

PART 4 (SECTION B)

ACCESS TO INFORMATION PROCEDURE RULES

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ACCESS TO INFORMATION PROCEDURE RULES

1. Scope

These rules apply to all meetings of the Council, the Overview and Scrutiny Committee, Area Committees (if any), the Standards Committee, Regulatory Committees and public meetings of the Cabinet (together called meetings). These rules do not apply to advisory committees, panels or working parties and these shall not constitute “meetings” for the purpose of these rules.

2. Additional Rights to Information

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

3. Rights to Attend Meetings

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

4. Notices of Meeting

The Council will give at least five clear days notice of any meeting by posting details of the meeting at the designated Council offices at the Municipal Buildings, West Street, Boston, Lincolnshire, PE21 8QR, unless the meeting is called at shorter notice, in which case a notice will be posted when the meeting is called.

5. Access to Agenda and Reports before the Meeting

The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least five clear days before the meeting (unless called at shorter notice, in which event the documentation will be available when the meeting is called). 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 designated officer shall make each such report available to the public as soon as the report is completed and sent to Councillors).

6. Supply of Copies

The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) if the Proper Officer thinks fit, 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 reasonable costs.

7. Access to Minutes 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 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.

8. Background Papers

8.1 List of Background Papers

The Proper Officer will set out in every report a list of those documents (called 'background papers') relating to the subject matter of the report which in his/her opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) which have been relied on to a material extent in preparing the report

but excluding published works and any material which discloses exempt or confidential information (as defined in Rule 10 below) and in respect of executive (Cabinet) reports, the advice of a political advisor.

8.2 Public Inspection of Background Papers

The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

9. Summary of Public's Rights

A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and available to the public at the Municipal Buildings, West Street, Boston, Lincolnshire. These rules constitute that written summary.

10. Exclusion of Access by the Public to Meetings

10.1 Confidential information – requirement to exclude public.

The public must be excluded from meetings during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that confidential information would be disclosed.

10.2 Exempt information – discretion to exclude public

The public may by resolution of the meeting concerned be excluded from meetings during an item of business 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 of the Act.

10.3 Meaning of confidential information

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

10.4 Meaning of exempt information

Exempt information means information falling within the following 7 categories (subject to any of the qualifications below):-

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
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.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes—
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
 - 7.A Information which is subject to any obligation of confidentiality.
 - 7.B Information which relates in any way to matters concerning national security.
 - 7.C Information presented to the Standards Committee, or to a sub-committee of the Standards Committee, set up to consider any matter under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008, or referred under section 58(1)(c) of the Local Government Act 2000.

Qualifications:

A. Information falling within category 3 above is not exempt information by virtue of that paragraph if it is required to be registered under:

- (a) the Companies Act 1985;
- (b) the Friendly Societies Act 1974;
- (c) the Friendly Societies Act 1992;
- (d) the Industrial and Provident Societies Acts 1965 to 1978;
- (e) the Building Societies Act 1986; or
- (f) the Charities Act 1993.

B. Information 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.

C. Information which:

- (a) falls within any of paragraphs 1 to 7 above; and
- (b) is not prevented from being exempt by virtue of qualification A or B above, is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

11. Exclusion of Access by the Public to Reports

If the Proper Officer thinks fit, the Council may exclude access by the public to the whole or any part of reports which in his or her opinion relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports (or parts thereof) will be marked "Not for publication" together with the category of information likely to be disclosed.

12. Application of Rules to the Cabinet

- 12.1 Rules 13 – 25 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 – 11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is as defined in Article 13.3 of this Constitution.

13. Procedure Prior to a Private Meeting of the Cabinet

- 13.1 Subject to Rule 13.2, before a decision is taken by the Cabinet or its Committees to hold a meeting, or part of a meeting in private i.e. where the public are excluded in accordance with either Rule 10.1 or 10.2 above:-

13.1.1 A notice of intention to hold a private meeting including a statement of reasons for the meeting to be held in private must be made available at the Municipal Buildings, West Street, Boston and be published on the Council's website at least 28 clear days before the meeting.

13.1.2 A further notice of intention to hold a private meeting, including a statement of reasons for the meeting being held in private, details of any representation received by the Cabinet or its Committees about why the meeting should be open to the public and a statement of response to any such representations must be made available at the Municipal Buildings, West Street, Boston, and be published on the Council's website at least 5 clear days before the meeting.

13.2 Where the date by which a meeting must be held makes compliance with Rule 13.1 impracticable, then the decision to hold the meeting, or part of the meeting in private, may still be made if the Cabinet or its Committees obtains the agreement of the Chairman of the Overview and Scrutiny Committee (or in his/her absence the Mayor or Deputy Mayor) that the meeting is urgent and cannot reasonably be deferred provided that, as soon as reasonably practicable after such consent is obtained, a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred must be made available at the Municipal Buildings, West Street, Boston and on the Council's website.

14. 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) a notice of the decision has been published in the Forward Plan;
- (b) The notice of the key decision referred to in paragraph (a) above has been made available for inspection by the public at the Municipal Buildings, West Street, Boston on weekdays during office hours and on the Council's website for at least 28 clear days; 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).

15. The Forward Plan of Key Decisions

15.1 The Forward Plan will contain matters which will be the subject of a key decision to be taken by the Cabinet, a committee of the Cabinet, individual Members of the Executive, Officers or under joint arrangements in the course of the discharge of a Cabinet function. It will state the following particulars:-

- (a) that a key decision is to be made on behalf of the Council;
- (b) The matter in respect of which the decision is to be made;
- (c) 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;

(Note: there is no delegation under this Constitution to individual Members and “key decisions” should only be taken by Officers acting under delegated powers in cases of emergency)

- (d) the date on which, or the period within which, the decision will be taken;
- (e) a list of the documents submitted to the decision-taker for consideration in relation to the matter;
- (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.

Exempt information need not be included in a forward plan and confidential information cannot be included.

15.2 Publication of the Forward Plan

The forward plan of key decisions must be made available for inspection by the public at the Municipal Buildings, West Street, Boston on weekdays during office hours and on the Council’s website at least 28 clear working days before a key decision is made.

16. General Exception

Subject to Rule 17 (special urgency), where the publication of the intention to make a key decision under Rule 15 is impracticable, then the decision can only be made where:-

- (a) the Proper Officer has informed the Chairman of the Overview and Scrutiny Committee, or if there is no such person, each Member of that Committee by notice in writing, of the matter about which the decision is to be made and the reason why it is impracticable to comply with Rule 15;
- (b) the Proper Officer has made a copy of that notice available for inspection by the public at the offices of the Council on weekdays during office hours and on the Council’s website; and
- (d) at least five clear days have elapsed since the Proper Officer complied with (b).

17. Special Urgency

- 17.1 Where the date by which a key decision must be made, makes compliance with Rule 16 (general exception) impracticable, the decision may only be made where the decision maker has obtained the agreement of the Chairman of the Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no chairman of the Overview and Scrutiny Committee, or if the Chairman of the Overview and Scrutiny Committee 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 Committee can require a report

If the Overview and Scrutiny Committee thinks that an executive decision has been taken which was not treated as being a key decision and the Committee are of the opinion that the decision should have been treated as a key decision then the Committee may require the Cabinet to submit a report to the Council within such reasonable time as the Committee specifies.

The requirement may be raised by resolution passed at a meeting of the Overview and Scrutiny Committee.

Alternatively, the Proper Officer shall by written notice require such a report on behalf of the Committee when so requested by the Chairman or any 5 Members of the Committee.

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, and the reasons for making it, the individual or body making the decision, and if the Cabinet is of the opinion that it was not a key decision, the reasons for that opinion.

18.3 Reports on special urgency decisions

The Leader will submit quarterly reports to the Council on the executive decisions taken in the circumstances set out in Rule 17 (special urgency) in the preceding three months or annually if there have been none. The report will include the particulars of each decision made and a summary of the matters in respect of which those decisions were taken.

19. Records of Decisions

As soon as reasonably practicable after any meeting of the Cabinet or any of its committees, the Proper Officer or, where the Proper Officer was not present, the person presiding at the meeting, will produce a written statement of every decision taken at that meeting. The statement will include:-

- (a) a record of the decision including the date that it was made;
- (b) a record of the reasons for the decision
- (c) any alternative options considered and rejected at the meeting at which the decision was made;
- (d) a record of any conflict of interest in relation to the matter decided which is declared by any member of the decision making body which made the decision; and
- (e) in respect of any declared conflict of interest, a note of any dispensation granted by the Monitoring Officer.

20. Cabinet Meetings relating to matters which are not Key Decisions

The Cabinet will decide whether meetings relating to matters that are not key decisions will be held in public or private.

(Note: the current practice is to consider all decisions in public, with the exception of those items disclosing exempt or confidential information).

21. Decisions by Individual Members of the Executive (Cabinet)

21.1 Reports intended to be taken into account

Where an individual Member of the Cabinet receives a report which he/she intends to take into account in making any key decision, then he/she will not make the decision until at least five clear days after that report was made publicly available under Rule 22.2 below or would have been made publicly available but for the fact that it contains confidential or exempt information.

21.2 Provision of copies of reports to the Overview and Scrutiny Committee

On giving of such a report to an individual decision maker, the person who prepared that report will give a copy of it to the Chairman of the Overview and Scrutiny Committee as soon as reasonably practical, and make it publicly available at the same time.

21.3 Record of individual decision

As soon as reasonably practicable after an executive decision has been taken either by an individual Member of the Cabinet or by an Officer, he/she will prepare, or instruct the Proper Officer to prepare, a written statement of the decision, which shall include a record of the decision including the date it was made, a record of the reasons for it, any alternative options considered and rejected, a record of any conflict of interest declared by any Cabinet Member who is consulted by the decision maker, and in respect of any declared conflict of interest a note of any dispensation granted by the Monitoring Officer.

The provisions of Rules 7 and 8 (inspection of documents after meeting) will also apply to the making of executive decisions by individual Members of the Cabinet and Officers. This does not require the disclosure of exempt or confidential information or advice from a political assistant.

(Note: Currently there is no delegation under this Constitution to individual Members).

22. Officer Delegated Powers

22.1 Record of Decisions Taken by Officers

As soon as reasonably practicable, after the taking of a delegated decision the relevant Officer will produce a written record of 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 Member of the Council consulted by the officer who made the decision, who has declared a conflict of interest in relation to the decision, if the decision was made under a specific express authorisation.

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 Monitoring Officer will arrange to supply a copy of the delegated decision notice and report in relation to an officer decision.

22.2 Under the Scheme of Officer Delegation, Officers do not have delegated authority to take decisions which are key decisions unless it is impracticable for the Cabinet to do so because of the urgent nature of the decisions to be made. Such decisions will therefore only be made in exceptional circumstances.

22.3 In the event of an Officer taking a key decision 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.

23. Overview and Scrutiny Committee Access to Documents

23.1 Right to copies

Subject to Rule 23.2 below, the Overview and Scrutiny Committee (including its sub-committees) will be entitled to copies of any document which is in the possession or control of the Cabinet or its committees and which contains material relating to-

- (a) any business that has been transacted at a public or private meeting of the Cabinet or its committees; or
- (b) any decision taken by an individual Member of the Cabinet or any executive decision taken by an officer.

Subject to Rule 23.2 below, where a member of the Overview and Scrutiny Committee requests a document which falls within (a) or (b) this must be provided by the Cabinet as soon as reasonably practicable and in any case no later than 10 clear days after the Cabinet receives the request.

23.2 Limit on rights

No Member of the Overview and Scrutiny Committee will 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 any programme of work that the Overview and Scrutiny Committee or its sub-committee ; or
- (c) any part of a document that contains the advice of a political adviser.

24 Additional Rights of Access for Members

24.1 Material relating to previous business

Subject to Rule 24.3 and Rule 24.4 any document which is in the possession of, or under the control of the Cabinet and contains material relating to any business transacted at a private meeting of the Cabinet or its Committees, or any decision made by an individual member or officer in accordance with executive arrangements, must be available for inspection by any member of the Council when the meeting concludes or where an executive decision is made by an individual member or an officer immediately after the decision has been made and this must be within 24 hours.

24.2 Material relating to business to be transacted

Subject to Rule 24.3 and Rule 24.4 any document which is in the possession of, or under the control of the Cabinet and contains material relating to any

business to be transacted at a public meeting of the Cabinet or its Committees, must be available for inspection by any member of the Council for at least 5 clear days before the meeting. Where the meeting is convened at shorter notice any such document must be available for inspection when the meeting is convened and where an item is added to the agenda at shorter notice, any such document must be available for inspection when the item is added to the agenda.

24.3 Rules 24.1 and 24.2 do not require a document to be available for inspection if it appears to the Proper Officer that it discloses exempt information of a description falling within Part 1 of Schedule 12A to the Local Government Act 1972 (as set out in Rule 10.2 above) unless the document contains exempt information falling into paragraph 3 of Schedule 12A to the 1972 Act (except to the extent that the information relates to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract) or paragraph 6 of Schedule 12A of the 1972 Act.

24.4 Rules 24.1 and 24.2 do not require any document to be made available for inspection if it appears to the Proper Officer that it discloses the advice of a political adviser.

24.5 Nature of Rights

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