

CHAPTER 8 – ACCESS TO INFORMATION PROCEDURE RULES

1. EXECUTIVE ARRANGEMENTS

These rules apply to all meetings of the Council, Policy Development and Scrutiny Committees, Area Committees (if any), the Standards Committee and regulatory committees and public meetings of the Executive (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. RIGHTS TO ATTEND MEETINGS

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

4. NOTICES OF MEETING

The Council will publish each year its proposed schedule of meetings of both the full Council and of the Executive. At least 5 clear days' notice of any meeting will be given in addition by posting details of the meeting at the Civic Centre, Stockwell Close, Bromley, the designated office.

5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

The Council will make copies of the agenda and reports which are open to the public available for inspection at the designated office 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 summons has been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to ~~Councillor~~Members) 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 proper officer thinks fit, copies of any other documents supplied to ~~Councillor~~Members 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 executive, 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 proper officer~~ will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

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

but does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of Executive reports, the advice of a political advisor.

8.2 Public inspection of background papers

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

9. SUMMARY OF PUBLIC'S RIGHTS

A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and available to the public at the Council's main offices.

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 the 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 7 categories (subject to any condition):

| Category | Condition |
|---|---|
| 1. Information relating to any individual. | |
| 2. Information which is likely to reveal the identity of an individual. | |
| 3. Information relating to the financial or business affairs of any particular person (including the authority holding that information). | Information within paragraph 3 is not exempt if it must be registered under various statutes, such as the Companies Act or Charities Act as set out in paragraph 8 of Schedule 12A of the Local Government Act 1972 (as amended). Financial or business affairs includes contemplated as well as past or current activities. |
| 4. Information relating to any consultations or negotiations or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office-holders under the authority. | Information within paragraph 4 is only exempt if and for so long as its disclosure to the public would prejudice the authority in those or any other consultations or negotiations in connection with a labour relations matter. "Labour relations matters" are as specified in paragraphs (a) to (g) of Section 218 of the Trade Unions and Labour Relations Act 1992, i.e. matters which may be the subject of a trade dispute. |
| 5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. | |

| Category | Condition |
|---|---|
| <p>6. Information which reveals that the authority proposes:</p> <p>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) to make an order or direction under any enactment.</p> | <p>Information within paragraph 6 is exempt only while disclosure might give an opportunity to a person affected by the notice, order or direction to defeat the purpose for which the notice, order or direction is to be given or made.</p> |
| <p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p> | |

Information falling within any of paragraphs 1-7 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.

11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

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 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 EXECUTIVE

Rules 13 – 24 apply to the Executive and its Committees. If the Executive or its Committees meet to take a key decision then it must also comply with Rules 1 – 11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is as defined in **Chapter 1** of this Constitution.

If the Executive 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. This requirement does not include meetings, whose sole purpose is for officers to brief Members.

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 Executive or its committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

14. THE FORWARD PLAN

14.1 Period of ~~F~~forward ~~P~~plan

The Forward Plan shall be updated and published on a regular basis covering key decisions up to a year in advance.

~~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 or private decision to be taken by the Executive, a committee of the Executive, individual Members of the Executive, officers, Area Committees 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 executive 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 28 days before the start of the period covered. ~~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.~~
- ~~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 ~~or private~~ 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 proper officer has informed the chairperson of a relevant Policy Development and 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 (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 Chairperson of the body making the decision, obtains the agreement of the Chairperson of a relevant Policy Development and Scrutiny

Committee that the taking of the decision cannot be reasonably deferred. If there is no Chairperson of a relevant Policy Development and Scrutiny Committee, or if the Chairperson of each relevant Policy Development and Scrutiny Committee is unable to act, then the agreement of the Mayor will suffice.

As soon as reasonably practicable after the decision maker has obtained agreement, in accordance with the above procedure, that the decision is urgent and cannot reasonably be deferred, the Proper Officer must:

- i) make available a notice at the Council offices setting out the reasons that the decision is urgent and cannot reasonably be deferred and
- ii) publish the notice on the Council's website.

17. REPORT TO COUNCIL

17.1 When a Policy Development and Scrutiny Committee can require a report

If a Policy Development and 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 a relevant Policy Development and Scrutiny Chairperson, or the Mayor under Rule 16;

the Committee may require the Executive 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 proper officer, who shall require such a report on behalf of the Committee when so requested by (the Chairperson or any 5 Members). Alternatively the requirement may be raised by resolution passed at a meeting of the relevant Policy Development and Scrutiny Committee.

17.2 Executive's report to Council

The Executive will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the written notice, or the resolution of the Committee, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, 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 Executive 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

After any meeting of the Executive or any of its Committees, whether held in public or private, 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 practicable. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

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

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

1920. NOTICE OF MEETING OF THE EXECUTIVE

Members of the Executive or its Committees 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.

204. ATTENDANCE AT MEETING OF THE EXECUTIVE

All formal meetings of the Executive will be held in public unless a decision to exclude the public has been taken in accordance with Rule 10.

Any recognised Group on the Council not represented on the Executive may appoint a spokesperson who shall be entitled to attend all meetings of the Executive and speak on any item on the agenda.

All other Members of the Council are entitled to attend meetings of the Executive and speak subject to the discretion of the Chairperson.

The Head of Paid Service, Chief Finance Officer and the Monitoring Officer and their nominees are entitled to attend any meeting of the Executive.

212. DECISIONS BY INDIVIDUAL MEMBERS OF THE EXECUTIVE

212.1 Reports intended to be taken into account

Where an individual Member of the Executive 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 5 clear days after receipt of that report.

212.2 Provision of copies of reports to Policy Development and Scrutiny Committees

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 chairperson of every relevant Policy Development and Scrutiny Committee as soon as reasonably practicable, and make it publicly available at the same time.

212.3 Record of individual decision

As soon as reasonably practicable after an Executive decision has been taken by an individual Member of the Executive 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 7 and 8 (inspection of documents after meetings) will also apply to the making of decisions by individual Members of the Executive. This does not require the disclosure of exempt or confidential information or advice from a political or Mayor's assistant.

223. POLICY DEVELOPMENT AND SCRUTINY COMMITTEES ACCESS TO DOCUMENTS

223.1 Rights to copies

Subject to Rule 23.2 below, a Policy Development and Scrutiny Committee (including its Sub-Committees) will be entitled to copies of any document which is in the possession or control of the Executive or its Committees and which contains material relating to

- (a) any business transacted at a public or private meeting of the Executive; or
- (b) any decision taken by an individual Member of the Executive.

223.2 Limit on rights

A Policy Development and 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.

234. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS

234.1 Material relating to previous business

All Members will be entitled to inspect any document which is in the possession or under the control of the Executive 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 3 and 6 of the categories of exempt information; or
- (b) it contains the advice of a political adviser.

234.2 Material relating to key decisions

All Members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Executive or

its Committees which relates to any key decision unless paragraph (a) or (b) above applies.

243.3 Nature of rights

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

234.4 Member's Need to Know access

Under common law principles, Members have the right to access information held by the Council where it is reasonably necessary to enable the Member to properly perform their duties as a Member. This is known as the "Need to Know". The common law "Need to Know" is the prima facie right of Members to inspect documents of the authority which exist, as Members are under a duty to keep themselves informed of Council business which relate to their role as elected representatives.

This right applies to Members who do not have statutory rights to exempt or confidential information and to other documents held by the Council under local government legislation, the Freedom of Information Act 2000 or data protection legislation. For example, a Member is likely to have a prima facie "Need to Know" where they have a legitimate Ward problem and access is needed to the documents that are relevant to that specific problem. A further example would be an **Overview and -Scrutiny & Overview** Committee requiring access to information to inform a scrutiny review. Any request from scrutiny for access to confidential information should be made by the Chairperson of the respective Scrutiny Committee/Sub-Committee via the Council's Statutory Scrutiny Officer and will need to confirm why it is required.

Access to information on the basis of a 'Need to Know' does not exist where the Member is considered to be "fishing" for information or seeks access for an ulterior/improper purpose (e.g. for a private purpose). Case law has established that mere idle curiosity as to what is in the documentation will not be sufficient. Some material (for example, financial or commercial interests) may be redacted from any information that is disclosed, if this does not affect the ability of a Member to exercise their role as an elected representative.

There will also be a range of documents which, because of their nature, are either not accessible by Members (such as the personal records of an individual) or are accessible only by the political group forming the administration and not by the Members of other political groups. An example of this latter category could be draft documents compiled in the context of emerging Council policies and draft Committee reports, the premature disclosure of which might be against both the Council's and the public interest.

Whilst the term "Council document" is very broad and includes, for example, any document produced with Council resources, it is accepted by convention that a Member of one political group will not have a "Need to Know" and therefore, a right to inspect, a document which forms part of the internal workings of another political group, for instance relating to the process of policy development.