

# Part 5

## ACCESS TO INFORMATION PROCEDURE RULES

Wiltshire Council believes in public access to information in order to ensure that members of the public can exercise their rights to have a say about decisions and can understand what decisions have been taken and why. Although some information has to remain private, for example to respect personal privacy, commercial confidentiality or for legal reasons, the Council has adopted a presumption of openness that information will be available unless there is a substantial lawful reason why not.

This Part 5 reflects the current statutory requirements set out in Section 100 Local Government Act 1972 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. These rules apply except where proceedings of the body concerned are governed by other specific legislation.

### Definitions

Cabinet	means Cabinet or a committee of Cabinet.
Full Council	means Full Council or a committee of Full Council, including sub-committees.
Offices	means the Council's three hub offices at County Hall, Trowbridge, Monkton Park, Chippenham and Bourne Hill, Salisbury.
Private Meeting	means a meeting, or part of a meeting during which the public are excluded by virtue of paragraphs 15 or 17 below.
Proper Officer	means the Associate Director, Corporate Function and Procurement, or such other officer as designated from time to time by the Head of Paid Service.

### Scope

1. These rules apply to all meetings of Full Council or Cabinet.

### Additional rights to information

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

### Rights to attend meetings

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

## **Notice of public meetings**

4. The Council will give at least five clear working days' notice of any public meeting by posting details of the meeting at its Offices and on its website, or if a meeting is convened at less than five clear working days' notice, as soon as it is convened.

## **Notice of private meetings**

5. The Council will give at least 28 clear calendar days' notice of its intention to hold a meeting in private by posting a notice at its Offices and on its website. The notice must include a statement of the reasons for the meeting to be held in private.
6. At least 5 clear working days before a private meeting the Council will post a further notice of its intention to hold a meeting in private at its Offices and on its website. The notice must include a statement of the reasons for the meeting to be held in private and details of any representations received about why the meeting should be open to the public and a statement of its responses to any such representations.
7. Where a meeting to be held in private is convened at less than 28 clear calendar days' notice the meeting may only be held in private with the agreement of:
  - the chairman of the Overview and Scrutiny Management Committee; or
  - if there is no such person or the chairman of the Overview and Scrutiny Management Committee is unable to act, the chairman of Full Council; or
  - where there is no chairman of either the Overview and Scrutiny Management Committee or of Full Council, the vice-chairman of Full Council.

As soon as reasonably practicable after agreement has been given under this paragraph, the Council must post at its Offices and on its website a notice setting out the reasons why the meeting is urgent and cannot be reasonable deferred.

## **Access to agenda and reports before a public meeting**

8. The Council will make copies of the agenda and reports open to the public available for inspection at its Offices and on its website at least five clear working days before the public meeting. 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 Proper Officer shall make each such report available to the public as soon as the report is completed and sent to councillors.
9. If the Proper Officer thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with these rules, the meeting is likely not to be open to the public. Such reports will be marked "not for publication" and state that they contain confidential or exempt information as defined in paragraphs 16 or 18 below.

### **Supply of copies**

10. The council will supply copies of:

- any agenda and reports which are open to public inspection
- any further statements or particulars necessary to indicate the nature of the items in the agenda and
- if the Proper Officer thinks fit, copies of any other documents supplied to councillors in connection with an item

to any person on payment of a charge for postage and any other costs and make a reasonable number of copies available at the public meeting (except in relation to any part of the meeting not open to the public).

### **Access to minutes etc. after the meeting**

11. The Council will make available copies of the following for six years after a meeting:

- 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
- 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
- the agenda for the meeting and
- reports relating to items when the meeting was open to the public.

### **Background papers**

12. The relevant Director 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:

- disclose any facts or matters on which the report or an important part of the report is based and
- 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 paragraphs 16 and 18 ) and in respect of cabinet reports, the advice of a political assistant.

### Public inspection of background papers

13. The Council will make available for public inspection at its Offices and on its website for six years after the date of the meeting one copy of each of the documents on the list of background papers.

## **Summary of public's rights to attend meetings**

14. 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 Offices.

## **Exclusion of access by the public to meetings**

### Confidential information – requirement to exclude public

15. The public shall 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.
16. 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 or under any enactment.

### Exempt information – discretion to exclude public

17. The public may 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.
18. Exempt information means information falling within the following seven categories(subject to any condition):
  - 18.1 information relating to any individual
  - 18.2 information which is likely to reveal the identity of an individual
  - 18.3 information relating to the financial or business affairs of any particular person (including the authority holding that information)
  - 18.4 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
  - 18.5 information in respect of which a claim to legal professional privilege could be maintained in legal proceedings
  - 18.6 information which reveals that the authority proposes:
    - (a) to give under any enactment a notice by virtue of which requirements are imposed on a person, or
    - (b) to make an order or direction under any enactment.
  - 18.7 information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime
19. Information which falls into paragraphs 18.1 to 18.7 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.

20. Information is not exempt information if it relates to proposed development for which the local planning authority can grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.
21. 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.

### **Application of rules to the Cabinet**

22. Paragraphs 24 - 55 apply to the Cabinet. If the Cabinet meets to take a key decision it must also comply with paragraphs 1 – 18 unless paragraphs 25, 26 and 27 (general exception) or paragraph 28 (special urgency) apply. A key decision is defined in Part 1 of this Constitution.
23. If the Cabinet meets to discuss a key decision to be taken collectively, with an officer other than a political assistant present, within 28 clear calendar days of the date according to the forward plan by which it is to be decided, then it must also comply with paragraphs 1 – 18 unless paragraphs 28, 29 and 30 (general exceptions) or paragraph 31 (special urgency) apply. This requirement does not include meetings, whose sole purpose is for officers to brief councillors / co-opted members.

### **Procedure before taking key decisions**

24. Subject to paragraphs 28, 29 and 30 (general exception) and paragraph 31 (special urgency), a key decision may not be taken unless:
  - a notice (called here a forward plan) has been published in connection with the matter in question and made available by the public at its Offices and on its website;
  - at least 28 clear calendar days have elapsed since the publication of the forward plan; and
  - where the decision is to be taken at a meeting of the Cabinet, notice of the meeting has been given in accordance with paragraph 4 (notice of public meetings).

### **The forward plan**

25. 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.
26. The forward plan will contain matters which the Leader has reason to believe will be subject of a key decision (as defined in Part 1 of this Constitution) to be taken by the Cabinet, officers or under joint arrangements in the course of the discharge of a cabinet function during the period covered by the plan. It will describe the following particulars in so far as the information is available or might reasonably be obtained:

- the matter in respect of which a decision is to be made;
- 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;
- the date on which, or the period within which, the decision will be taken;
- the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
- the means by which any such consultation is proposed to be undertaken;
- 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;
- a list of the documents submitted to the decision taker for consideration in relation to the matter;
- 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;
- that other documents relevant to the matter may be submitted to the decision taker; and
- the procedure for requesting details of those documents (if any) as they become available.

27 Where in relation to any matter where the public may be excluded from a public meeting under paragraphs 15 or 17, or documents relating to the decision need not be disclosed to the public, the forward plan must contain the particulars of the matter, but may not contain any confidential information, exempt information or particulars of the advice of a political adviser or assistant.

### **General exception**

28. If a matter which is likely to be a key decision has not been included in the forward plan, then subject to paragraph 31 (special urgency), the decision may still be taken if:
- 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;
  - the Proper Officer has informed the chair of the Overview and Scrutiny Management 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;

- the Proper Officer has made copies of that notice available to the public at the Offices and on the Council's website; and
  - at least five clear working days have elapsed since the Proper Officer complied with the requirements of paragraph 28, bullet point three.
29. A soon as reasonably practicable after the Proper Officer has complied with the above they must make available at the Offices and on the Council's website a notice setting out the reasons why compliance with paragraph 26 above is impracticable.
30. Where such a decision is taken collectively, it must be taken in public.

### **Special urgency**

31. If by virtue of the date by which a decision must be taken paragraph 28 (general exception) cannot be followed then the decision can only be taken if the decision taker (if an individual) or the chair of the body making the decision, obtains the agreement of;
- the chairman of the Overview and Scrutiny Management Committee; or
  - if there is no such person, or if the chairman of the Overview and Scrutiny Management Committee is unable to act, the chairman of Full Council; or
  - where there is no chairman of either the Overview and Scrutiny Management Committee or of Full Council, the vice-chairman of Full Council.
  - that the taking of the decision is urgent and cannot be reasonably deferred.

### **Reports to Council**

32. If the Overview and Scrutiny Management Committee thinks that a key decision has been taken which was not:
- included in the forward plan; or
  - the subject of the general exception procedure under paragraph 28; or
  - the subject of an agreement under paragraph 31 (special urgency).

the Overview and Scrutiny Management Committee may require the Cabinet to submit a report to Full Council within such reasonable time as the Committee specifies.

The power to require a report rests with the Overview and Scrutiny Management Committee, but is also delegated to the Proper Officer, who shall require such a report on behalf of the Committee when so requested by the Chairman or any five members of the Committee. Alternatively the requirement may be raised by resolution passed at a meeting of the Overview and Scrutiny Management Committee.

### Cabinet's report to Full Council

33. The Cabinet will prepare a report for submission to the next available meeting of Full Council. However, if the next meeting of the Council is within seven days of receipt of the written notice, or the resolution of the Overview and

Scrutiny Management Committee, then the report may be submitted to the meeting after that. The report to Full 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.

#### Reports on special urgency decisions

34. The Leader shall report any decision taken under paragraph 31 (special urgency) to the next available meeting of Full Council. In any event the Leader will submit an annual report to Full Council on the Cabinet decisions taken under paragraph 31 (special urgency) in the preceding twelve 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.

#### **Record of decisions**

35. After any meeting of the Cabinet, whether held in public or private, the Proper Officer or their nominee or, where no officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as practicable. The record will include:
- a) A record of the decision including the date it was made;
  - b) A record of the reasons for the decision;
  - c) Details of any alternative options considered and rejected by the decision taker;
  - d) A record of any conflict of interest relating to the matter decided which is declared by any member of the decision taker; and
  - e) In respect of any declared conflict of interest, a note of any dispensation granted by the Standards Dispensation Sub-Committee.

In relation to decisions made by officers, the officer will produce a record of their decision in accordance with Part 3 of this Constitution as soon as reasonably practicable after the decision is made.

#### **Cabinet meetings relating to matters which are not key decisions**

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

#### **Notice of private meetings of the Cabinet**

37. Members of the Cabinet will be entitled to receive five 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.

#### **Attendance at private meetings of the Cabinet**

38. All members of the Cabinet will be served notice of all private meetings of Committees of the Cabinet, whether or not they are Members of that Committee.
39. All members of the Cabinet are entitled to attend a private meeting of any Committee of the Cabinet.
40. Notice of private meetings of the Cabinet will be served on the chairs of the Overview and Scrutiny Committee and sub-committees, at the same time as notice is served on members of the Cabinet. Where the Overview and Scrutiny

Committee does not have a chair, the notice will be served on all the members of that Committee.

41. Where a matter under consideration at a private meeting of the Cabinet, is within the remit of the Overview and Scrutiny Committee/sub-committee, the chair of that Committee or in his/her absence the vice chair may attend that private meeting with the consent of the person presiding, and speak.
42. The Corporate Directors, 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 Proper Officer has been given reasonable notice that a meeting is to take place.
43. A private meeting may only take place in the presence of the Proper Officer or his/her nominee who are responsible for recording and publicising the decisions.
44. The provisions of paragraph 35 (record of decisions) will apply where meetings of the Cabinet are held in private.

### **Decisions made by individual members of the Cabinet**

#### Reports intended to be taken into account

45. 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 working days after receipt of that report.

#### Provision of copies of reports to Overview and Scrutiny Committees

46. 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 chair of an Overview and Scrutiny Committee as soon as reasonably practicable, and make it publicly available at the same time.

#### Record of individual decision

47. As soon as reasonably practicable after an executive decision has been taken by an individual member of the Cabinet, a written record of the decision must be produced which must include the following:
  - a) record of the decision including the date it was made;
  - b) A record of the reasons for the decision;
  - c) Details of any alternative options considered and rejected by the member;
  - d) A record of any conflict of interest relating to the matter decided which is declared by any member of the Cabinet who is consulted by the member which relates to the decision; and
  - e) In respect of any declared conflict of interest, a note of any dispensation granted by the Standards Dispensation Sub-Committee.
48. The provisions of paragraphs 11, 12 and 13 (access to minutes and background papers after meetings) 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 or advice from a political or mayor's assistant.

## **Overview and scrutiny committees' access to documents**

### Rights to copies

49. Subject to paragraph 51 (limit on rights) below, any member of an Overview and Scrutiny Committee (including its sub-committees) is entitled to copies of any document which is in the possession or control of the Leader and which contains material relating to:
- any business transacted at a public or private meeting of the Cabinet; or
  - any decision taken by an individual member of the Cabinet; or
  - any executive decisions that have been made by an officer in accordance with Part 3 of this Constitution.

Where a member of an Overview and Scrutiny Committee (including its sub-committees) requests a document which falls within the above the Leader must provide that document as soon as reasonably practicable and in any case no later than 10 clear working days after the Leader receives the request.

50. Subject to paragraph 51, the chair of the Overview and Scrutiny Committee will be entitled to foresight of papers in relation to private decisions of the Cabinet before the decision is made.

### Limit on rights

51. A member of the Overview and Scrutiny Committee will not be entitled to:
- any document that is in draft form;
  - any document or part of it 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 any review contained in any programme of work of the Overview and Scrutiny Committees; or
  - the advice of a political adviser.

Where the Leader determines that a member of the Overview and Scrutiny Committee is not entitled to a copy of a document, or part of any such document, for the reasons set out above the Leader must provide the Overview and Scrutiny Committee with a written statement setting out their reasons for that decision.

## **Additional rights of access for councillors**

52. Any document which is in the possession or under the control of the Leader and contains material relating to:
- any business to be transacted at a public meeting;
  - any business transacted at a private meeting;
  - any decision made by an individual member; or

- an executive decision made by an officer

must be available for inspection by any councillor unless:

- it contains exempt information falling within paragraphs 18.1, 18.2, 18.3 (but only 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), 18.4, 18.5, and 18.7 of the categories of exempt information; or
- it contains the advice of a political adviser.

53. In relation to public meetings, where a document is required to be available for inspection it must be available for at least 5 clear working days before the meeting except where the meeting is convened at shorter notice or an item is added to an agenda at shorter notice in which case the document must be available for inspection when the meeting is convened or the item is added to the agenda.

54. In relation to private meetings, decisions made by an individual member or executive decisions made by an officer, where a document is required to be available for inspection it must be available within 24 hours of the meeting concluding or where an executive decision is made by an individual member or an officer within 24 hours of the decision being made.

#### Material relating to key decisions

55. 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 Leader which relates to any key decision unless the exceptions in paragraph 52 above apply.

#### **Nature of rights**

56. These rights of councillors are additional to any other right he/she may have.