

ACCESS TO INFORMATION PROCEDURE RULES

INTRODUCTION

The access to information rules which apply to Council meetings and committees of the Council are set out in sections 100A-H and Schedule 12A of the Local Government Act 1972. As the Council is functioning under an executive form of governance it is bound by further access to information rules contained in The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended). These rules comply with both statutory provisions.

1.0 SCOPE

- 1.1 These rules cover all meetings of the Council and its Committees, Sub-Committees, Advisory Panels, Cabinet (together called meetings) and (where specified) executive decisions made by individual Members and Key Decisions made by Officers.
- 1.2 These rules also cover Members' rights of access to information.
- 1.3 These rules do not cover public rights of access to information under the Freedom of Information Act 2000, and the Data Protection Act 1998. These can be found on the Council's website or obtained from the Westfields
- 1.4 These rules do not affect any more specific right to information contained elsewhere in this Constitution in any Act.

2.0 PUBLIC ACCESS TO MEETINGS

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

3.0 NOTICE OF MEETINGS

- 3.1 The Council will give at least five clear working days' notice of any meeting by posting details of the meeting at Westfields, Middlewich Road, Sandbach, CW11 1HZ (the designated office) and on its website. The notice will specify the business proposed to be transacted at the meeting.
- 3.2 Members entitled to attend a meeting, will receive a summons giving five clear working days' notice to attend and specifying the business proposed to be transacted at the meeting. Except in the case of business required by law to be transacted at the annual meeting, or other business brought before the meeting as a matter of urgency in

accordance with the Constitution, no business shall be transacted at a meeting other than that specified in the summons.

4.0 PUBLIC ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

- 4.1 The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least 5 clear working days before the meeting, except that where a meeting is convened at shorter notice, the copies of the agenda and reports shall be open to inspection from the time the meeting is convened.
- 4.2 Where an item is added to the agenda, and the report is open to the public, copies of any report for the meeting relating to the item, and the revised agenda shall be available for inspection from the time the item is added to the agenda.
- 4.3 Where copies of the agenda and reports open to the public are not made available for inspection in this way, an item of business will not be considered unless, by reason of special circumstances, which shall be specified in the minutes, the chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency.

5.0 PUBLIC ACCESS TO COPIES

- 5.1 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; and
 - (c) if the Proper Officer thinks fit, copies of any other documents supplied to Members in connection with an item to any person on payment of a charge for postage, copying and any other costs.
- 5.2 Copies of the agendas of Cabinet meetings will be circulated to all Members.
- 5.3 The Council will make available for the use of members of the public present at meetings, a reasonable number of copies of the agenda and of those reports which are open to the public.

6.0 PUBLIC ACCESS TO MINUTES ETC AFTER THE MEETING

- 6.1 The Council will make available for inspection copies of the following for six years after a meeting:

- (a) the minutes of the meeting excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information (as defined in Rules 9 and 10);
- (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

7.0 PUBLIC ACCESS TO BACKGROUND PAPERS

7.1 List of Background Papers

The author of a report 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) have been relied on to a material extent in preparing the report

but this does not include published works or those which disclose exempt or confidential information (as defined in Rules 9 and 10), nor in respect of executive reports, does this include the advice of a political advisor, or any draft report or document.

7.2 Public inspection

- (a) A copy of each of the documents listed will be available for inspection at the same time as the report is available for public inspection.
- (b) 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.

8.0 EXCLUSION OF PUBLIC ACCESS TO REPORTS

- 8.1 The Proper Officer will exclude access by the public to reports which in his opinion contain confidential information, (as defined in Rule 9).

- 8.2 If the Proper Officer thinks fit, access by the public may also be excluded to reports which in his opinion relate to items during which, in accordance with Rule 10 (Exempt Information) the meeting is likely not to be open to the public.
- 8.3 Such reports will be marked “Not for publication” together with “confidential information” or the exemption relied upon.
- 8.4 Where an exemption is relied upon, any such report must contain the reasons why, as in all in the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

9.0 CONFIDENTIAL INFORMATION – REQUIREMENT TO EXCLUDE PUBLIC ACCESS

- 9.1 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.
- 9.2 Confidential information means
- (a) information given to the Council by a Government Department on terms which forbid its public disclosure or
 - (b) information the disclosure of which to the public is prohibited by or under another Act or by Court.

10.0 EXEMPT INFORMATION – DISCRETION TO EXCLUDE PUBLIC ACCESS TO MEETINGS

10. 1 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 provided:
- (a) the meeting resolves so to exclude the public, and that resolution identifies the proceedings or part of the proceedings to which it applies;
 - (b) that resolution states, by reference to the descriptions in Schedule 12A to the Local Government Act 1972 (paragraph 10.4 below), the description of the exempt information giving rise to the exclusion of the public; and
 - (c) that resolution states, by reference to reasons given in a relevant report or otherwise, in all the circumstances of the case, that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

- 10.2 In these circumstances, public access to reports, background papers and minutes will also be excluded.
- 10.3 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.
- 10.4 Exempt information means information falling within the following categories (subject to any condition):

Category	Condition
1. Information relating to any individual.	Information is 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
2. Information which is likely to reveal the identity of an individual.	Information is 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
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information). "Financial or business affairs" includes contemplated, as well as past or current, activities	Information is 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 Information within paragraph 3 is not exempt if it must 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.
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	Information is 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

Category	Condition
officer-holders under the authority. “Labour relations matter” are as specified in paragraphs (a) to (g) of section 218(1) of the Trade Unions and Labour Relations (Consolidation) Act 1992, i.e. matters which may be the subject of a trade dispute within the meaning of that Act or any dispute about any such matter	
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	Information is 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
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	Information is 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
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	Information is 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

EXCEPT THAT

Information falling within any of paragraphs 1-7 is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission under regulation 3 of the Town and Country Planning General Regulations 1992.

The following will also be exempt information for some meetings of the Standards Committee or a Sub-Committee of it.¹

¹ Where a Standards Committee is convened to consider a matter referred 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.

Category	Condition
7A. Information which is subject to any obligation of confidentiality.	Information is 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
7B. Information which relates in any way to matters concerning national security.	Information is 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
7C. Information presented to a standards committee, or to a sub-committee of a standards committee, set up to consider any matter under regulations 13 and 16 to 20 of the Standards Committee (England) Regulations 2008, (referrals to and references from Monitoring Officers) or referred under section 58(1)(c) of the Local Government Act 2000 (failure to comply with Code of Conduct).	Information is 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

10.5 Procedure at Standards Committee (Complaints and reviews)

When a meeting of a Sub-Committee of the Standards Committee is convened to consider a written complaint ¹ or to review a decision² then Part 5A of the Local Government Act 1972 does not apply to those meetings. Regulation 8 of the Standards Committee (England) Regulations 2008 applies to those meetings generally and Regulation 8(5)(a) governs the production and publication of a written summary of the sub-committees decision.

10.6 Disorderly Conduct – discretion to exclude public

The public may also be excluded from meetings, where the meeting so resolves, in the exercise of a lawful power of exclusion in order to maintain orderly conduct or to prevent misbehaviour at a meeting.

¹ Received under Section 57A(1) of the Local Government Act 2000

² Under Section 57B of the Local Government Act 2000

11.0 PUBLIC ACCESS TO CABINET MEETINGS

11.1 The Cabinet has decided that all of its meetings and its Committees are to be held in public whether or not a Key Decision is to be made and the preceding rules 1 – 10 therefore apply.

11.2 However if a Key Decision is to be made Rules 11 to 16 below also apply

A “key decision” means an executive decision which, is likely

- (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’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 wards or electoral divisions in the area of the local authority.

11.3 If the Cabinet or its Committees meet to discuss a key decision that is due to be taken collectively and

- a) an Officer (other than a political adviser) is present at the discussion
- b) the discussion is within 28 days of the date by which, according to the Forward Plan, the decision is to be made

then Rules 1 – 11 must be complied with unless Rule 15 (general exception) or

Rule 16 (special urgency) applies or the principal purpose of the meeting is for the Officer to brief the decision maker on matters connected with the making of the executive decision.

12.0 PROCEDURE BEFORE TAKING KEY DECISIONS

Subject to Rule 14 (general exception) and Rule 15 (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 or its Committees, notice of the meeting has been given in accordance with Rule 3

13.0 THE FORWARD PLAN

13.1 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. They will contain outstanding matters from the previous forward plan.

13.2 Content of Forward Plan

13.2.1 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, Officers, Area Committees or under joint arrangements in the course of the discharge of an executive function during the period covered by the plan. The Forward Plan must be published at least 14 days before the start of the period covered and made available to the relevant Scrutiny Committees. 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.

13.2.2 The Proper Officer 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.

13.2.3 Exempt information (as defined in Rule 10) and the advice of political advisers need not be included in a forward plan and confidential information (as defined in Rule 9) cannot be included, but the Forward Plan should contain particulars of the matter.

14.0 GENERAL EXCEPTION

14.1 If a matter which is likely to be a Key Decision has not been included in the Forward Plan, then subject to Rule 15 (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 Proper Officer has informed the chairman of a relevant 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 Proper Officer 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 Proper Officer complied with (b) and (c).

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

15.0 SPECIAL URGENCY

15.1 If by virtue of the date by which a decision must be taken Rule 14 (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 a relevant Scrutiny Committee that the taking of the decision cannot be reasonably deferred and the decision is urgent. If there is no chairman of a relevant Scrutiny Committee, or if the chairman of the relevant Scrutiny Committee is unable to act, then the agreement of the Mayor of the Council, or in his/her absence the Deputy Mayor will suffice.

16.0 REPORTS TO COUNCIL

16.1 When a Scrutiny Committee can require a report

Where an executive decision has been made and was not treated as a Key Decision and a relevant Scrutiny Committee thinks that it should have been treated as a Key Decision the Scrutiny Committee may require the Cabinet to submit a report to the Council within such reasonable time as the Scrutiny 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 the Chairman of the Committee or any 5 Members. Alternatively, the requirement may be raised by resolution passed at a meeting of the relevant Scrutiny Committee.

16.2 The 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 resolution of the Scrutiny Committee, then the report may be submitted to the meeting after that. The report to 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.

16.3 Quarterly reports on special urgency decisions

In any event the Leader will submit quarterly reports to the Council on the executive decisions taken in the circumstances set out in Rule 15 (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.

17.0 PUBLIC ACCESS TO CABINET DECISIONS - RECORD OF DECISIONS

- 17.1 After any meeting of the Cabinet or any of its Committees, the Proper Officer 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 reasonably practicable and make it available for inspection by the public. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

18.0 DECISIONS BY INDIVIDUAL MEMBERS OF THE CABINET OR OFFICERS

- 18.1 Public access to reports intended to be taken into account

Where an Individual Cabinet Member or Officer 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 the report has been available for public inspection for at least five clear working days.

- 18.2 Provision of copies of reports to Scrutiny Committees

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

- 18.3 Public access to record of individual decision

As soon as reasonably practicable after any executive decision has been made by an individual member of the Cabinet or a Key Decision has been taken by an officer, 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. The provisions of Rules 6 and 7 (inspection of documents after meetings) will also apply to the making of Key Decisions by Directors. This does not require the disclosure of exempt or confidential information, or advice from a political adviser or assistant.

19.0 MEMBER ACCESS TO EXEMPT OR CONFIDENTIAL DOCUMENTS

- 19.1 This section deals with Member access to documents which contain confidential or exempt information, including agenda papers, background documents and minutes.
- 19.2 Members of a committee or decision-making body of the Council or of the executive are automatically provided with, and entitled to receive, copies of confidential or exempt reports.
- 19.3 In addition, the following categories of Member shall automatically receive copies of confidential or exempt executive reports:
- Group Leaders
 - Local Ward Members for the Ward affected, in accordance with the Ward Member Protocol
 - Relevant scrutiny committee Chairmen and Vice-Chairmen
 - Members visiting the meeting in question, who would receive the papers upon arrival
- 19.4 Subject to the provisions above, and to paragraph 19.5, any Member of the Council may, upon request, receive a copy of a confidential or exempt report or agenda, or inspect an associated background document, on any matter except where the report or document contains information relating to either of the following categories:
- Staffing information, where the identity of individual officers would be revealed
 - Information relating to vulnerable children and adults
- 19.5 Any Member wishing to receive or inspect a report or document containing information of the categories referred to in paragraph 19.4 must demonstrate a 'need to know' in accordance with the following process:
- The Member will submit to the Borough Solicitor and Monitoring Officer, or to the Democratic and Registration Services Manager in writing, information in support of their claim to have a "need to know".
 - The claim will be submitted to the relevant Chairman (or Vice Chairman, in his/her absence) of the non-executive committee or sub-committee in question, or to the Portfolio Holder (or the Leader, in his/her absence), in respect of an executive decision, for determination.
 - The determination as to whether or not a "need to know" has been demonstrated will be based on officer advice and will include legal advice.

- Once a determination has been made, this will be communicated to the Member who has made the claim.

19.6 All Members of the Council shall have access to all minutes and records of decisions, subject to the provisions of paragraphs 19.4 and 19.5.

21.0 NATURE OF ADDITIONAL RIGHTS

The members rights of access in Rules 19 and 20 are additional to any other statutory or common law rights they have including the right to access to information on a 'need to know' basis in order assist in the proper discharge of their duties as a member of the Council.