become available; and
- (i) the dates on each month in the following year on which each forward plan will be published and available to the public at the Council's offices.

Exempt information need not be included in a forward plan and confidential information cannot be included. In the case of doubt the advice of the Monitoring Officer should be sought.

## 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~~Head of Paid Service~~ has informed the Chairman of the Overview & Scrutiny Panel, or if there is no such person, each Member of Overview & Scrutiny in writing, by notice, of the matter to which the decision is to be made;
- (c) the Monitoring Officer~~Head of Paid Service~~ has made copies of that notice available to the public ~~at the offices of the Council~~; and (although not sure what the notice is)
- (d) at least **three clear working days** have elapsed since the Head of Paid Service complied with (a) and (b).

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

## 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 chairman of the body making the decision, obtains the agreement of the Chairman of the Overview and Scrutiny Panel that the taking of the decision cannot be reasonably deferred. If there is no Chairman of the Overview and Scrutiny Panel, or if he/she is unable to act, then the agreement of the Chairman of the Council, or in his/her absence the Vice Chairman of the Council will suffice.

## 17. REPORT TO COUNCIL

### 17.1 When the Overview & Scrutiny Panel can require a report

If the Overview and Scrutiny Panel 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 the Chairman of Overview and Scrutiny Panel or the Chairman/Vice Chairman of the Council under Rule 16;

The Overview and Scrutiny Panel may require the Executive to submit a report to the Council within such reasonable time as the body specifies. The power to require a report rests with the Overview and Scrutiny Panel, but is also delegated to the Head of Paid Service, who shall require such a report on behalf of the body when so requested by the Chairman of the Council or any ~~four~~ **five** ~~councillors~~. Alternatively the requirement may be raised by resolution passed at a meeting of the Overview and Scrutiny Panel.

**Comment [KT3]:** Four members to bring in line with Call In procedures

### 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 a Overview and Scrutiny Panel, 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 of the Council 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 of the Council 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 ~~the Monitoring Officer (or Democratic Services Manager in his/her absence) will produce~~ a record of every decision taken at that meeting will be produced as a set of minutes, as soon as practicable and no later than 48 hours after the meeting. *The record will include a statement*

*of the reasons for each decision and any alternative options considered and rejected at that meeting.*

**Comment [KT4]:** Check legislation

## 19. EXECUTIVE MEETINGS RELATING TO MATTERS WHICH ARE NOT KEY DECISIONS

All meetings of the Executive will be held in public except when a motion is approved to considering exempt or confidential items.

## 20. OFFICERS

The Head of Paid Service, the Section 151 Officer and the Monitoring Officer and their nominees are entitled to attend any meeting of the Executive.

## 21. DECISIONS BY INDIVIDUALS

### 21.1 Record of key individual decision

As soon as reasonably practicable after a key decision has been taken by an officer, he/she will prepare, ~~or instruct the Monitoring Officer (or Democratic Services Manager in his/her absence)~~ ~~to prepare~~ a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. This does not require the disclosure of exempt or confidential information.

**Comment [KT5]:** Forward Plan has been revamped for 2019. Greater focus on what is/not key decision. Dem Services will look to roll out this element in the New Year.

## 22. SCRUTINY'S ACCESS TO DOCUMENTS

### 22.1 Rights to copies

Subject to Rule 22.2 below, the Overview and Scrutiny Panel will be entitled to copies of any document which is in the possession or control of the Executive and which contains material relating to any business transacted at a meeting of the Executive.

### 22.2 Limit on rights

The Overview & Scrutiny Panel 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 in the opinion of the Monitoring Officer that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise.

## 23. ADDITIONAL RIGHTS OF ACCESS FOR COUNCILLORS

### 23.1 Material relating to key decisions

All ~~members~~councillors of the Council will be entitled to inspect any document ~~(except those available only in draft form)~~ in the possession ~~or under the control~~ of the Executive which relates to any key decision unless:

- it is only available in draft form
- it contains exempt information ~~falling within the categories of exempt information shown above,~~ (with the exception of paragraph 3 (except to the extent that it relates to terms proposed by or to the authority in the course of negotiations for a contract) ~~and~~ paragraph ~~(6)~~.)

Comment [KT6]: Reworded for clarity

### 23.2 Nature of rights

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