

## **(2) Access to Information Procedure Rules**

### **1. SCOPE**

These rules apply to all meetings of the Council, overview and scrutiny committees, Audit Committee, area committees (if any), the Standards Committee and regulatory committees and public meetings of the Leader, Cabinet and individual Cabinet Members (together called meetings).

### **2. ADDITIONAL RIGHTS TO INFORMATION**

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

### **3. RIGHTS TO ATTEND MEETINGS**

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

### **4. NOTICES OF MEETING**

The Council will give at least five clear working days notice of any meeting by posting details of the meeting at County Hall, Lewes, East Sussex (the designated office).

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

The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least five clear working days before the meeting, subject to any exceptions provided in the legislation. Where a meeting is convened at shorter notice, a copy of the agenda and associated reports shall be available for inspection from the time the meeting is convened. Where an item is added to the agenda later, the revised agenda, and any report shall be made available to the public when the item is added to the agenda. Save that there is no requirement for a copy of an agenda, item or report to be available for inspection by the public until a copy is available to members of the decision-making body.

### **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 proper officer thinks fit), 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], excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

## **8. BACKGROUND PAPERS**

### **8.1 List of background papers**

The proper officer 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) or in respect of Cabinet reports, the advice of a political adviser.

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

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.

**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 County Hall, Lewes, East Sussex.

**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 set out in Part 1 of Schedule 12A of the Local Government Act 1972 (subject to any condition):

Category	Condition
1. Information relating to any individual	
2. Information that 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 within category 3 is not exempt if it must be registered under various statutes, such as the Companies Act or Charities Act as set out in paragraph 8 of Schedule 12A of

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	the Local Government Act 1972 (as amended). Financial or business affairs includes contemplated as well as past or current activities.
4. Information relating to any 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.	Information within category 4 is only exempt if and for so long as its disclosure to the public would prejudice the authority in those or any other consultations or negotiations in connection with a labour relations matter. "Labour relations matters" are as specified in paragraphs (a) to (g) of section 218 of the Trade Unions and Labour Relations Act 1992, i.e. matters which may be the subject of a trade dispute.
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	Information within category 6 is exempt only while disclosure might give an opportunity to a person affected by the notice, order direction to defeat the purpose for which the notice, order or direction is to be given or made.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	

10.5 Information falling within any of categories 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.

10.6 Information which falls within any of categories 1 to 7 above and which is not prevented from being exempt by either the condition to category 3 or Rule 10.5 is exempt information if and so long as in all the circumstances of the case

the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

#### **11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS**

If the Deputy Chief Executive, as the proper 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 CABINET**

Rules 13 - 24 apply to the Cabinet, its committees and individual Cabinet Members. If the Cabinet, its committees or individual Cabinet Members meet 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 13.02(b) of this Constitution.

This requirement does not include meetings, whose sole purpose is for officers to brief members.

#### **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 28 days before a key decision is to be made in connection with the matter in question; and
- (b) where the decision is to be taken at a meeting of the Cabinet, its committees or individual Cabinet meetings, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

#### **14. THE FORWARD PLAN**

##### **14.1 Period of forward plan**

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

##### **14.2 Contents of forward plan**

The forward plan will contain matters which the Leader has reason to believe will be the subject of a key decision to be taken by the Cabinet, a committee of the

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Cabinet, individual members of the Cabinet, 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 is to be made;
- (d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
- (e) the means by which any such consultation is proposed to be undertaken;
- (f) the steps any person might take who wishes to make representations to the Cabinet or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken;
- (g) a list of the documents submitted to the decision taker for consideration in relation to the matter on which a key decision is to be made;
- (h) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
- (i) that other documents relevant to those matters may be submitted to the decision maker; and
- (j) the procedure for requesting details of those documents (if any) as they become available.

The forward plan must be published at least 28 days before the start of the period covered. The proper officer will publish once a year a notice in at least one newspaper circulating in the area, stating:

- (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;

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- (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.

### **15. GENERAL EXCEPTION**

15.1 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 proper officer has informed the chair of a relevant overview and scrutiny committee, or if there is no such person, each member of that committee in writing of the matter about which the decision is to be made;
- (c) the proper officer has made copies of that notice available to the public at the offices of the Council and on the Council's website; and
- (d) at least 5 clear days have elapsed since the proper officer complied with (b) and (c).

**16. SPECIAL URGENCY**

16.1 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 chair of the body making the decision, obtains the agreement of the chair of a relevant overview and scrutiny committee that the taking of the decision is urgent and cannot be reasonably deferred. If there is no chair of a relevant overview and scrutiny committee, or if the chair of the relevant overview and scrutiny committee is unable to act, then the agreement of the Chairman of the Council, or in his/her absence the agreement of the Vice Chairman of the Council is required.

16.2 As soon as reasonably practical after the decision maker has obtained agreement under 16(1) that the decision is urgent and cannot reasonably be deferred, the decision maker must publish a notice on the Council's website setting out the reasons that the meeting is urgent and cannot reasonably be deferred.

**17. REPORT TO COUNCIL**

**17.1 When an overview and scrutiny committee can require a report**

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 chair, or the Chairman/Vice Chairman of the Council under Rule 16;

The committee may require the Cabinet or individual Cabinet Members to submit a report to the Council within such reasonable time as the committee specifies. The report must include details of the decision and reason for the decision, the decision maker and, if the executive are of the opinion that the decision was not a key decision, the reasons for that opinion. The power to require a report rests with the committee, but is also delegated to the proper officer, who shall require such a report on behalf of the committee when so requested by (the chairman or any 3 members). Alternatively the requirement may be raised by resolution passed at a meeting of the relevant overview and scrutiny committee.

**17.2 Cabinet's report to Council**

The Cabinet or individual Cabinet Members will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the



Council is within 10 days of receipt of the written notice, or the resolution of the committee, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual or body making the decision, and if the Leader is of the opinion that it was not a key decision the reasons for that opinion.

### **17.3 Quarterly reports on special urgency decisions**

In any event the Leader will submit quarterly reports to the Council on the Cabinet or individual Cabinet Member 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 Cabinet, any of its committees or individual Cabinet members, whether held in public or private, the proper officer will produce a record of every decision taken at that meeting as soon as practicable. The record will include a statement of the reasons for each decision, any alternative options considered and rejected at that meeting and a record of any conflict of interest relating to the matter decided which is declared by a member of the decision making body.

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

The Cabinet will decide whether meetings relating to matters which are not key decisions will be held in public or private. In accordance with the Council's policy of openness there is a presumption that all meetings of the Cabinet or individual Cabinet Members will be held in public, except where considering exempt or confidential business.

## **20. NOTICE OF PRIVATE MEETING OF THE CABINET**

Members of the Cabinet 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.

## **21. ATTENDANCE AT PRIVATE MEETINGS OF THE CABINET**

- a) All members of the Cabinet will be served notice of all private meetings of committees of the Cabinet, whether or not they are members of that committee.
- b) All members of the Cabinet are entitled to attend a private meeting of any committees of the Cabinet.

- c) The head of the paid service, the chief financial officer and the monitoring officer, and their nominees are entitled to attend any meeting of the Cabinet and its committees. The Cabinet may not meet unless the proper officer has been given reasonable notice that a meeting is to take place.
- d) A private Cabinet meeting may only take place in the presence of the proper officer or his/her nominee with responsibility for recording and publicising the decisions.

The provisions of Rule 18 (Record of Decisions) will apply.

## **22. DECISIONS BY INDIVIDUAL MEMBERS OF THE CABINET**

### **22.1 Reports intended to be taken into account**

Where an individual member of the Cabinet 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 4 clear working days after receipt of that report.

### **22.2 Provision of copies of reports to overview and scrutiny committees**

On giving of such a report to an individual decision maker, the proper officer will give a copy of it to the chair of every relevant overview and scrutiny committee as soon as reasonably practicable, and make it publicly available at the same time unless it is exempt or confidential.

### **22.3 Record of individual decision**

As soon as reasonably practicable after an executive decision has been taken by an individual member of the Cabinet or a key decision has been taken by an officer, he/she will prepare, or instruct the proper officer to prepare, a record of the decision, a statement of the reasons for it, any alternative options considered and rejected and a record of any conflict of interest declared by any executive member. 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 Cabinet. This does not require the disclosure of exempt or confidential information or advice from a political assistant.

## **23. OVERVIEW AND SCRUTINY COMMITTEES ACCESS TO DOCUMENTS**

### **23.1 Rights to copies**

Subject to Rule 23.2 below, a member of an overview and scrutiny committee (including its sub-committees) is entitled to copies of any document which is in the possession or control of the Cabinet [or its committees] and which contains material relating to

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- (a) any business transacted at a meeting of a decision making body of the Council, the Cabinet [or its committees]; or
- (b) any decision taken by an individual member of the Cabinet; or
- (c) any decision made by an officer of the authority in accordance with executive arrangements

Subject to Rule 23.2 below, where a member of a overview and scrutiny committee requests a document set out above, the executive must provide the document as soon as reasonably practicable and no later than 10 days after the request is received.

### **23.2 Limit on rights**

No member of an overview and scrutiny committee is 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 (any such exempt or confidential information to be treated as such); or
- (c) the advice of a political adviser.

23.3 Where the Executive determines that a member of an overview and scrutiny committee is not entitled to a copy of a document for a reason set out in 23.1 or 23.2 above it must provide a written statement setting out its reasons.

## **24. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS**

### **24.1 Material relating to previous business**

All members will be entitled to inspect any document which is in the possession or under the control of the Cabinet [or its committees] and contains material relating to any business previously transacted at a private meeting unless either (a) or (b) below applies.

- (a) it contains exempt information falling within paragraphs 1 to 7 of the categories of exempt information; or
- (b) it contains the advice of a political adviser

Subject to the advice of the Proper Officer members may in certain circumstances be able to inspect a wider range of documents on a confidential basis if it is shown to be necessary to carry out their role as Councillors.

#### **24.2 Material relating to key decisions**

All members 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 Cabinet [or its committees] which relates to any key decision unless paragraph 24.1 (a) or (b) above applies.

#### **24.3 Nature of rights**

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

### **25 PROCEDURES PRIOR TO PRIVATE MEETINGS**

25.1 At least 28 clear days before a private decision-making meeting (a meeting where some or all of the report(s) contain exempt or confidential information) of the Cabinet, committee of the Cabinet or an individual member of the Cabinet, a notice of the intention to hold a meeting in private must be published on the Council's website.

25.2 The notice referred to in 25.1 must include a statement of the reasons for the meeting to be held in private.

25.3 At least five clear days before a private meeting, the decision-making body must publish a further notice of its intention to hold a meeting in private. This notice must include a statement of the reasons for the meeting to be held in private; details of any representations received by the decision making body about why the meeting should be open to the public; and a statement of its response to any such representations, the statement of response in respect of Cabinet will be agreed by the Chair of the Cabinet, or in their absence, the Vice-Chair of the Cabinet.

25.4 Where the date by which the meeting must be held makes compliance with 25.1 impracticable the meeting may only be held in private where the decision maker (if an individual) or the chair of the body making the decision, obtains the agreement of the chair of the relevant overview and scrutiny committee that the taking of the decision is urgent and cannot be reasonably deferred. If there is no chair of a relevant overview and scrutiny committee, or if the chair of the relevant overview and scrutiny committee is unable to act, then the agreement of the Chairman of the Council, or in his/her absence the agreement of the Vice Chairman of the Council is required.

25.5 As soon as reasonably practical after the decision maker has obtained agreement under 25.4 that the decision is urgent and cannot reasonably be deferred and that the meeting should be held in private, the decision maker must publish a notice on the Council's website setting out the reasons that the meeting is urgent and cannot reasonably be deferred.