

ACCESS TO INFORMATION
PROCEDURE RULES

Section 1 - General Provisions

1. Status

These Rules are for the most part not rules laid down by the Council itself, but a summary of the effect of the legal provisions about access to information and a description of how the provisions operate in practice within the Council and its organisation and what the Council expects to be done. In the event of any conflict between these Rules and the legal provisions, the legal provisions will prevail. They are to be found in the Local Government Act 1972 (as amended) and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

2. Additional Rights to Information

These Rules do not affect or detract from any other, more specific rights to information contained elsewhere in this Constitution or the law.

Section 2 – General Access Rules

3. Interpretation of this Section

In this Section of these Rules, unless the contrary appears, all references to a meeting or meetings are references to a meeting or meetings to which this Section applies.

The Press is defined in the widest terms including traditional print media, filming crews, hyper-local journalists and bloggers.

4. Rights to Attend and Record a Meeting

4.1 All meetings must be open to the public except in limited circumstances where the national rules require or allow the meeting to be closed to the public.

4.2 The Council is required to allow any member of the public to take photographs, film and audio-record the proceedings, and report on all public meetings without prior permission. The Council is also required to provide reasonable facilities for any member of the public to report on the meetings. Reasonable facilities should include space to view and hear the meeting, seats, and ideally a desk.

4.3 The Council must allow for reporting of meetings via social media of any kind. Therefore bloggers, tweeters, and for example Facebook, YouTube users and individuals with their own website, should be able to report on meetings.

4.4 Councillors are also able to tweet and blog during meetings provided that it is not disruptive and does not detract from the proper conduct of the meeting.

4.5 Any person can provide commentary during a meeting, as well as oral commentary outside or after the meeting. Oral commentary cannot be provided during a meeting as this would be disruptive to the order of the meeting.

5. Disruptive Behaviour

5.1 Any action or activity which disrupts the conduct of meetings or impedes other members of the public being able to see, hear or film etc the proceedings.

5.2 Any person taking photographs, filming or audio recording or using social media must not act in a disruptive manner or they will be excluded from the meeting.

6. Limits to what can be Tweeted or Recorded

6.1 The law of the land applies – including the law of defamation and the law on public order offences.

6.2 Freedom of speech within the law should also be exercised with personal and social responsibility – showing respect and tolerance towards the views of others.

7. Filming of Members of the Public, Children, Vulnerable and other Members of the Public who Object to Being Filmed.

7.1 As a courtesy to the public, staff and councillors, the Borough Council would like to receive “reasonable notice” in advance of a meeting if filming or photography is to take place. The Democratic Services Manager should be made aware of any intention to record, film or photograph a meeting, before the start of the meeting. The Democratic Services Manager will then be able to inform the relevant Chairman of what is to take place.

7.2 Where the council has been notified, the Chairman will, at the beginning of the relevant meeting, make an announcement that the meeting will be filmed, recorded or photographed and will ask if anyone objects to this.

7.3 The council is responsible for ensuring it protects children, the vulnerable and other members of the public who actively object to being filmed without undermining the broader transparency of the meeting. As such, the Chairman will advise those who wish to film or record of this fact and that they should act accordingly.

7.4 The council requires those participating in recording, filming or photography not to edit the recordings, film or photographs in a way that could lead to misinterpretation of the proceedings. Doing so may lead to restrictions on access to record, film or photograph future meetings. Any restrictions would be decided by the Monitoring Officer.

7.5 Those intending to bring large equipment, or wishing to discuss any special requirements are advised to contact the council’s Democratic Services Manager in advance of the meeting to seek advice and guidance.

7.6 It would be preferable if any filming or photography takes place from a fixed point, normally in the public gallery.

7.7 Any member of the public who attends a meeting and objects to being filmed should advise the borough council (in advance where possible) and it will strongly advise that they are not included in any filming, photography or recording.

7.8 Members of the public speaking at, or attending, council meetings (including asking questions or presenting petitions) must not be filmed if they have indicated that they do not wish to be included.

SECTION 3

8. Notices of Meeting

8.1 The Council will give at least five clear days notice of any meeting by posting details of the meeting at the Civic Offices, Merrial Street, Newcastle (the designated office). Notice of the meeting will also be published on the Council's website.

9. Access to Agenda and Reports before the Meeting

9.1 Agendas for meetings and reports that are available for public inspection will normally be available at the designated office at least five clear days before the meeting.

9.2 Where an item is added to the agenda within 5 days before the meeting is scheduled to take place, a revised agenda, public report and background papers must be published as soon as the item is added to the agenda. In some circumstances, the whole or part of a report may not be available for public inspection because it contains either confidential or exempt information. In this case, the report should bear the phrase 'not for publication' and state that it contains confidential information or set out the description of the exempt information.

10. Supply of Copies

10.1 On payment of a charge for postage and any other reasonable costs, the Council will supply to any person copies of any agenda and reports that are open to public inspection.

10.2 The Council will exclude from public access any reports that relate to items during the consideration of which a meeting is, in the opinion of the Proper Officer, likely not to be open to the public. If at the meeting, the reports are in fact considered when the meeting is open to the public, full public access will immediately be allowed to the reports.

11. Access to Minutes etc. after Meetings

11.1 The Council will keep publicly available copies of the following for six years after a meeting:

- (a) The minutes of the meeting or other record of the decisions it took, but excluding any minute or record relating to proceedings that took place or a decision that was made when the meeting was not open to the public or which discloses exempt or confidential information ;
- (b) A summary of any part of the proceedings of the meeting that was not open to the public, if the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) The agenda for the meeting; and
- (d) Reports relating to items considered when the meeting was open to the public.

12. Background Papers

12.1 Each report that is available for public inspection will contain a list of background papers. These are documents relating to the subject matter of the report that:

- (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.

The list excludes any published works and any documents that disclose exempt or confidential information.

12.2 Public inspection of background papers

The Council will make available for public inspection for four years after the meeting one copy of each of the documents in the lists of background papers to the reports considered in public at the meeting.

13. Recording of Decisions of Public Meetings

13.1 The council must keep records of any executive decisions made as soon as reasonably practicable after any public meeting. The written records will reflect the following information:

1. Details of the decision and the date it was made;
2. reasons for the decision;
3. any other options considered and why those options were rejected;
4. details of any conflict of interest of an executive member of the decision-making body; and
5. note of dispensation granted by the Head of Paid Service in respect of any declared conflict of interest

13.2 These records will be made available at the Council's Offices and on the Council's website and will be available for inspection for 6 years beginning with the date of the meeting apart from background papers which can be inspected for 4 years.

14. Summary of public rights

14.1 For the purpose of providing a written summary of the right of the public to attend meetings and to inspect and copy documents, a copy of these Rules will be kept at the designated office and available to the public.

15. Exclusion of access by the public to meetings

15.1 All meetings of the Cabinet including meetings of its committees or sub-committees must be open to the public, except in limited defined circumstances where the national rules require or allow the meeting to be closed to the public.

15.2 The rules require a meeting of the Cabinet including meetings of its committees or sub-committees to be closed to the public in two specific circumstances:

1. If the presence of the public is likely to result in the council breaching a legal obligation to third parties about the keeping of confidential information; or
2. a lawful power is used to exclude the public in order to maintain orderly conduct or prevent misbehaviour at a meeting.

15.3 In addition, a meeting can also be closed to the public where the Cabinet so decides (by passing a resolution of its members) because exempt information would otherwise be likely to be disclosed. It is open to the Cabinet if it chooses to consider in public matters involving exempt information. There is no over-riding legal requirement forcing councils to discuss exempt information in private.

16. Confidential Information

16.1 Confidential information means:

1. information provided to the council by a Government department on terms which forbid the disclosure of the information to the public; and
2. information which is prohibited from being disclosed by any enactment or by a court order.

17. Exempt Information

17.1 The descriptions of exempt information are set out in Schedule 12A to the Local Government Act 1972. The descriptions are:

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).
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.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes—
 - a. to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - b. to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

The qualifications to the list of exempt information are as follows:

A. Information falling within number 3 above is not exempt information by virtue of that paragraph if it is required to be registered under--

[the Companies Acts (as defined in section 2 of the Companies Act 2006)];
the Friendly Societies Act 1974;
the Friendly Societies Act 1992;
the Industrial and Provident Societies Acts 1965 [Co-operative and Community Benefit Societies and Credit Unions Acts 1965] to 1978;
the Building Societies Act 1986; or
[(f) the Charities Act 2011.

B. 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.

C. Information which— falls within any of numbers 1 to 7 above; and is not prevented from being exempt by virtue of number A or B 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.

18. Notification of Private meetings of the Council's Cabinet

18.1 Prior to holding a private meeting, the council will publish on its website and at its offices at least 28 clear days' notice of its intention to consider a matter in private and the reasons for the private meeting. This is to ensure that members of the public have reasonable opportunity to make representations as to why the proposed private meeting should not be held in private.

18.2 At least 5 clear days before the meeting, the council will confirm its intention to go ahead with the private meeting through another notice on its website and at its offices. This second notice will include details of any representations received and the council's response to them.

18.3 A private meeting can only be held without 28 days' notice after the agreement of the Chairman of the relevant Scrutiny Committee has been obtained that the meeting is urgent and cannot reasonably be delayed. In the absence of the Scrutiny Committee Chairman, the permission of the Council Chairman (or, in their absence, the Vice Chairman) must be obtained. If this agreement is granted the council will publish a notice about why the meeting is urgent and cannot be deferred. This notice will be available at Council offices and on the Council website. If agreement is not given then the meeting must either be held in public, or the council must comply with the 28 day notice requirements.

19. Interpretation

(1) Employee' means a person employed under contract of service;

'financial or business affairs' includes contemplated, as well as past or current activities

'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 (10) (matters which may be the subject of a trade dispute, within the meaning of the 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;

'registered' in relation to information required to be registered under the Building Societies Act 1986 (11), means recorded in the public file of any building society (within the meaning of that Act)

- (2) Any reference to 'the authority' is a reference to the principal council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined
- (a) in the case of a principal council, to any committee or sub-committee of the council; and
 - (b) in the case of a committee, to:
 - (i) any constituent principal council
 - (ii) any other principal council by which appointments are made to the committee or whose functions the committee discharges; and
 - (iii) any other committee or sub-committee of a principal council falling within sub-paragraph (i) or (ii) above; and
 - (c) in the case of a sub-committee, to:
 - (i) the committee, or any of the committees, of which it is a sub-committee
 - (ii) any principal committee which falls within paragraph (b) above in relation to that committee.

Section 3 – Key Decisions

20. Meaning of 'Key' Decision

A 'key' decision means:

- 20.1 Any Cabinet decision (as opposed to a regulatory decision) which is likely to result in the Council incurring significant expenditure or the making of savings where there is:
- (a) A change in service provision that impacts upon the service revenue budget by £50,000 or more, or
 - (b) a contract worth £50,000 or more, or
 - (c) a new or un-programmed capital scheme of £50,000 or more, or
- 20.2 Any Cabinet decision which will have a significant impact in environmental, physical, social or economic terms on communities living or working in an area comprising two or more electoral wards.

21. Procedure before taking Key Decisions

21.1 The Council must publish with 28 clear days' notice any key decision that is intended to be made. The notice has to include details of the individual or cabinet body that will make the decision, the matter that is subject to a decision, other documents to be considered, and where these other documents are available.

21.2 This notice document must be available at the council's offices and on its website before the decision is made. Such decisions when made will be properly recorded with reasons and published for call in purposes even where made by Officers with delegated responsibility.

21.3 An Authority cannot take a key decision without giving 28 days' notice unless an urgent decision is required. The following requirements must be met:

- The relevant Scrutiny Committee Chairman is informed in advance and in writing (or all the members of the Overview and Scrutiny Committee) about what the decision is concerning;
- a notice about the key decision to be made is made available for inspection at the council's offices and published on the website; and
- 5 clear days elapse following the day a notice is published about the key decision to be made.

21.4 If there is a case of special urgency, for example an urgent decision on a negotiation, expenditure or contract, the decision must only be made if the agreement of the Scrutiny Committee Chairman is received. In the absence of the Scrutiny Committee Chairman, the permission of the Council Chairman (or in their absence the Vice Chairman) must be obtained. If agreement is given, a notice explaining why the decision is urgent and cannot reasonably be deferred, must be published and should be available at the council's offices and on the website as soon as reasonably practicable.

22. Executive decisions by individuals

22.1 Reports intended to be taken into account

Where an individual Cabinet Member or an officer receives a report which he or she intends to take into account in making a key decision, he or she shall not make the decision until the report has been available for inspection by the public for at least 5 clear days. He or she shall also ensure that the Chief Executive or an officer on his behalf makes the report available for inspection by the public as soon as is reasonably practical after the Member or officer receives it.

22.2 Copies of reports for Scrutiny Chair

Where a report has been submitted to an individual Cabinet Member or an officer with a view to it being considered by him or her when making a key decision, the person who submitted the report shall as soon as reasonably practicable supply a copy of it to the Chair of the Scrutiny Committee.

22.3 Background papers

The Chief Executive or an officer on his or her behalf shall, in any report required to be available for inspection by the public as provided above, ensure that there is included a list of the background papers for the report and that they also are available for inspection by the public.

23. Records of Decisions – Individual Members and Officers

23.1 The regulations require an officer to prepare a written statement of every executive decision which he or she takes, which must include a note of any executive member whom he has consulted in taking that decision.

The regulations state the following:

For an Officer

(4) As soon as reasonably practicable after an officer has made a decision which is an executive decision, the officer must produce a written statement which must 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 officer when making the decision;
- (d) a record of any conflict of interest declared by any executive member who is consulted by the officer which relates to the decision; and
- (e) in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service

For a Member

Recording of executive decisions made by individuals

(1) As soon as reasonably practicable after an individual member has made an executive decision, that member must produce or instruct the proper officer to produce a written statement of that executive decision which includes the information specified in paragraph.

(2) The statement referred to in paragraph (1) must 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 member when making the decision;
- (d) a record of any conflict of interest declared by any executive member who is consulted by the member which relates to the decision; and
- (e) in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service..

23.2 The policy and practice of the Council is that the Chief Executive should be present or represented when an individual Cabinet Member makes an Cabinet decision and will assume responsibility on behalf of the Member for the production of the required record.

23.3 The requirement to record applies to all decisions taken by officers whilst acting under a specific express authorisation and to only three categories of decision taken whilst acting under a general authorisation. These categories cover decisions to “grant a permission or licence”; that “affect the rights of an individual” (i.e. to change an individual’s legal rights); or to “award a contract or incur expenditure which, in either case, materially affects that relevant local government body’s financial position”.

23.4 Officers take many administrative and operational decisions about how they go about their day to day work within the council’s or local body’s rules. These decisions will not need to be recorded.

24. Access to Information for Councillors

24.1 Councillors can inspect any document that contains material to be discussed at least 5 days before a public meeting is held. In case of a private meeting or decision made by an individual Cabinet member or officer, members can inspect the document within 24 hours of the conclusion of the meeting or the decision being made.

24.2 In addition, members of a scrutiny committee can ask for any document that contains business transacted at a meeting of the Cabinet, its committees or sub-committees or officer of the authority. The executive must provide the document within 10 days after it (the Cabinet) receives the request. In an instance where the Cabinet cannot release the whole or part of the document, it must provide the Member with a written explanation.

24.3 In addition to the rights conferred on councillors by the Regulations in relation to executive decision making, councillors also have statutory rights to inspect documents of the council and its committees under Part 5A of the Local Government Act 1972. Councillors may also request information held by their council under the Freedom of Information Act 2000 (or the Environmental Information Regulations 2004 in relation to environmental information). Councillors may have rights under the common law to inspect such documents held by their council as are reasonably necessary for them to perform their duties.

SECTION 4

25. The Forward Plan Instructions

The purpose of the Forward Plan is to give notice of key decisions; such a decision can be made by Cabinet or by an Officer under delegated powers. So it is not just about items which will be going to Cabinet

The Council produces the Forward Plan through Modern.gov. and all officers will need to use the online submission form to make this work. In order to submit items for the forward plan please could you now follow the instructions below and complete the required fields.

Go to the intranet and click 'Member/Committee Services'

Click 'Work to Do' in the left hand box

Enter your User name and password that you use to log onto to your computer in the morning.

Click 'Options' and 'Submit Plan item'

Follow on screen instructions

This will upload you items directly into Modern Gov.

AN ITEM MUST BE PUBLISHED ON THE FORWARD PLAN 28 CLEAR DAYS BEFORE THE DECISION IS TO BE MADE.

Submitting an Officer Decision made under delegated authority

The regulations require an officer to prepare a written statement of **EVERY** executive decision which he takes, which must include a note of any executive member whom he has consulted in taking that decision. This can also now be done through Modern.Gov on the intranet:

Go to the intranet and click 'Member/Committee Services'

Click 'Work to Do' in the left hand box

Enter your User name and password that you use to log onto to your computer in the morning.

Click 'Options' and 'Submit Officer Decision'

Follow on screen instructions

This will upload you items directly onto the website and it can be viewed under decisions.