

## Access to Information Procedure Rules

### INTRODUCTION

The access to information rules which apply to Council meetings and committees of the Council are set out in sections 100A-H and Schedule 12A of the Local Government Act 1972 (as amended). As the Council is functioning under an executive form of governance it is bound by further access to information rules contained in The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. These rules comply with both statutory provisions.

#### 1. Scope

- (1) These rules apply to all meetings of the Council, Cabinet, Panels and Committees (together called meetings).

#### 2. Additional Rights to Information

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

#### 3. Right to Attend Meetings

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

#### 4. Notices of Meeting

- (1) The Council will give at least five clear days' notice of any meeting by posting details of the meeting at the Town Hall, High Street, Colchester and on the Council's web site.

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

- (1) The Council will make copies of the agenda and reports open to the public available for inspection at the Town Hall 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 Proper Officer 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**

- (1) 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, 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**

- (1) The Council will make available copies of the following for six years after a meeting (including making available on the Council's website):
  - (a) the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of the Cabinet, 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.

## **BACKGROUND PAPERS**

### **8. List of background papers**

- (1) The author of a report will set out in the report a list of those documents (called background papers) relating to the subject matter of the report which in the author's opinion:
  - (a) disclose any facts or matters on which the report or an important part of the report is based; and
  - (b) which have been relied on to a material extent in preparing the report

but does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of Cabinet reports, the advice of a political advisor.

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

- (1) The Council will make available for public inspection for six years after the date of the meeting one copy of each of the documents on the list of background papers.

## **10. Summary of Public's Rights**

- (1) These rules constitute a written summary of the public's rights to attend meetings and to inspect and copy documents. Copy documents can be inspected at the Town Hall, High Street Colchester during normal office hours upon reasonable prior notice.

## **EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS**

### **11. Confidential information – requirement to exclude public**

- (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.

### **12. Meaning of Confidential Information**

- (1) 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.

### **13. Exempt information – discretion to exclude public**

- (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.
- (2) 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.

### **14. Meaning of exempt information**

- (1) Exempt information means information falling within the following seven categories (subject to any qualification) (sections 100A-H and Schedule 12A of the Local Government Act 1972):

Description	Qualifications
1. Information relating to any individual	Information is only exempt information if and so long as in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information
2. Information which is likely to reveal the identity of an individual	Information is only exempt information if and so long as in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)	<p>Information is only exempt information if and so long as in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p> <p>Information is not exempt information if it is required to be registered under-</p> <ul style="list-style-type: none"> <li>(a) the Companies Act 1985</li> <li>(b) the Friendly Societies Act 1974</li> <li>(c) the Friendly Societies Act 1992</li> <li>(d) the Industrial and Provident Societies Acts 1965 to 1978</li> <li>(e) the Building Societies Act 1986</li> <li>(f) the Charities Act 1993</li> </ul>
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.	Information is only exempt information if and so long as in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings	Information is only exempt information if and so long as in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information

Description	Qualifications
<p>6. Information which reveals that the authority proposes-</p> <p>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) to make an order or direction under any enactment</p>	<p>Information is only exempt information if and so long as in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p>
<p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime</p>	<p>Information is only exempt information if and so long as in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p>

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

- (1) If 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 13, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication" together with the description of the exempt or confidential information likely to be disclosed.
- (2) Any meeting of the Cabinet or of any Cabinet committee must comply with Rule 9 of the Cabinet Procedure Rules in the event that a meeting or part of a meeting will be a private meeting by virtue of it considering an item that comprises either exempt or confidential information.

## 16. Application of Rules to the Cabinet

- (1) Rules 17-35 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 1-15 unless Rule 20 (general exception) or Rule 21 (special urgency) applies. A Key Decision is as defined in Article 12.03 of this Constitution.
- (2) 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 Forward Plan by which it is to be decided, then it must also comply with Rules 1-15 unless Rule 20 (general exception) or Rule 21 (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 Councillors.

## **17. Procedure Before Taking Key Decisions**

- (1) Subject to Rule 20 (general exception) and Rule 21 (special urgency), a Key Decision may not be taken unless:
  - (a) a notice (called here the Forward Plan) has been published in connection with the matter in question;
  - (b) at least 14 days have elapsed since the publication of the Forward Plan; and
  - (c) where the decision is to be taken at a meeting of the Cabinet or its committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).
  - (d) the report in relation to the key decision has been made available for public inspection for five clear days prior to the decision being made.

## **THE FORWARD PLAN**

### **18. Period of Forward Plan**

- (1) Forward Plans will be prepared by the Leader to cover a minimum 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.

### **19. Contents of Forward Plan**

- (1) The Forward Plan will contain matters which the Leader has reason to believe will be subject of a Key Decision to be taken by the Cabinet, a Committee of the Cabinet, individual Cabinet Members, Officers, area committees or under joint arrangements in the course of the discharge of a Cabinet 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;
  - (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; and
  - (g) a list of the documents submitted to the decision taker for consideration in relation to the matter.
- (2) The Forward Plan must be published at least 14 days before the start of the period covered. The Proper Officer will ensure that the Forward Plan is made available to all Members of the Council at least 14 days before the start of the period covered.
- (3) The Proper Officer will publish once a year a notice on the Council's website 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;
  - (c) that the Forward Plan will contain details of the Key Decisions to be made for the four month period following its publication;
  - (d) that each Forward Plan will be available for inspection at reasonable hours free of charge at the Council's offices;
  - (e) that each Forward 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.
- (4) Exempt information need not be included in a Forward Plan and confidential information cannot be included.

## **20. General Exception**

- (1) If a matter which is likely to be a Key Decision has not been included in the Forward Plan, then subject to Rule 21 (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 chairman of the Scrutiny Panel, or if there is no such person, each member of that Panel in writing, by notice, of the matter to 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
  - (d) at least five clear days have elapsed since the Proper Officer complied with (c) above.
- (2) Where such a decision is taken collectively, it must be taken in public.

## **21. Urgency**

- (1) If by virtue of the date by which a decision must be taken Rule 20 (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 Scrutiny Panel that the taking of the decision cannot be reasonably deferred. If there is no chairman of the Scrutiny Panel or the chairman is unable to act, then the agreement of the Mayor, or in his/her absence the Deputy Mayor will suffice.

## **REPORT TO COUNCIL**

### **22. When the Scrutiny Panel can require a report**

- (1) If the 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 the Scrutiny Panel, or the Mayor under Rule 21;

the Panel may require the Cabinet to submit a report to the Council within such reasonable time as the Panel specifies. The power to require a report rests with the Panel, but is also delegated to the Proper Officer, who shall require such a report on behalf of the Panel when so requested by the chairman or any 5 members. Alternatively the requirement may be raised by resolution passed at a meeting of the Scrutiny Panel.

### **23. Cabinet's report to Council**

- (1) In the event that the Scrutiny Panel request a report in accordance with Rule 22, the Cabinet must prepare a report for submission to the meeting of Council specified by the Panel. However, if the next meeting

of the Council is within seven days of receipt of the written notice, or the resolution of the Panel, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision and a summary of the subject matter of the decision.

#### **24. Annual report on urgency decisions**

- (1) In any event the Leader will submit annual report to the Council on executive decisions taken in the circumstances set out in Rule 21 (urgency). The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

#### **25. Record of Decisions**

- (1) After any meeting of the Cabinet or any of its committees, whether held in public or private, the Proper Officer 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 a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

### **DECISIONS BY INDIVIDUAL CABINET MEMBERS**

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

- (1) Where an individual Cabinet member 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 five clear days after receipt of that report.

#### **27. Provision of copies of reports to the Scrutiny Panel**

- (1) On giving of such a report to an individual decision maker, the person who prepared the report will give a copy of it to the chairman of the Scrutiny Panel as appropriate as soon as reasonably practicable, and make it publicly available at the same time.

#### **28. Record of individual decisions**

- (1) 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 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 Cabinet members. This does not require the disclosure of exempt or confidential information or advice from a political assistant.

## **SCRUTINY PANEL MEMBERS ACCESS TO DOCUMENTS**

### **29. Right to copies**

- (1) Subject to Rule 31 below, members of the Scrutiny Panel will be entitled to copies of any document which is in the possession or under the control of the Cabinet or its committees and which contains material relating to:
  - (a) any business transacted at a public or private meeting of the Cabinet, or a committee of Cabinet or a joint committee;
  - (b) any decision taken by an individual member of the Cabinet; or
  - (c) any Key Decision taken by an officer.
- (2) The Cabinet will arrange for copies of the document to be supplied within ten clear days of receiving the request.

### **30. Limit on Rights**

- (1) Members of the 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 that information is relevant to an action or decision they are reviewing or scrutinising or any review contained in the Panel's work programme ; or
  - (c) the advice of a political adviser .
- (2) Where the Cabinet determines that a member of the Scrutiny Panel is not entitled to a copy of a document or part of a document in accordance with Rule 29 and 30 it will provide the Scrutiny Panel with a written statement setting out its reason for that decision.

## **ADDITIONAL RIGHTS OF ACCESS FOR COUNCILLORS**

### **31. Material relating to previous business**

- (1) All Councillors 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 the descriptions of exempt information within paragraph 3 (information relating to the financial or business affairs of any particular person (including the authority holding that information)) except to the extent that the information relates to any terms proposed by or to the Council in the course of negotiations for a contract; or

paragraph 6 (information which reveals that the authority proposed: (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); or

- (b) it contains the advice of a political adviser.

### **32. Material relating to Key Decisions**

- (1) All Councillors 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 (a) or (b) of Rule 31 applies.

### **33. Nature of rights**

- (1) These rights of a Councillor are additional to any other right he/she may have.

### **34. Inspection of Documents**

- (1) Councillors may, for their purpose of carrying out their duties as an elected member of the Council but not otherwise, on application to the Proper Officer, inspect any document which has been considered by the Cabinet, a Panel, a Committee or by the Council and if copies are available shall, on request, be supplied for the like purposes with a copy of such document. Provided that a Councillor shall not knowingly inspect and shall not call for a copy of any document relating to a matter in which the Councillor is professionally interested or has, a disclosable pecuniary interest personal as defined in the Council's Members' Code of Conduct and that this Rule shall not preclude the Proper Officer from declining to allow inspection of any document which is or, in the event of legal proceedings, would be protected by privilege arising from the relationship of Solicitor and Client.
- (2) All reports made to or minutes kept by the Cabinet, any Panel, or any Committee shall, as soon as the Cabinet, the Panel or Committee has concluded action on the matter to which such reports or minutes relate, be open for the inspection of any Councillor. Any Councillor is entitled, upon prior request, to a copy of any agenda or report to be considered by the Cabinet, a Panel or a Committee.
- (3) A Councillor who has a personal and/or a prejudicial interest due to membership of, employment with or other involvement in a body which is seeking to obtain a contract for services from the Council shall not be afforded access to any report which contains exempt information as defined in Section 100 I of the Local Government Act 1972 relating to matters concerned with the competition process in respect of the services in question.
- (4) The following rights of Councillors, provided by Section 100 F of the Local Government Act 1972, are in addition to the foregoing rights:-

- (a) Pursuant to Section 100 F of the Local Government Act 1972, any Councillor may, upon application to the Proper Officer and subject to the following paragraph, inspect any document which is in the possession or under the control of the Council and contains material relating to any business to be transacted at a meeting of the Council, the Cabinet, a Panel, a Committee or Sub-Committee.
  
- (b) A Councillor's right to inspect such documents is limited to documents which do not contain exempt information of a description for the time being, falling within any of the descriptions of exempt information which are applied to Section 100 F of the Local Government Act 1972 and which the Proper Officer has certified as falling within any such category.