

## Part 4B: Access to Information Procedure Rules

### Table of Contents

1. Scope and Access to Information.....	2
2. Additional Rights to Information .....	2
3. Rights to attend meetings and report on meetings .....	2
4. Notices of meeting.....	3
5. Access to Agenda and Reports before the meeting .....	3
6. Supply of copies .....	3
7. Access to Minutes etc. after the meeting .....	4
8. Background Papers .....	4
9. Summary of Public’s Rights.....	5
10. Exclusion of Access by the Public to Meetings.....	5
11. Exclusion of Access by the Public to Reports.....	10
12. Application of Rules to the Executive .....	10
13. Procedure before taking Key Decisions.....	10
14. General Exception .....	11
15. Special Urgency .....	11
16. Report to Council.....	12
17. Record of Decisions .....	13
18. Key Decisions by Individual Members of the Executive.....	13
19. Corporate Overview and Scrutiny Management Board and Scrutiny Committees - Access to Documents.....	14
20. Additional Rights of Access to Documents for Members .....	14

## Access to Information Procedure Rules

### 1. Scope and Access to Information

- 1.1 These rules apply to all meetings of the Council, the Executive, the Corporate Overview and Scrutiny Management Board and Scrutiny Committees, the Standards Committee and Regulatory Committees (together called meetings).
- 1.2 For all purposes of the Constitution including procedure rules, the terms “notice”, “summons”, “agenda”, “report”, “written record” and “background papers” when referred to as being a document that is:
  - (a) “open to inspection” shall include for these and all other purposes as being published on the website of the council; and
  - (b) to be published, posted or made available at offices of the Authority shall include publication on the website of the Authority.

### 2. Additional Rights to Information

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law nor do these rules limit or diminish the Council’s duties to protect certain information, including personal information. This includes the rights and duties from the provisions of the Freedom of Information Act 2000 and the Data Protection Act 2018.

### 3. Rights to attend meetings and report on meetings

- 3.1 Members of the public may attend all meetings subject only to the exceptions in these Rules. Members of the public are also entitled to report on meetings of Council, Committees and Cabinet, except in circumstances where the public have been excluded as permitted by law.
- 3.2 Reporting means:-
  - filming, photographing or making an audio recording of the proceedings of the meeting;
  - using any other means for enabling persons not present to see or hear proceedings at a meeting as it takes place or later; or

- reporting or providing commentary on proceedings at a meeting, orally or in writing, so that the report or commentary is available as the meeting takes place or later if the person is not present.
- 3.3 Anyone present at a meeting as it takes place, is not permitted to carry out an oral commentary or report. This is to prevent the business of the meeting being disrupted.
- 3.4 Members of the public are to remain seated throughout the meeting and to follow the meeting etiquette to prevent a distraction from the business in hand.
- 3.5 For meetings held in County Council Buildings, members of the public are welcome to use the Council's Wi-Fi facilities. Where meetings take place in venues not run by the County Council members of the public are advised to check with the venue whether Wi-Fi is available. Due to health and safety reasons the Council is unable to facilitate members of the public using electric plug sockets in meetings for their equipment.

#### **4. Notices of meeting**

The Council will give at least five clear days' notice of any meeting by publishing details of the meeting on the Council website.

#### **5. Access to Agenda and Reports before the meeting**

- 5.1 The Members of the Corporate Overview and Scrutiny Management Board and Scrutiny Committees shall be provided with full copies of the agenda and reports presented to Cabinet including those containing exempt and/or confidential information.
- 5.2 The Council will make copies of the agenda and reports open to the public available for inspection on the Council website at least five clear days before the meeting. If an item is added to the agenda later, the revised agenda (where reports are prepared after the summons has been sent out, the Director of Legal and Democratic Services shall make each such report available to the public as soon as the report is completed and sent to Councillors) 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 Director of Legal and Democratic Services 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 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**

### **List of background papers**

8.1 The Officer preparing a report will set out in such report a list of those documents (called background papers) relating to the subject matter of the report which in their 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).

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

8.2 The Council will make available for public inspection via the website for four years after the date of the meeting a link to the documents on the list of background papers.

## 9. Summary of Public's Rights

The written summary of the public's rights to attend meetings and to inspect and copy documents are contained in the Constitution. The Constitution is held at County Hall, Durham and available on the Council website.

## 10. Exclusion of Access by the Public to Meetings

### Confidential information – requirement to exclude public

- 10.1 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.

### Exempt information – discretion to exclude public

- 10.2 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.

### Meaning of confidential information

- 10.3 Confidential information means information given to the Council by a Government Service or Agency on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.

### Meaning of exempt information

- 10.4 Exempt information means information falling within the following categories (subject to any qualification):

Category	Qualification	Interpretation
<b>1. Information relating to any individual</b>	The exemption applies only 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	

	(see note on public interest below).	
<b>2. Information which is likely to reveal the identity of an individual.</b>	The Public Interest Test Qualification applies, as in 1 above.	
<b>3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).</b>	<p>The Public Interest Test Qualification applies, as in 1 above.</p> <p>"Financial or business affairs" includes contemplated, as well as past or current, activities. Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under –</p> <ul style="list-style-type: none"> <li>i. the Companies Act 1985;</li> <li>ii. the Friendly Societies Act 1974;</li> <li>iii. the Friendly Societies Act 1992;</li> <li>iv. the Industrial and Provident Societies Acts 1965 to 1978;</li> <li>v. the Building Societies Act 1986 ["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).]; or</li> </ul>	<b>Any reference to "the authority" is a reference to the Council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined.</b>

	vi. the Charities Act 1993.	
<p><b>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.</b></p>	<p>The Public Interest Test Qualification applies, as in 1 above.</p>	<p><b>Any reference to "the authority" is a reference to the Council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined.</b></p> <p><b>"labour relations matter" means—</b></p> <p><b>(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></p> <p><b>(b) any dispute about a matter falling within paragraph (a) above; 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;</b></p>

		<p><b>"employee" means a person employed under a contract of service;</b></p> <p><b>"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;</b></p>
<p><b>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</b></p>	<p>The Public Interest Test Qualification applies, as in 1 above.</p>	
<p><b>6. Information which reveals that the authority proposes—</b></p> <p><b>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person;</b></p> <p><b>or</b></p> <p><b>(b) to make an order or direction under any enactment.</b></p>	<p>The Public Interest Test Qualification applies, as in 1 above.</p>	<p><b>Any reference to "the authority" is a reference to the Council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined.</b></p>
<p><b>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</b></p>	<p>The Public Interest Test Qualification applies, as in 1 above.</p>	



**Exempt Information relating to the Standards Committee ONLY**

<b>7A. Information which is the subject to any obligation of confidentiality</b>	The Public Interest Test Qualification applies, as in 1 above.	
<b>7B. Information which relates in any way to matters concerning national security.</b>	<b>The Public Interest Test Qualification applies, as in 1 above.</b>	

**NOTE 1** Information falling within any of paragraphs 1 – 7 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.

**NOTE 2 -** The Public Interest Test

The Public Interest Test in the Freedom of Information (FOI) Act 2000 is specifically defined –

The Authority must release the information unless “in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”.

The starting point is that there is a general public interest in release and the public authority has to decide whether in any particular case it would serve the interest of the public better to either disclose or withhold the information.

There is no legal definition of what the public interest is, but the following have been identified as some of the relevant considerations.

- There is a distinction between the public interest and what merely interests the public.
- Does it further the understanding of and participation in the public debate of issues of the day?
- Does it promote accountability and transparency by public authorities for decisions taken by them or in the spending of public money?
- Does it allow individuals and companies to understand decisions made by public authorities affecting their lives?

- Does it bring to light information affecting public health and public safety?

## 11. Exclusion of Access by the Public to Reports

If the Director of Legal and Democratic Services thinks fit, the Council may exclude access by the public to reports which in their 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

- 12.1 Rules 13-20 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 1-11 unless Rule 14 (general exception) or Rule 15 (special urgency) apply. A key decision is as defined in Article 12.03 of this Constitution.
- 12.2 If the Executive or its Committees meet to discuss a key decision to be taken collectively, with an Officer other than a political assistant present, within 28 days of the date according to the Notice of Key Decisions by which it is to be decided, then it must also comply with Rules 1–11 unless Rule 14 (general exception) or Rule 15 (special urgency) apply. A key decision is as defined in Article 12.03 of this Constitution. This requirement does not include meetings whose sole purpose is for Officers to brief Members.

## 13. Procedure before taking Key Decisions

- 13.1 Subject to Rule 14 (general exception) and Rule 15 (special urgency), a key decision may not be taken unless:
- 13.2 Where a decision maker (the decision making body by which, or the individual by whom an executive decision is made) intends to make a key decision, that decision must not be made until a document has been published at least 28 clear days before the making of the decision at the Council offices or on its website stating:-
- (a) that a key decision is to be made on behalf of the relevant local authority;
  - (b) the matter in respect of which the decision is to be made;
  - (c) where the decision maker is an individual, that individual’s name and title if any and, where the decision maker is a decision-making body, its name and a list of its members;
  - (d) the date on which, or the period within which, the decision, 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.

13.3 Where in relation to any matter the public may be excluded from the meeting at which the matter is to be discussed or documents relating to the decision need not be disclosed to the public, the document referred to must contain particulars of the matter but may not contain any confidential, exempt information or particulars of the advice of a political adviser or assistant.

## 14. General Exception

14.1 Where the publication of the intention to make a key decision is impracticable, that decision may only be made:-

- (a) where the proper officer has informed the chair of the Corporate Overview and Scrutiny Management Board or, if there is no such person, each member of the Corporate Overview and Scrutiny Management Board by notice in writing, of the matter about which the decision is to be made;
- (b) where the proper officer has made available at the Council offices for inspection by the public and published on the Council's website, a copy of the notice given pursuant to sub-paragraph (a); and
- (c) after five clear days have elapsed following the day on which the proper officer made available the notice referred to in sub-paragraph (b).

14.2 As soon as reasonably practicable after the proper officer has complied with 14.1(a)-(c) above they must make available at the council offices or publish on the Council website a notice setting out the reasons why compliance with paragraph 13 is impracticable.

## 15. Special Urgency

15.1 Where the date by which a key decision must be made, makes compliance with Rule 14 (General Exception), the decision may only be made where the decision maker has obtained agreement from:-

- (a) the chair of the Corporate Overview and Scrutiny Management Board; or
- (b) if the chair of the Corporate Overview and Scrutiny Management Board is unable to act, the chair of the Council; or
- (c) where there is no chair of either the Corporate Overview and Scrutiny Management Board or of the Council, the Vice-Chair of the Council,

that the making of the decision is urgent and cannot reasonably be deferred.

15.2 As soon as reasonably practicable after the decision maker has obtained agreement under Rule 15.1 that the making of the decision is urgent and cannot reasonably be deferred, the decision maker must make available at the Council offices or publish on the Council website a notice setting out the reasons that the meeting is urgent and cannot reasonably be deferred;

## 16. Report to Council

### When the Corporate Overview and Scrutiny Management Board can require a report

16.1 If the Corporate Overview and Scrutiny Management Board thinks that a key decision has been taken which was not:

- (a) published in accordance with Rule 13
- (b) the subject of the general exception procedure; or
- (c) the subject of the special urgency procedure.

the Board may require the Executive to submit a report to the Council within such reasonable time as the Board specifies. The power to require a report rests with the Board, but is also delegated to the Director of Legal and Democratic Services, who shall require such a report on behalf of the Board when so requested by the Chair of the Corporate Overview and Scrutiny Management Board. Alternatively the requirement may be raised by resolution passed at a meeting of the Corporate Overview and Scrutiny Management Board.

### Executive's report to Council

16.2 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 7 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 member 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.

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

- 16.3 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 particulars of each decision made and a summary of the matters in respect of which each decision was made.

## **17. Record of Decisions**

After any meeting of the Executive or any of its Committees held in public the Director of Legal and Democratic Services or, where no Officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as practicable. The record will include the date it was made, a statement of the reasons for each decision and any alternative options considered and rejected at that meeting, 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 in respect of any declared conflict of interest, a note of dispensation granted by the Council's Head of Paid Service.

## **18. Key Decisions by Individual Members of the Executive**

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

- 18.1 Where an individual Member of the Executive receives a report which they intend to take into account in making any key decision, then they will not make the decision until at least 5 clear days after receipt of that report.

### **Provision of copies of reports to Corporate Overview and Scrutiny Management Board**

- 18.2 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 Chair of the Corporate Overview and Scrutiny Management Board as soon as reasonably practicable, and make it publicly available at the same time.

### **Record of individual decision**

- 18.3 As soon as reasonably practicable after an Executive decision has been taken by an individual Member of the Executive, they will prepare, or instruct the Director of Legal and Democratic Services to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. 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.

## 19. Corporate Overview and Scrutiny Management Board and Scrutiny Committees - Access to Documents

19.1 Members of the Corporate Overview and Scrutiny Management Board and the Scrutiny Committees are entitled to a copy of any documents which are in the possession or under the control of the executive of that authority; and contains material relating to:

- (i) any business that has been transacted at a **meeting** of a decision making body of that authority
- (ii) any decision that has been made by an **individual member** of that executive in accordance with the executive arrangements
- (iii) any decision that has been made by **an officer** of the authority in accordance with executive arrangements.

19.2. Where a member of an Overview and Scrutiny Committee requests a document following the definition above, the executive must provide that document as soon as reasonably practicable and in any case no later than 10 clear days after the executive receives the request.

19.3 The entitlement does not extend to a copy of any document or part of a document that contains exempt or confidential information unless that information is relevant to an action or decision that the member is reviewing or scrutinising or any review contained in any programme of work.

19.4 If the executive determines that a member of an Overview and Scrutiny Committee is not entitled to a copy of the document or part of any such document, it must provide the Overview and Scrutiny Committee with a written statement stating the reasons for that decision.

## 20. Additional Rights of Access to Documents for Members

20.1 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 Executive or its Committees which contains material relating to any business to be transacted at a public meeting. Any document must be available for inspection at least 5 clear days before the meeting except:-

- (a) where the meeting is convened at shorter notice the document must be available for inspection when the meeting is convened; and

- (b) where an item is added to the agenda at shorter notice, a document that would be required to be available must be available for inspection when the item is added on the agenda.

20.2 Any document which is in the possession or under control of the Executive and contains material relating to any business transacted at a private meeting, will be available for members to read through committee services, subject to 20.4 below.

20.3 Any document which is in the possession or under control of the Executive and contains material relating to:

- (a) any business transacted at a private meeting.
- (b) any decision made by an individual member in accordance with executive arrangements;
- (c) any decision made by an officer in accordance with executive arrangements

must be available for inspection by a member within 24 hours from when the meeting concludes or where an executive decision is made by an officer, from after the decision has been made

20.4 (a) The entitlement to access documents does not extend to a document:

- i) that contains exempt information unless the exemption solely relates to the financial or business affairs of any particular person: or,
  - ii) the exemption solely relates to information that reveals that the authority proposes to give under any enactment, or notice under or by virtue of which requirements are imposed on a person, or to make an order or direction under any enactment.
- (b) Nothing in rule 20.4 (a) permits the disclosure of exempt information relating to any terms proposed by or to the authority in the course of negotiations of contract.
  - (c) Nothing in these rules requires the disclosure of confidential information that breaches the obligation of confidence.
  - (d) Nothing in these rules requires the disclosure of a document, or part of a document where advice had been provided by a political adviser or assistant.

20.5 Where access is restricted to a document identified in 20.2, the restriction is determined by the Leader and Cabinet on advice of the Director of Legal and

Democratic Services, where an explanation would be provided to members on the restriction to access to the document, and attendance at meeting.

**NOTE 3 -** How 20.2, 20.4 and 20.5 work in the Council:

members in normal circumstances will be able to access the report and attend meetings, however there may be occasions such as:-

- i. highly sensitive and complex negotiations
- ii. significant litigation risk
- iii. sensitive personal information where the data subject would reasonably expect such information to be restricted only to decision makers

where access would be restricted, the restriction would be determined by the Leader and Cabinet on the advice of the Director of Legal and Democratic Services, in which case an explanation will be provided to members for the restriction to access.

20.6 Nature of rights. These rights of a Member are additional to any other right they may have.