



## **Section B**

### **ACCESS TO INFORMATION PROCEDURE RULES**

#### **1. SCOPE**

These rules apply to all meetings of the Council, the Executive and individual Cabinet Member meetings, Scrutiny Committee, the Audit and Governance Committee, Regulatory Committees and public meetings in general (together called meetings).

#### **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. RIGHT TO ATTEND MEETINGS**

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

#### **4. NOTICES OF MEETINGS**

The Council will give at least 5 clear days' notice of any meeting by posting details of the meeting at the Town Hall, Grove Road, Eastbourne.

#### **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 Town Hall at least 5 clear days before the meeting. If an item is added to the agenda later, the revised agenda (where reports are prepared after the agenda 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) will be open to inspection from the time the item was added to the agenda.

#### **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 Chief Executive 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**

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 report author 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 does not include published works or those which disclose exempt or confidential information (as defined in Rule 10).

### **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 Town Hall.

## **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.

### **10.2 Exempt information – discretion to exclude public**

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.

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.

### **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 categories (subject to any condition):

<b>Category of Exempt Information</b>	<b>Condition</b>
1. Information relating to any individual.	See conditions 9 and 10 below.
2. Information which is likely to reveal the identity of an individual.	See conditions 9 and 10 below.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).	See conditions 8, 9, 10 and 12 below.

<b>Category of Exempt Information</b>	<b>Condition</b>
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.	See conditions 9, 10, 11 and 12 below.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	See conditions 9 and 10 below.
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.	See conditions 9, 10 and 12 below.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	See conditions 9 and 10 below.

**Conditions**

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| <p>8. Information is not exempt information if it is required to be registered under:</p> <ul style="list-style-type: none"> <li>(a) the Companies Acts (as defined in section 2 of the Companies Act 2006</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; or</li> <li>(f) the Charities Act 1993.</li> </ul> <p>“Financial or business affairs” includes contemplated as well as past or current activities.</p> |
| <p>9. 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.</p>  |

**Conditions**

10. Information which:

- (a) falls within any of paragraphs 1 to 7 above; and
- (b) is not prevented from being exempt by virtue of paragraph 8 or 9 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.

For guidance on the application of the public interest test see the Information Commissioner Guidance's at [www.ico.gov.uk](http://www.ico.gov.uk) or seek advice from the Council's Monitoring Officer.

11. "Labour relations matter" means:

- (a) any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act); or

- (b) any dispute about a matter falling within paragraph (a) above;

and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to employees of the authority;

"Office-holder", in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority.

"Employee" means a person employed under a contract of service.

12. "The authority" is a reference to the council or a committee or sub-committee of the council or a joint committee of more than one council.

**11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS**

If the Chief Executive 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 10, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed.

## **12. APPLICATION OF RULES TO THE CABINET**

Rules 13 – 24 apply to the Cabinet, its committees and individual Cabinet Members. If the Cabinet, its committees or individual Cabinet Members meet to take a key decision then it must also comply with Rules 1 – 11 above unless Rule 15 (general exception) or Rule 16 (special urgency) apply.

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 – 11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is as defined in Article 13.04 of this Constitution. This requirement does not include meetings, whose sole purpose is for officers to brief Councillors.

## **13. PROCEDURE BEFORE TAKING KEY DECISIONS**

Subject to Rule 15 (general exception) and Rule 16 (special urgency), a key decision may not be taken unless:

- (a) a notice (called here a forward plan) has been published in connection with the matter in question;
- (b) at least 5 clear 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, its committees or at an individual Cabinet member meeting, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

## **14. THE FORWARD PLAN**

### **14.1 Period of forward plan**

Forward plans will be prepared by the Leader to cover a 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.

### **14.2 Contents of forward plan**

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 members of the Cabinet, officers, or under joint arrangements in the course of the discharge of an executive 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.

The forward plan must be published at least 14 days before the start of the period covered. The Chief Executive will publish once a year a notice in at least one newspaper circulating in the area, 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 plan will contain details of the key decisions to be made for the four month period following its publication;
- (d) that each plan will be available for inspection at reasonable hours free of charge at the Council's Offices;
- (e) that each 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.

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

## **15. GENERAL EXCEPTION**

If a matter which is likely to be a key decision has not been included in the forward plan, then subject to Rule 16 (special urgency), the decision may still be taken if:

- (a) the decision must be taken by such a date that it is impracticable to defer the decision until 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 Chief Executive has informed the Chairman of the Scrutiny Committee, or if there is no such person, each member of that Committee in writing, by notice, of the matter to which the decision is to be made;
- (c) the Chief Executive has made copies of that notice available to the public at the offices of the Council; and
- (d) at least 5 clear days have elapsed since the Chief Executive complied with (a) and (b).

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

## **16. SPECIAL URGENCY**

If by virtue of the date by which a decision must be taken Rule 15 (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 Committee that the taking of the decision cannot be reasonably deferred. If there is no Chairman of the Scrutiny Committee, or if the Chairman of the Scrutiny Committee is unable to act, then the agreement of the Mayor or in his/her absence the Deputy Mayor will suffice.

## **17. REPORT TO COUNCIL**

### **17.1 When the Scrutiny Committee can require a report:**

If the Scrutiny Committee 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 Scrutiny Committee Chairman, or the Mayor/Deputy Mayor under Rule 16;

the Committee may require the Cabinet or individual Cabinet Members to submit a report to the Council within such reasonable time as the Committee specifies. The power to require a report rests with the Committee, but is also delegated to the Chief Executive, who shall require such a report on behalf of the Committee when so requested by any three of its members. Alternatively, the requirement may be raised by resolution passed at a meeting of the Scrutiny Committee.

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

The Cabinet or individual Cabinet member will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within seven 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 the Council will set out particulars of the decision, the individual or body making the decision, and if the Leader is of the opinion that it was not a key decision the reasons for that opinion.

## **17.3 Quarterly reports on special urgency decisions**

In any event the Leader will submit quarterly reports to the Council on the Cabinet or individual Cabinet Member decisions taken in the circumstances set out in Rule 16 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

## **18. RECORD OF DECISIONS**

- 18.1 After any meeting of the Cabinet or any of its committees, whether held in public or private, the Cabinet Secretary will produce a record of every decision taken at that meeting as soon as practicable. The record will include the reasons for each decision and any alternative options considered and rejected at that meeting.
- 18.2 In addition a notice of decisions made in respect of key decisions will be published and circulated in accordance with Rule 9 of the Cabinet Procedure Rules and Rules 18.1 and 18.2 of the Scrutiny Procedure Rules.

**19. EXECUTIVE MEETINGS RELATING TO MATTERS WHICH ARE NOT KEY DECISIONS**

Cabinet or individual Cabinet Member meetings relating to matters which are not key decisions will normally be held in public other than when exempt or confidential information is to be considered.

**20. NOTICE OF PRIVATE MEETING OF THE CABINET**

Members of the Cabinet will be entitled to receive 5 clear working days' notice of a meeting to which they are summoned unless the meeting is convened at shorter notice as a matter of urgency.

**21. ATTENDANCE AT PRIVATE MEETINGS OF THE CABINET**

- (a) Notice of private meetings of the Cabinet will be served on the Chairman of the Scrutiny Committee, at the same time as notice is served on members of the Cabinet. Where the Scrutiny Committee does not have a Chairman, the notice will be served on all the members of that Committee.
- (b) Where a matter under consideration at a private meeting of the Cabinet is within the remit of the Scrutiny Committee the Chairman of that Committee or in his/her absence the Deputy Chairman may attend that private meeting with the consent of the person presiding, and speak if those present agree.
- (c) The Head of the Paid Service, the Chief Finance Officer and the Monitoring Officer, and their nominees are entitled to attend any meeting of the Cabinet. The Cabinet may not meet unless the Chief Executive has been given reasonable notice that a meeting is to take place.
- (d) A private Cabinet meeting may only take place in the presence of the Chief Executive or his/her nominee with responsibility for recording and publicising the decisions.

**22. DECISIONS BY INDIVIDUAL MEMBERS OF THE CABINET**

**22.1 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 receipt of that report.

## **22.2 Provision of copies of reports to the Scrutiny Committee**

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 Committee as soon as reasonably practicable, and make it publicly available at the same time.

## **22.3 Record of Individual Decision**

As soon as reasonably practicable after an executive decision has been taken by an individual member of the Cabinet or a key decision has been taken by an officer, he/she will prepare, or instruct the Head of Corporate Development 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 concerning access to minutes and papers after a meeting will also apply to the making of decisions by individual members of the Cabinet. This does not require the disclosure of exempt or confidential information.

## **23. SCRUTINY COMMITTEE ACCESS TO DOCUMENTS**

### **23.1 Rights to copies**

Subject to Rule 23.2 below, the Scrutiny Committee 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 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.

### **23.2 Limit on rights**

The Scrutiny Committee will not be entitled to:

- (a) any document that is in draft form;
- (b) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise; or
- (c) the advice of a political adviser.

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

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

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 paragraphs 1, 2, 4, 5, or 7 of the categories of exempt information; or
- (b) it contains the advice of a political adviser.

### **24.2 Material relating to key decisions**

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) above applies.

### **24.3 Nature of rights**

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