

RULES ON ACCESS TO INFORMATION ABOUT THE COUNTY COUNCIL'S FORMAL BUSINESS

Introduction

1. The formal business of the Council is carried out at meetings of the full Council, meetings of other Council bodies to which it has delegated responsibility for some of its functions, meetings of the Cabinet and by the Leader of the Council, Cabinet Members and Officers under "delegated powers". County Councillors and members of the public enjoy certain legal rights to discover in advance what will be discussed at each meeting, obtain copies of documents about items of business, to attend meetings and discover what decisions were made. The public also has a right to know about certain decisions taken by the Leader of the Council, Cabinet Members and Officers and the reasons for those decisions. These rights are usually known as "individuals' rights of access to information", and are important because they help to ensure the Council is accountable for its decisions and promote increased and better informed participation in the work of the Authority. The purpose of this part of the Constitution is, therefore, to summarise the rules that enable people to obtain access to information about the Council's business.

The public's right to attend meetings

2. The public may attend any meeting of the full Council, a Council body and the Cabinet except for:

- 2.1 Any **informal** meeting of the Cabinet that may, and which the Cabinet decides shall, be held in private, **where no formal decisions can be taken**;
- 2.2 Any meeting, or part of a meeting, that involves the consideration of "exempt information", and which the full Council, a Council body or the Cabinet formally resolves should not be open to members of the public;
- 2.3 Any meeting or part of a meeting that involves the consideration of "confidential information".

3. The meaning of "exempt information" information is described in Schedule 12A of the Local Government Act 1972, which is reproduced as an Appendix to these rules. In essence information will be "exempt information" if it contains personal details about an existing, former or prospective employee or Member of the Council or another individual who is affected by what the Council is doing, information about prospective contracts, legal proceedings and negotiations with trade unions. The Council is committed to conducting its business openly. Therefore, as a general principle, it will discuss **exempt information matters** in public unless there are compelling reasons why it should not do so.

4. The meaning of "confidential information" is defined in Section 100A of the 1972 Act. It is important to note that this statutory definition has a much narrower meaning than might be ascribed to it in everyday language and catches only that information that is given to the Council **by a government department** on terms that forbid disclosure to the public and information that may not be disclosed under **any enactment or** the terms of a court order. Whilst the Council has discretion to allow the public access to exempt information, no such choice exists in relation to confidential information; the law requires that the Council must exclude the public when confidential information is discussed.

The public's right to obtain copies of the agenda to meetings and reports and documents that are to be discussed at meetings

5. The public is entitled to see and obtain a copy of the agenda of every meeting of the full Council, Council body and any meeting of the Cabinet held in public at least five days before the day of the meeting (excluding the day the agenda is first publicised and the day of the meeting itself). The public may also see and obtain a copy of every report that is to be considered at the meeting and any "background paper" that was relied on to produce the report. A member of the public will know whether there are any background papers to a report because the author of a report will list any that they have used. Background papers need not be listed in the case of any report that contains confidential or exempt information.

6. Sometimes the agenda is changed, and new items of business added to it, after an agenda is published in accordance with paragraph 5 of these rules. When this happens, the Director of Law and Administration will ensure that the revised agenda is available to the public as soon as a new agenda item has been added. Any new report, and any associated background papers, will be made available to the public at the same time they are made available to elected Members of the Council.

7. Occasionally an item of "urgent business" will arise and need to be added to the agenda of the full Council, a Council body or the Cabinet in circumstances that precluded its prior publication in accordance with paragraphs 5 and 6 of these rules. Subject to advice from the Monitoring Officer, the Chairperson of any meeting may add an urgent business to the agenda of any meeting but when they do so, they must explain why the item is urgent and this reason must be written down in the minutes of the meeting.

8. The public's right to look at and obtain copies of reports and background papers in accordance with paragraphs 5 to 7 of these rules is subject to the limitation that they are not entitled to look at, or receive a copy of, any exempt or confidential information. Any item of business that is restricted in this way will be clearly described on the agenda as being "not for publication" and contain a statement that it contains either exempt or confidential information within the meaning of the Local Government Act 1972. Reports containing exempt or confidential information will be clearly marked in the same way. In the case of exempt material the agenda and the report will specify which paragraph of Schedule 12A to the 1972 Act applies to place an item of business into this category.

At least 28 clear days before a private meeting is a meeting or part of a meeting from which the public are to be excluded because exempt or confidential information may be disclosed, Cabinet must publish at Shire Hall and on the Council's web site, notice of the intention to hold a private meeting, stating its reasons. A further such notice must be published at least 5 clear days before the private meeting and will include details of any representations received by Cabinet about why the meeting should be open to the public, and its response to any such representations. Where compliance with this requirement is impracticable Cabinet must obtain agreement from the Chair of the relevant Overview & Scrutiny Committee, or where he or she is unable to act, the Chair of the Council, that the meeting is urgent and cannot reasonably be deferred. Once agreement has been obtained notice of it and the reasons will be published.

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Sub-committees, panels and groups

9. Council bodies may establish politically balanced sub-committees with the power to make any decisions that are formally authorised by the parent body. These rules apply to a meeting of a sub-committee and to any Cabinet committee that meets in public.

Sub-committees and Cabinet committees can be distinguished from panels established from time to time by council bodies, the Cabinet, Leader of the Council and Cabinet Members on

the basis that panels have no power to make a decision in respect of any Council function. Consequently, these rules do not apply to panels. This does not necessarily mean that meetings of these groups, their agenda and any documents they produce will not be open to the public. Rather it will be a matter for the parent body or the panel itself to decide whether and to what extent they should meet individual requests for access to information.

Groups are established by Officers to deal with a particular item of work or work area and do not include Members and operate in the same way as panels for the purposes of access to information.

Decisions by the Leader of the Council, Cabinet Members and Officers

10. All decisions that are made by the Leader of the Council and Cabinet Members under delegated powers must be recorded in writing. After the decision has been made, the public are entitled to look at the record of decisions that are made by Leader of the Council and Cabinet Members and obtain copies of any decision. Paragraph 5.8 of Section 5 Part 3 of the Constitution specifies the content of the decision record.

~~Key-d~~Decisions that are made by Officers under delegated powers must be recorded in writing. After the ~~key~~ decision has been made, the public are entitled to look at the record of ~~key~~ decisions made by Officers ~~and obtain copies of any decision~~. Paragraph 5.8 of Section 5 Part 3 of the Constitution specifies the content of the decision record.

Subject to paragraph 16 below, before any key decisions are made by the Leader of the Council, or Cabinet Members, or key decisions are made by Officers, at least five days before the day of the decision ~~(excluding the day the agenda is first publicised and the day of the meeting itself)~~ every report that is to be considered and any "background paper" that was relied on to produce the report shall be available for public inspection.

The public is entitled to look at and obtain copies of decision records and background papers provided they are no more than 6 years old (4 years old in relation to background papers) (time begins to run from the date of the decision).

Minutes of meetings and executive decisions

11. After a meeting of the full Council, a Council body or the Cabinet, Legal & Democratic Services will produce a "minute" (a written record) that records, in summary form, every decision that was made at the meeting. The public is entitled to look at and obtain copies of minutes, the associated agenda and reports and background papers provided they are no more than 6 years old (4 years old in relation to background papers) (time begins to run from the date of the meeting). The Council is not obliged to disclose exempt information when it publishes a minute, but if it does not and as a result part of the minutes would be difficult to understand, the Director of Law and Administration must provide a summary so that part of the minute can be understood.

As soon as reasonably practicable after the Cabinet, a Cabinet Member or an Officer has made an executive decision Legal & Democratic Services will publish a decision statement setting out:

- A record of the decision including the date it was made
- The reasons for the decision
- Details of any alternative options considered and rejected by the decision maker
- A record of any conflict of interest declared by a member of Cabinet

- A note of any dispensation granted by the Head of Paid Service relating to a conflict of interest declared by a Cabinet Member

~~Note: Minutes are not prepared by Legal and Democratic Services in respect of decisions made by the Leader of the Council and Cabinet Members or Officers.~~

Charges for the supply of agenda, reports and background papers

12. The Council is entitled to make a reasonable charge for the copying and postage of minutes, agenda, reports and background papers. Requests for photocopying and the supply of reports and background papers should be made to the Director of Law and Administration, who will be pleased to help you obtain what you need and to tell you about any charge that will be made for the service.

The special rules that apply to “key decisions”

13. A key decision is an executive decision that may be taken by the Cabinet, a Cabinet committee, Leader of the Council, a Cabinet Members or any Officer under powers delegated to him and which, if implemented, would be likely to:

13.1 Result in the Council incurring expenditure or the making of a saving, which is significant having regard to the County Council's budget for the service or function to which the decision relates; or

13.2 Be significant in terms of its effects on communities living or working in an area comprising two or more county electoral divisions in the county.

14. As a general rule, a decision will fall into paragraph 13.1 if the value of any expenditure or saving exceeds £500,000 unless the Council's Chief Financial Officer and Monitoring Officer certify that it would not be a key decision and state their reasons for this conclusion in writing.

Note 1: The Chief Financial Officer and Monitoring Officer may issue guidance from time to time on the meaning of “key decisions”

Note 2: In view of the importance of key decisions they should normally only be taken by the Cabinet.

~~15. In view of the importance of key decisions they should normally only be taken by the Cabinet and then only if the rules set out in paragraph 5 have been complied with and notice of the item of business which would involve the making of any key decision has been published in a document called a “Forward Plan” at least five days before the meeting at which the decision will be made (excluding the day of publication and the day of the meeting). Subject to paragraphs 16, 17 and 18, the Council must publish at its offices and on its web site at least 28 days clear days before a key decision is made a document which states that~~

- a key decision is to be made
- the subject matter of the decision
- the identity of the decision maker – in the case of an individual his or her name and title, or if the decision is to be taken by Cabinet, a list of its members
- the date, or period within which the decision is to be made
- a list of documents submitted to the decision maker relating to the decision
- the address from which copies of such documents may be obtained

- that other documents may be submitted to the decision maker and the procedure for obtaining copies of them
- whether any part of the meeting at which the matter is to be discussed will be held in private

Exceptions to the need to publish notice of a key decision in the Forward Plan 28 days in advance

16. The procedure that is described in paragraph 15 may only be departed from under the:

- 16.1 General exception rule; or
- 16.2 The special urgency rule.

The general exception rule

17. Under the “general exception rule” a key decision that the Cabinet, Leader of the Council, Cabinet Member or an Officer acting under delegated powers wishes to make but is not and cannot practically be included in a Forward Plan the document referred to in paragraph 15 may be made if the Chief Executive gives the Chairperson of the relevant Overview and Scrutiny Committee a written notice that a key decision will be made at least five clear days before that decision is made (ie excluding the day the notice is given and the date of the decision).

The notice given to the Chairperson of any Overview and Scrutiny Committee under this rule is made available for public inspection at Shire Hall, Gloucester at least 5 days before that decision is made, and also published on the Council's web site.

As soon as reasonably practicable after giving such notice the Chief Executive must make available at Shire Hall and on the web site a notice setting out the reasons why it is impracticable to give 28 days' notice of the key decision.

The special urgency rule

18. If the Cabinet, Leader of the Council, a Cabinet Member or any Officer acting under delegated powers believes a decision must be made so urgently that is not possible it is impracticable to give the five days notice that is required under the “general exception rule” it may nevertheless make the decision if the Chief Executive has given written notice of the key decision to the Chairperson of the relevant Overview and Scrutiny Committee (or the Chairman of the Council if he or she is unable to act) and that Chairperson or the Chairman agrees that the decision may be made. A notice setting out the reasons why the decision is urgent and cannot reasonably be deferred must be made available at Shire Hall and published on the Council's web site.

~~The Forward Plan~~

~~19. The Forward Plan is prepared by the Director of Law and Administration on behalf of the Leader of the Council each month. It lists the Members of the Cabinet and all the key decisions it is anticipated the Cabinet, Leader of the Council, Cabinet Members and Officers acting under delegated powers will make over the next four months. The Forward Plan also describes when each key decision will be made, the main consultees, how and when consultation will be carried out, and a list of documents that relate to a prospective decision and which are available to the public. The Forward Plan is a public document, and copies of~~

~~it may be obtained from the Director of Law and Administration. The Forward Plan is published monthly at least 14 days before it comes into effect and includes any outstanding matters from, and supersedes, the previous Forward Plan.~~

~~2019.~~ In order that the Council may be confident key decisions are only made under the urgency procedure when there are good reasons for doing so the Leader of the Council will make a report to the full Council every three months on the use of this power. The report will summarise how many decisions were made under the urgency procedure in the previous three months and describe the subject matter of each of those decisions.

Overview and Scrutiny Committees ~~and the Forward Plan~~

~~240.~~ Overview and Scrutiny Committees play an important role in ensuring that key decisions are well publicised ~~through the Forward Plan~~. Thus, if an Overview and Scrutiny Committee decides a key decision was taken by the Cabinet, Leader of the Council, Cabinet Member or an Officer but was not ~~included in the Forward Plan treated as such~~ nor taken under ~~the general exception or~~ the special urgency procedure the committee may require the Leader of the Council to submit a report to the full Council. The report must describe the decision that was made and give the reasons for the decision. The report must also explain why the Cabinet, Leader of the Council, Cabinet Member or Officer believes the decision was not a key decision. Alternatively, if the Cabinet, Leader of the Council, Cabinet Member or Officer accepts the decision was a key decision, the report should explain why it was not ~~advertised in the Forward Plan publicised as required~~ nor dealt with as urgent business.

Elected Members' additional rights of access to information

~~221.~~ Under the Local Government Act 1972 ~~all~~ elected Members ("County Councillors") have all the rights of access to information about Council business that are enjoyed by members of the public. ~~In addition all County Councillors are entitled to see exempt information which comes under the following categories:~~

- ~~• information relating to the financial or business affairs of any person (including the Council itself) but not including information relating to the negotiations for a contract; and~~

~~information relating to a notice given by the Council under any enactment which imposes requirements upon a person, or the making of an order or direction under any enactment~~
~~The 1972 Act also gives all County Councillors an absolute right to look at exempt information contained in the Forward Plan or a report or background paper unless it relates to one of four categories of particularly sensitive exempt material. That is information about:~~

~~22.1 — The adoption, care, fostering or education of a child;~~

~~22.2 — The terms of a contract for the acquisition or disposal of property, goods or services; consultations or negotiations about labour relations;~~

~~22.3 — Counsel's advice about legal proceedings or another matter affecting the Council;~~

~~22.4 — The prevention, investigation or prosecution of a crime.~~

~~23. — Only County Councillors who are Members of a committee (including the Cabinet) or a sub-committee that is concerned with a matter falling within paragraphs 22.1, 22.2, 22.3 and 22.4 of these rules, or confidential material, have an absolute right to look at that information or attend that part of a meeting at which it is discussed.~~

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242. In addition to the rights mentioned in paragraphs 21 ~~and~~, 22 ~~and 23~~ of these rules County Councillors may look at other information contained in any document, including exempt or confidential information, if they are able to establish a “need to know” what is in it to carry out their business as an elected Member of the Authority. The same rule applies in relation to any meeting or part of a meeting of a committee, sub-committee (except an ~~informal private~~ meeting of the Cabinet or a Cabinet committee), panel or group, even if it is concerned with exempt or confidential information, provided a County Councillor is able to demonstrate they have a need to know about its business to carry out their duties as an elected Member.

253. It is not possible to lay down any hard and fast rules about what a “need to know” means and when it may be said to arise; this will always be a matter of fact and degree, to be decided in the light of all the circumstances attaching to a particular request. Judicial decisions, however, indicate that a need to know does not arise merely because a County Councillor would like to know what is in a document or may be said at a meeting. Nor does a need to know enable a County Councillor to “rove through” the Council’s files in search of information that it is thought might be helpful to them (this is sometimes known as “fishing for information”). On the other hand, a County Councillor will often be able to demonstrate a need to know about matters affecting their electoral division or that relate to a Council body or informal working group to which they belong.

264. Access to draft documents can present particular difficulties. They may be looked at if they are identified as background papers to a report. In other cases, draft documents will not normally be made available to County Councillors; if it is proposed to publish a document for debate (either in its own right or in relation to a particular decision), a County Councillor will rarely be able to establish a need to know what is contained in an unfinished version of it.

275. A County Councillor should normally ask a Head of Service for any document they wish to look at because of a need to know what is in it. If the Head of Service is unsure whether the document should be provided, they will consult the Monitoring Officer, who is responsible for adjudicating on whether the information should be made available in cases of uncertainty.

286. A County Councillor should normally ask the Chairperson of a body that proposes to hold a meeting that is not open to all County Councillors for permission to attend, explaining why they have a need to know about what is to be discussed. Any dispute should be referred to the Monitoring Officer, who is responsible for adjudicating on whether a County Councillor may attend a meeting when this may not otherwise be clear.

Additional rights of access to information by Overview and Scrutiny Committees

297. Parliament has decided that Overview and Scrutiny Committees should have additional rights of access to information to help them carry out their duty of holding the executive to account. To this end they are entitled to copies of executive documents, that contain material relating to any business that has been carried out at a Cabinet meeting, documents that relate to a decision made by the Leader of the Council or Cabinet Member under delegated powers or documents that relate to a ~~key~~ decision made by an Officer under delegated powers. Such documents should be provided as soon as reasonably practicable and in any event within 10 clear days of the request. This right does not, however, allow an Overview and Scrutiny Committee to look at ~~a draft document~~, the advice of a political adviser, or any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing, scrutinising or intend to scrutinise. if the request is refused then written reasons should be provided to the Overview and Scrutiny Committee

Elected Members' duty of confidence

3028. County Councillors are provided with exempt and confidential information in confidence. Accordingly if a County Councillor discloses this information to the press or any third party they are liable to breach the Council's Code of Conduct for Members. In that event a County Councillor may be reported to the Standards Committee of the Council, which will investigate whether the Code has been breached, ~~and in the event that it has may impose sanctions including the suspension or disqualification of a County Councillor from office.~~

3429. In view of the risks associated with any breach of Members' duty of confidence County Councillors must ensure that exempt and confidential information is only used for the performance of their duties as County Councillors. They should also keep the information securely, avoid making copies of it, and ensure that it is disposed of in a way that prevents anyone else from reading it (the best course of action is to return documents to the Democratic Services Unit so that it may be shredded).