

# **ACCESS TO INFORMATION PROCEDURE RULES**

# **Access to Information Procedure Rules**

## **1. Scope of These Rules**

These rules apply to all meetings of the Council, the Overview and Scrutiny Management Committee and Scrutiny Panels, the Standards Committee and regulatory and other Council committees (together called meetings). Rule 14 provides for their application to meetings of the Cabinet, Cabinet committees and of individual Cabinet members with officers for decision-making.

The Council is governed by the requirements of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 as amended and the Openness of Local Government Bodies Regulations 2014.

## **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 such meetings subject only to the exceptions in these rules.

## **4. Notices of Meeting**

The Council will give at least five clear days notice of any meeting by posting details of the meeting at the Town Hall, Ramsden Street, Huddersfield. Except in the case of a Council meeting, this requirement may be reduced when a meeting is called on shorter notice in cases of urgency. The notice will specify the business proposed to be transacted at the meeting.

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

Unless a meeting is called on shorter notice in cases of urgency, 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 days before the meeting. 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 Head of Governance shall make each such report available to the public as soon as the report is completed and sent to councillors.

Where copies of the agenda and reports open to the public are not made available for inspection in this way, an item of business will not be considered unless by reason of special circumstances, which shall be specified in the minutes, the chair of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency.

## **6. Supply of Copies**

Copies of those documents and notices which are published on the Council's website in accordance with these rules and also in accordance with the Executive Procedure Rules, will be made available on inspection by the public on request during office hours at the authority's offices at Town Hall, Ramsden Street, Huddersfield.

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) 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, if the Head of Governance thinks fit.

## **7. Access to Records of Decisions**

### **7.1 Records of Decisions Taken at Meetings**

For six years after a meeting, the Council will make available for inspection, and following a request made on behalf of a newspaper, and on payment being made of postage, copying or any other necessary charge, the Head of Governance will arrange to supply copies of the following:

- (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

### **7.2 Records of Decisions Taken By Officers<sup>1</sup>**

As soon as reasonably practicable after a significant operational decision taken by an officer in relation to a Council Function, the officer will produce a written record of

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<sup>1</sup> In accordance with The Openness of Local Government Bodies Regulations 2014, a written record of the decision and the reasons for it, together with the date of the decision, produced in accordance with any other statutory requirement, will be sufficient to satisfy the requirement to produce a written record set out in this rule,

the decision and arrange for its publication on the Council's website together with the report in relation to the decision made. The record will include;

- A record of the decision including the date it was made,
- A statement of the reasons for it,
- Details of any alternative options considered and rejected by the officer at the time of making the decision, and
- A record of any interest declared by any Executive Member consulted by the officer who made the decision together with a note of any dispensation granted in respect of that interest.

The written record will be retained and made available for inspection by the public for a period of six years beginning with the date of the decision to which it relates.

Following a request and on payment being made of postage, copying or any other necessary charge, the Head of Governance will arrange to supply a copy of the delegated decision notice and report in relation to an officer decision.

## **8. Background Papers**

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

The Head of Governance will ensure that there is 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.

This requirement does not include published works or those which disclose exempt or confidential information or in the case of Cabinet reports, the advice of a political advisor, if any, or any draft report or document.

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

- (a) A copy of each of the documents listed will be:-
  - (i) published on the Council's website at the same time as the report is available for public inspection, and
  - (ii) made available to a member of the public during office hours at the authorities offices at the Town Hall, Ramsden Street on payment of the Council's reasonable fee.
- (b) 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 the Town Hall, Ramsden Street, Huddersfield. These Rules constitute that written summary.

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

- 10.1 The Head of Governance will exclude access by the public to reports which in his/her opinion contain confidential information, (as defined in Rule 11).
- 10.2 If the Head of Governance thinks fit, access by the public may also be excluded in respect of reports which in his/her opinion relate to items during which, in accordance with exempt information rules, the meeting is likely not to be open to the public.
- 10.3 Such reports will be marked 'Not for publication' together with 'confidential information' or the exemption relied upon.
- 10.4 Where an exemption is relied upon, any such report must contain the reasons why, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

## **11 Confidential Information – Requirement to Exclude Public Access**

The public<sup>2</sup> 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. Likewise, public access to reports, background papers, and minutes will also be excluded.

Confidential information means<sup>3</sup>

- (a) information given to the Council by a Government Department on terms which forbid its public disclosure or
- (b) information which cannot be publicly disclosed by Court Order or another Act. Generally, personal information which identifies an individual, must not be disclosed under the data protection and human rights rules.

## **12 Exempt Information – Discretion to Exclude Public Access**

- 12.1 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 provided:
  - (a) the meeting resolves so to exclude the public, and that resolution identifies the proceedings or part of the proceedings to which it applies, and

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<sup>2</sup> Members of the Council and officers attending the meeting in the course of their employment shall not be considered to be members of the public

<sup>3</sup> Care should be taken to ensure that partners are aware of this definition of Confidential Information which will apply to information which they choose to share with the Council

(b) that resolution states by reference to the descriptions in Schedule 12A to the Local Government Act 1972 (paragraph 12.5 below) the description of the exempt information giving rise to the exclusion of the public.

(c) that resolution states, by reference to reasons given in a relevant report or otherwise, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

12.2 In these circumstances, public access to reports, background papers and minutes will also be excluded.

12.3 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.

12.4 Exempt information means<sup>4</sup> information falling within the following categories, (subject to any relevant conditions specified below).

NB the numbering of the categories reflects that which is set out in schedule 12A to the Local Government Act 1972, as currently amended.

## 12.5 Categories

Category	Condition
1. Information relating to any individual	Information is exempt 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
2. Information which is likely to reveal the identity of an individual	Information is exempt 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
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)	Information is exempt 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  Information within paragraph 3 is not exempt if it must be registered under various statutes, such as the Companies Acts or the Charities Act 2011.

<sup>4</sup> Care should be taken to ensure that partners are aware of this definition of Exempt Information which will apply to information which they choose to share with the Council

	“Financial or business affairs” includes contemplated, as well as past or current, activities
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	Information is exempt 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  “Labour relations matters” are as specified in paragraphs (a) to (g) of section 218(1) of the Trade Unions and Labour Relations (Consolidation) Act 1992, i.e. matters which may be the subject of a trade dispute within the meaning of that Act or any dispute about any such matter
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings	Information is exempt 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
6. (a) Information which reveals that the authority proposes -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 is exempt 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
7. Information relating to any action taken or to be taken in connection with the prevention investigation or prosecution of crime	Information is exempt 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

### Conditions

Information falling within categories 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.

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

If the Head of Governance 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 12, 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 and, where relevant, an explanation of why this is considered to be in the public interest.

## **14. Application of Rules to the Cabinet and Key Decisions**

**14.1** Rules 15 – 25 apply to the Cabinet and its committees and, unless otherwise stated, to executive decisions taken by individual Cabinet Members and Officers. Unless the Council otherwise agrees, Rules 1-13 will also apply to the Cabinet and its committees. If the Cabinet or its committees meet to take a key decision then it must also comply with Rules 1 – 13 unless Rule 16 (general exception) or Rule 17 (special urgency) apply. A key decision is an executive decision which is likely:

- to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates; or
- to be significant in terms of its effects on communities living or working in an area comprising two or more wards.

These expressions are further explained in Rules 14.2, 14.3 and 14.4 below.

**14.2** For this purpose, expenditure or savings with a gross full year effect of over £500,000 in any one case will be regarded as significant. Decisions having a particular significant effect on a single ward may also be treated as if they were key decisions. This figure applies to any service or function. However, this does not include:-

- Bids for funding of £500,000 or greater made by the Council to third parties where a further report will be submitted for approval of the scheme, should the bid be successful;
- Expenditure which is, in the view of the Service Director – Legal, Governance and Commissioning, inevitable for the day to day provision of services (e.g. day to day supplies, payment of energy bills etc.) provided that such expenditure could reasonably be regarded as having been in the contemplation of members when the revenue budget was approved.
- Expenditure incurred as a result of decisions made by the Director of Finance in accordance with the approved Treasury Management Policy.
- Grants to and from the Council and loans from the Council (in accordance with the Financial Procedure Rules)

- 14.3** A decision will be significant in terms of its effects on a community if it is likely to have a significant impact, whether positive or negative, (e.g. in environmental, physical, social or economic terms) on people living or working in that community. However, matters will not be key decisions simply because the result would be, for instance, that work would be carried out in two or more wards irrespective of the impact. A decision-maker may seek advice from the Chief Executive or the Service Director – Legal, Governance and Commissioning on whether any proposed decision should be regarded as significant for these purposes.
- 14.4** A decision will not be a key decision if it is a direct consequence of implementing a key decision. So, for example, once the details of a capital scheme of £500,000 have been approved, the submission of a report to approve a select list of tenderers for that scheme will not be a key decision.
- 14.5** If the Cabinet 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 document by which it is to be decided, then it must also comply with Rules 1 – 13 unless Rule 16 (general exception) or Rule 17 (special urgency) apply. This requirement does not include meetings whose sole purpose in respect of that particular decision is for officers to brief members and for members to seek further advice and information from officers to assist them in making a decision at the appropriate time.
- 14.6** It should be noted that the requirements relating to key decisions being taken in public do not apply when such decisions are taken by officers.

## **15. Procedure before taking Key Decisions**

Subject to Rule 16 (general exception) and Rule 17 (special urgency), a key decision may not be taken unless:

a document has been published in accordance with the requirements below, which state:

- That a key decision is to be made on behalf of the Council
- The matter in respect of which the decision is to be made
- Where the decision maker is a decision making body, its name and a list of its members and, where the decision maker is an individual, that individual's name, and title if any.
- The date on which, or the period within which, the decision is to be made

- A list of the documents submitted to the decision maker for consideration in relation to the matter on which the decision is to be made
- Details of any principal groups whom the decision maker intends to consult in relation to the intended decision

At least 28 clear days before a key decision is to be made, the document referred to in paragraph 15 will be made available for inspection by public notice.

## **16. General Exception**

If a matter which is likely to be a key decision has not been included in the document, then subject to Rule 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 for a period of 28 days to allow a notice of the intention to take a key decision in accordance with Rule 15;
- (b) the Head of Governance has informed the chair of the Overview and Scrutiny Management Committee, or the relevant panel (or if there is no such person able to act, each member of that committee or panel) in writing, by notice, of the matter to which the decision is to be made;
- (c) the Head of Governance has made copies of that notice available to the public at the offices of the Council; and
- (d) at least 5 clear days have elapsed since the Head of Governance complied with (a) and (b).

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

## **17. Special Urgency**

If by virtue of the date by which a decision must be taken Rule 16 (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 the Overview and Scrutiny Management Committee or the relevant panel that the taking of the decision cannot be reasonably deferred. If there is no such chair, or if the chair is unable to act, then the agreement of the Mayor or in his/her absence the Deputy Mayor will suffice.

## **18. Report to Council**

### **18.1 When the Overview and Scrutiny Management Committee or Panel can require a report**

If the Overview and Scrutiny Management Committee or the relevant panel thinks that a key decision has been taken which was not:

- (a) included in the document; or
- (b) the subject of the general exception procedure; or
- (c) the subject of an agreement with the Overview and Scrutiny Management Committee or panel chair, or the Mayor/Deputy Mayor under Rule 17;

the Committee or panel may require the executive to submit a report to the Council within such reasonable time as the committee or panel specifies. The power to require a report rests with the committee or panel, but is also delegated to the Head of Governance, who shall require such a report on behalf of the committee or panel when so requested by the Chair.

Alternatively the requirement may be raised by resolution passed at a meeting of the Overview and Scrutiny Management Committee or panel.

Such a requirement should not be made without the advice of the Chief Executive and/or the Service Director – Legal, Governance and Commissioning having first been sought.

## **18.2 Cabinet's report to Council**

The Cabinet 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 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.

If the Council takes the view that a decision was a key decision and that the appropriate procedure has not been followed, the validity of that decision will nevertheless not be affected.

## **19. Record of Decisions**

After any meeting of the Cabinet or any of its committees, whether held in public or private, the Head of Governance 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 and any alternative options considered and rejected at that meeting.

## **20. Cabinet Meetings Relating To Matters Which Are Not Key Decisions**

Cabinet meetings relating to matters that are not key decisions will be held in public.

## **21. Notice of Private Meeting of the Cabinet**

Members of the Cabinet or its committees will be entitled to receive five 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.

## **22. Attendance at Private Meetings of the Cabinet**

The Council may determine rules for the attendance of other Council members at permitted private meetings.

## **23. Executive Briefing**

Rule 3 of the Cabinet Procedure Rules provides for executive briefing meetings. Rule 14.6 of these Rules, insofar as it relates to the discussion of a key decision, will apply to such meetings, but otherwise these Rules shall not apply.

## **24. Decisions by Individual Members of the Executive**

### **24.1 Cabinet Member Decision Meetings**

An individual member of the Cabinet may take decisions on matters which have been delegated to him/her only at a meeting between that member and relevant Council officers at which he/she can receive and consider reports and advice. Such meetings will be treated in the same way as if they were meetings of the Cabinet or its committees and these Rules will therefore apply to such decision making as specified in Rule 14. No such decision may be made by an individual Cabinet member at any other time. Nor should any individual Cabinet member make any prior commitment to make any particular decision.

### **24.2 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 Head of Governance to prepare, a record of the decision, a statement of the reasons for it, any alternative options considered and rejected, any conflict of interest declared and a note of any dispensation granted by the local authority's standards committee. 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. Records of such decisions will also be reported to the next appropriate meeting of the Cabinet.

### **24.3 Access to reports before decisions made**

Where an individual member of the Cabinet or an officer receives a report which he/she intends to take into consideration when he/she makes a key decision, he/she shall not make that decision until the report has been available for public inspection for at least five clear days.

## **25. Overview and Scrutiny Management Committee - Access To Documents**

### **25.1 Rights to copies**

Subject to Rule 25.2 below, the Overview and Scrutiny Management Committee or an Overview and Scrutiny Panel will be entitled to copies of any document which is in the possession or control of the Cabinet and which contains material relating to any business transacted at a meeting of the Cabinet.

### **25.2 Limit on rights**

The Overview and Scrutiny Management Committee or 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 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

The decision as to who is entitled to any Committee document is the responsibility of the Monitoring Officer.

## **26. Additional Rights of Access for Members**

### **26.1 Material relating to previous business**

Any member may, for the purposes of his/her duty as a councillor, 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) (b) or (c) below applies:

- (a) it contains exempt information other than information within category 6 set out in Rule 12 of these Rules, or within category 3 except information relating to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract; or
- (b) it contains the advice of a political adviser; or
- (c) the member has a prejudicial interest in the matter to which the document relates, as defined in the Council's Code of Conduct for Councillors (see Part 5 of this Constitution).

## **26.2 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 control of the Cabinet which relates to any key decision unless;

- (a) It contains exempt information falling within paragraphs 1, 2, 4, 5 and 7 of the categories of exempt information; or
- (b) It contains the advice of a political adviser

The decision as to who is entitled to any Committee document is the responsibility of the Monitoring Officer.

## **26.3 Nature of rights**

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

## **26.4 Officer attendance at political group meetings**

Officers may be called upon to attend and report to meetings of political groups. Their input should be limited to providing information and advice on Council business. They should not be involved in advising on political business and should not be expected to be present at meetings or parts of meetings when matters of political business are to be discussed.