

ACCESS TO INFORMATION RULES

APPENDIX 5 - ACCESS TO INFORMATION RULES

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APPENDIX 5 – ACCESS TO INFORMATION RULES

1. Scope and definitions

1.1 Unless otherwise indicated, these Rules apply to all formal meetings of the Council, the Cabinet, Committees including Joint Committees, Overview and Scrutiny Performance Board and its Overview and Scrutiny Panels, the Health Overview and Scrutiny Committee, and the Appointments etc. Panel which are together called 'meetings'. These rules do not apply to briefings, working parties, scrutiny task groups, training and development sessions etc.

1.2 Where indicated, certain rules apply only to:

- an 'executive decision-making body' (meaning meetings of the Cabinet, its committees, a joint committee of local authority executives or its subcommittees) or to
- decisions by an 'executive decision-maker' (meaning such a body as above or an individual member making an executive decision such as a Cabinet Member with Responsibility). 'Executive decision' means a decision by an executive decision-maker in connection with the discharge of a function which is the responsibility of the executive.

1.3 'Private meeting' means a meeting of the executive decision-making body during which the public are excluded.

1.4 'Regulations' in relation to executive decisions refer to the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 as amended or replaced.

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 or the law allowing them to be excluded i.e. during items of business where confidential or exempt information is likely to be disclosed or to maintain orderly conduct or prevent misbehaviour (see paragraph 10).

4. Notices of meeting

4.1 The Council will give at least five clear days' notice of the time and place of any meeting by posting details of the meeting at County Hall, Worcester (the designated office) and on its website, unless the meeting is convened at shorter notice in which case such notice will be given from the time that the meeting is convened.

4.2 Paragraph 13 makes provision in respect of private meetings.

5. Access to agenda and reports before the meeting

5.1 Subject to other provisions in these rules (particularly paragraph 11) or the law, the Council will make available copies of the agenda and reports which are open for public inspection at the designated office and on its website at least five clear days before the meeting.

5.2 If an item is added to the agenda later than as set out in 5.1, the revised agenda will be open to inspection as above from the time the item was added to the agenda. If a report is not available when the agenda is made open to inspection, the report will be open to inspection as set out in 5.3.

5.3 If the meeting is convened at shorter notice than five clear days, or where reports are finalised after the agenda has been published, the Assistant Director for Legal and Governance shall make each such agenda or report available to the public as above as soon as the agenda or report is completed and sent to councillors.

5.4 The Chairman of the meeting may bring before it and cause to be considered an item of business not specified in the summons or agenda where the Chairman is of the opinion, by reason of special circumstances (which shall be specified in the minutes) that the item should be considered at the meeting as a matter of urgency.

5.5 Nothing in these Rules requires a copy of the agenda, items or report to be available for inspection by the public until a copy is available to members of the meeting concerned.

6. Supply of Copies

6.1 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 open to the public; and
- c) if the Assistant Director for Legal and Governance thinks fit, copies of any other documents supplied to councillors in connection with such an item and which do not contain exempt or confidential information to any person on payment of a charge for postage, copying and any other costs.

6.2 Except during any part of the meeting during which the public are excluded, the Council will make available for the use of members of the public present at the meeting a reasonable number of copies of the agenda and reports which are accessible to the public.

7. Access to Minutes etc after the Meeting or executive decision

As soon as is reasonably practicable after a meeting or an executive decision, the Council will make available on its website and for inspection at County Hall copies of the following for six years:

- a) the minutes of the meeting (or written statement/record of decision in accordance with the Regulations) of decisions taken by an executive decision-maker, excluding any part 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 considered when the meeting was open to the public.

8. Background Papers

8.1 List of background papers

When a copy of the whole or part of a report for a meeting is made available for inspection by the public, the Proper Officer (the Chief Officer responsible for the 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 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 this does not include published works or documents which disclose exempt or confidential information (as defined in paragraph 10 below).

8.2 Public inspection of background papers

- a) 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.
- b) In respect of meetings of an executive decision-making body only, at least 1 copy of each of the background papers included in that list must be available for public inspection at County Hall and on the Council's website from the time when copies of the report are made available to the public.

9. Summary of Public's Rights

These rules provide a written summary of the public's right to attend meetings to and inspect and copy documents.

10. Exclusion of access by the public to meetings

10.1 Confidential information – requirement to exclude public

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 in breach of the obligation of confidence.

10.2 Meaning of confidential information

Confidential information means information given to the Council by a Government Department on terms (however expressed) which forbid its public disclosure or information which cannot be publicly disclosed by virtue of the law or Court Order.

10.3 Exempt information – discretion to exclude public

The public must be excluded from meetings during an item or items of business whenever the meeting resolves to do so on the basis that it is likely in view of the nature of the item of business that 'exempt information' would be disclosed to them, identifying the category of exempt information relied upon

10.4 Meaning of exempt information

Exempt information means information falling within any of the following categories (subject to any qualification or conditions set out) or otherwise defined as such by legislation.

Category	Additional Conditions
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 local authority holding that information).	Financial or Business affairs include contemplated, as well as past or current activities. Information is not exempt 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 (f) the Charities Act 1993
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 employee of, or office-holders under, the Authority.	'Labour relations matter' is defined in accordance with Schedule 12A of the Local Government Act 1972.
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.	
8. Information which is subject to any obligation of confidentiality.	
9. Information which relates in any way to matters concerning national security.	

10.5 Public interest test

Information in categories 1 to 7 in the table above is only 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.

10.6 Planning restriction

Information falling within any of categories 1-9 in the table above is not exempt by virtue of that paragraph if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

10.7 Orderly conduct

The public or a member of the public may be excluded from a particular meeting or part of it in order to maintain orderly conduct or prevent misbehaviour at a meeting.

11. Exclusion of Access by the Public to Reports

If the Assistant Director for Legal and Governance thinks fit, the Council may exclude access by the public to the whole or any part of the report which in his/her opinion relate to items during which, in accordance with paragraph 10 above, the meeting is likely not to be open to the public (a 'private meeting'). Such reports will be marked "not for publication" stating either that it contains confidential information or referring to the category of exempt information likely to be disclosed.

12. Application of Rules to the Cabinet, and Key Decisions

12.1 Paragraphs 13 – 24 only apply to meetings of the Cabinet or other executive decision-making body, or where stated, to executive decisions. If the Cabinet or other executive decision-making body meets to take a 'key decision' then it must also comply with paragraphs 1 – 11 above unless paragraph 15 (general exception) or paragraph 16 (special urgency) apply. It will also normally comply with paragraphs 1-11 if it is meeting to take a decision which is not a key decision.

12.2 A key decision is an executive decision which is likely:

- a) to result in the County Council incurring expenditure which is (or the making of savings which are) significant having regard to the Council's budget for the service or function to which the decision relates; or
- b) to be significant in terms of its effects on communities living or working in an area comprising two or more electoral divisions in the Council's area.

12.3 These rules do not apply to any meeting whose sole purpose is to brief councillors.

13. Procedure before taking decisions

13.1 Key decisions –

Where an executive decision-maker intends to make a key decision, then subject to paragraph 15 (general exception) and paragraph 16 (special urgency), that key decision may not be taken unless:

- a) a notice (usually contained within a Forward Plan) has been published in connection with the matter in question;
- b) at least 28 clear days have elapsed since that notice has been made available for public inspection at County Hall and on the Council's website; and

- c) where the decision is to be taken at a meeting of an executive decision-making body, notice of the meeting has been given in accordance with Paragraph 4 (notice of meetings).

13.2 Private meetings of an executive decision-making body

Where an executive decision-making body intend to hold a private meeting (meaning a meeting or part of a meeting of that body from which the public are excluded in accordance with paragraph 10) then subject to paragraphs 15 and 16:

- a) at least 28 clear days before the private meeting a notice of that intention (usually contained within a Forward Plan) must be made available at County Hall and on the Council's website, including a statement of reasons for the meeting to be held in private;
- b) at least 5 clear days before such a meeting a further notice of that intention must be made similarly available, including a statement of reasons for it to be held in private, should representations be received about why the meeting should be open to the public and a statement of its response to any such representations.

13.3 Where the date by which such a meeting must be held makes compliance with Rule 13.2 impracticable, the meeting may only be held in private where agreement has been obtained that the meeting is urgent and cannot reasonably be deferred from:

- a) the chairman of the relevant overview and scrutiny committee, or
- b) if there is no such person or that chairman is unable to act, the Chairman of the Council, or
- c) in the absence of both, the Vice-Chairman of the Council.

13.4 As soon as reasonably practicable after agreement has been obtained under 13.3, a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred must be made available at County Hall and on the Council's website.

14. The Forward Plan

14.1 Period of Forward Plan

A Forward Plan will be prepared on a rolling basis and will specify Key Decisions anticipated to be taken.

14.2 Contents of Forward Plan

The Forward Plan will provide notice relating to anticipated Key Decisions and will describe the following particulars insofar as the information is available:

- a) the matter in respect of which a Key Decision is to be made;

- b) where it is to be taken by a decision-making body, the name of that body and a list of its members, and where it is to be taken by an individual, his or her name, and title if any;
- c) the date on which, or the period within which, the decision will be made;
- d) a list of the documents submitted to the executive decision-maker for consideration in relation to the matter; and
- e) the address from which available listed documents may be available.

The notice will also state that other relevant documents may be submitted to the executive decision-maker, together with the procedure for requesting details of those documents as they become available.

[Note - for the sake of transparency, the Forward Plan usually contains matters planned to be decided by Cabinet or CMR which are not key decisions, but the above provisions do not apply to such non-key decisions].

Where the public may be excluded from the meeting at which a matter is to be discussed, or documents relating to the decision need not be disclosed to the public, particulars of the matter must be included in the Forward Plan but the Plan may not contain exempt or confidential information.

14.3 Publication of Forward Plan and notice of key decisions

The Forward Plan will be published on the Council's website on a rolling basis and copies may be requested from Legal and Democratic Services at County Hall during normal working hours.

15. General Exception

15.1 Where it is impracticable to publish notice under paragraph 13.1 in relation to a 'Key Decision', then subject to paragraph 16 (special urgency), the decision may still be taken if:

- a) the Assistant Director for Legal and Governance has notified the Chairman of the Overview and Scrutiny Performance Board, or if there is no such person, or each member of that Overview and Scrutiny Performance Board by notice in writing of the matter about which the decision is to be made;
- b) a copy of that notice under (a) is made available to the public at County Hall and on the Council's website; and
- c) at least five clear days have elapsed since compliance with (b).

15.2 Where paragraph 15.1 has been complied with, the provisions of 14.2 need not be complied with, but a notice setting out the reasons why compliance with 13.1 is impracticable must be made available at County Hall and on the Council's website as soon as is reasonably practicable.

16. Special Urgency

16.1 Where the date by which a key decision must be made makes compliance with paragraph 15 above (general exception) impracticable, then the key decision can only be taken where the decision-maker obtains the agreement of the chairman of the relevant Overview and Scrutiny Performance Board or if there is no such person or that chairman is unable to act, the Chairman of the Council (or in the absence of both, the Council's Vice-Chairman) that the taking of the decision is urgent and cannot reasonably be deferred.

16.2 As soon as reasonably practicable after agreement has been obtained under 16.1, a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred must be made available at County Hall and published on the Councils' website.

17. Report to Council

17.1 When the Overview and Scrutiny Performance Board can require a report

If the Overview and Scrutiny Performance Board is of the opinion that an executive decision has been made which was a key decision but not treated as such the Board may require the Cabinet (or CMR as appropriate) to submit a report to the Council within such reasonable time as the Board specifies.

17.2 Cabinet's report to Council

The Cabinet (or CMR as appropriate) will prepare a report for submission to Council which must include details of the decision and reasons for it, the details of the decision-maker, and if the Cabinet (or CMR as appropriate) is of the opinion that it was not a key decision, the reasons for that opinion.

18. Record of Decisions of the Cabinet or other executive decision-maker

18.1 As soon as reasonably practicable after an executive decision is made at a meeting of an executive decision-making body or by an individual member, the Assistant Director for Legal and Governance (or officer in respect of his or her decision) will produce a written statement of every such decision.

18.2 That statement (which for an executive decision-making body will normally be done though the production of minutes or record of decision) will include:

- a) a record of the decision and date it was made and by whom;
- b) the reasons for the decision and any alternative options considered and rejected;
and
- c) a record of any conflict of interest relating to that decision declared by any member of the executive decision-making body or any executive member consulted by the executive decision-maker (together with any note of dispensation provided by the Head of Paid Service relating to that conflict).

18.3 Subject to 18.4, as soon as is reasonably practicable after an executive decision has been made, the Assistant Director for Legal and Governance will make available for inspection by the public at County Hall and on the Council's website the above written statement (and any report or part of a report relevant to the decision and considered by the executive decision-maker). A copy of these documents must be supplied on request to a newspaper on payment of postage, copying and other necessary charge.

18.4 No written statement, report or document will be made available for public inspection which contains confidential information or where disclosure would give rise to the disclosure of exempt information, both as defined above.

18.5 Records and reports required to be available for public inspection under this paragraph must be retained for at least 6 years from the date of the decision.

19. Cabinet meetings relating to matters which are not key decisions

19.1 The Cabinet or other executive decision-making body will also meet to consider matters which are not key decisions. These meetings will also be in public unless the exemptions in paragraph 10.1, 10.3 or 10.7 apply.

20. Notice of meetings of the Cabinet

Members of the Cabinet will be entitled to receive five clear days' notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.

21. Attendance of officers at meetings of the Cabinet

21.1 The Chief Executive, Directors and the Monitoring Officer (and/or their nominees) are entitled to attend any meeting of the Cabinet or other executive decision-making body.

21.2 A private Cabinet meeting may only take place in the presence of the Assistant Director for Legal and Governance or his/her nominee and any other relevant Chief Officer or his/her nominee.

22. Key and other decisions by individual members of the Cabinet

The Leader or Cabinet may authorise individual members of the Cabinet to take Key and/or other executive decisions within any particular remit given from time to time by the Leader or Cabinet. The relevant provisions of these Rules will then apply to executive decisions taken by an individual member of Cabinet as an 'executive decision-maker' but the public will have no right of attendance at the decision-making, and the report will be published on the website as far as practicable at least 5 working days before the anticipated decision, which may be taken later than any date set out in the Forward Plan.

23. Additional rights of access to documents for Overview and Scrutiny purposes

23.1 Subject to paragraph 23.2 below, a member of an overview and scrutiny committee (ie the Overview and Scrutiny Performance Board, Health Overview and Scrutiny Committee, and Overview and Scrutiny Panels) will be entitled to a copy of any document (as defined above) which is in the possession or control of the Cabinet and

- a) contains material relating to any business which has been transacted at a public or private meeting of the Cabinet or executive decision-making body; or
- b) contains material relating to any executive decision made by an individual member of the Cabinet, or officer on behalf of the Cabinet, in accordance with executive arrangements.

That copy document must be provided as soon as reasonably practicable and in any event no later than 10 clear days after the request is received on behalf of the Cabinet.

23.2 Limit on rights

There is no entitlement under 23.1 to:

- a) any document that is in draft form;
- b) any document or part of a document that contains exempt or confidential information unless that information is relevant to:
 - i. an action or decision the scrutiny member is reviewing or scrutinising or
 - ii. any review contained in any programme of work of an overview and scrutiny committee; or
- c) the advice of a political adviser or assistant (if any).

Where it is determined that a member of an overview and scrutiny committee is not entitled to a copy of a document (or part of one), that committee must be provided with a written statement setting out the reasons for that decision.

24. Rights of access to documents by Members of the Council

24.1 A Member is entitled to inspect any document (which means in these rules any report or background paper taken into consideration in relation to an executive decision) which is:

- a) in the possession or under the control of the Cabinet and
- b) contains material relating to any business to be transacted at a public meeting of the Cabinet or decision-making body unless it is in draft form or paragraph 24.4 applies.

24.2 Such documents must be available for inspection by a member:

- a) at least 5 clear days before the meeting (if available), or

- b) from when the meeting is convened if at shorter notice than 5 clear days, or
- c) from when the item is added to the agenda or the document becomes available if that period is less than 5 clear days.

24.3 Any document which contains material relating to:

- a) any business transacted at a private meeting of the decision-making body (i.e. one from which the public have been excluded in accordance with these rules);
- b) a decision of an individual member as executive decision-maker; or
- c) a decision made by an officer on behalf of the Cabinet

must be made available for inspection by any member when the meeting concludes or immediately after the decision is taken and in any event within 24 hours of that conclusion or decision.

24.4 Members have no right to inspect a document which appears to the Assistant Director for Legal and Governance to disclose:

- a) exempt information as defined in paragraph 10.4. However, members can inspect a document if it only discloses information falling within category 3 (information relating to financial or business affairs) except to the extent that the information relates to terms proposed or to be proposed by or to the Council in the course of negotiation for a contract) or category 6 (the giving of statutory notices etc) in paragraph 10.4; or
- b) the advice of a political adviser or assistant (if any).

24.5 Attendance at Cabinet

Members have no right of attendance at a private meeting of the Cabinet or decision-making body (i.e. one where the press and public have been excluded) nor a right to inspect in advance any document relating to its business other than as set out above, except at the discretion of the Chairman of the meeting.

24.6 Nature of rights

The rights of a Member are additional to any other right he/she may have. These rules do not authorise or require the disclosure of confidential information in breach of the obligation of confidence.

25. Confidentiality

25.1 Members are provided with any exempt or confidential information in confidence for the performance of their duties as councillors and disclosures to a third party may be a breach of the Members' Code of Conduct and or the law.

25.2 No member of the Council, nor any co-opted member of any Committee, Panel or other member body, or a Scrutiny Task Group, shall without the permission of the Leader or Cabinet (in respect of executive functions) or of Council or the appropriate Committee or Panel (in respect of functions which are not executive functions), disclose any exempt or confidential information unless and to the extent only that that information shall have been properly placed in the public domain by the Council, the Cabinet or the appropriate Committee or Panel.

25.3 Any information treated as exempt or confidential may with the approval of the Leader of the Council (in respect of executive functions) or the relevant Chairman of the Committee, Panel or other member body (in respect of non-executive functions), as the case may be, be released for publicity purposes, whereupon that information shall be considered to have been published in the ordinary course of the Council's business.

26. Decisions by local members

Written records of decisions made or action taken by an individual local member of the Council by virtue of arrangements made under Section 236 of the Local Government and Public Involvement in Health Act 2007 will be published on the Council's website and be open to inspection by the public at County Hall in accordance with the Exercise of Functions by Local Councillors (Written Records) Regulations 2009 as amended from time to time.

Note – such arrangements have been made for all members in respect of the Worcestershire Councillors' Divisional Fund to improve the well-being of their Division or persons within them.

27. Inspection and supply of documents

27.1 Any document required to be open to inspection by members of the public must be available for inspection at all reasonable office hours at County Hall, and on the Council's website.

27.2 Background Documents are available for inspection upon payment of a reasonable fee.

27.3 Any person entitled to inspect a document may make a copy of it, or require the Council to supply a copy on payment of postage, copying or other necessary charge for transmission.

27.4 Any member of the public may, in any publicly available medium, reproduce or provide commentary in relation to a document supplied or made available to that person unless doing so infringes copyright (other than that of the Council).

27.5 Where any document open to inspection by the public is supplied to a member of the public or newspaper, the publication thereby of any defamatory matter contained in the document is privileged unless the publication is proved to be with malice.