

APPENDIX 11

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) (Access to Information) (England) Regulations 2000.

In general Members of the Council have access to all documents. However, there are specific exemptions which are set out in Section 12.4 of this Appendix. Where there may be any discretion the normal test which is applied is whether the request which a Member has made for a particular piece of information is relevant to the capacity in which they are asking for it e.g. as a member of a particular Committee, on a ward matter or similar.

2. Scope

2.1 Section 2 of these Rules applies to:

- (a) all meetings of the Council and Committees and Sub-committees of the Council; and
- (b) meetings of the Cabinet and Committees of the Cabinet that are held in public.

Rule 14 specifies the circumstances in which meetings of the Cabinet and Committees of the Cabinet must be held in public.

2.2 Section 3 of these Rules applies to meetings of the Cabinet and Committees of the Cabinet.

3. 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.

Information on data protection and IT security can be found at Appendix 15.

Section 2 – General Access Rules

4. 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.

5. Rights to Attend Meeting

Members of the public may attend meetings, subject to the exceptions set out in these Rules.

6. Notices of Meeting

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).

7. Access to Agenda and Reports before the Meeting

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. If items of business or reports are added to agendas less than three clear days before the meetings, revised or additional agendas and the reports will be available for inspection when they are sent to Members.

8. Supply of Copies

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.

9. Access to Minutes etc. after Meetings

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 (as defined in Rule 12);
- (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.

10. Background Papers

10.1 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.

10.2 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.

11. Summary of public rights

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.

12. Exclusion of access by the public to meetings

12.1 Confidential information – requirement to exclude the 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.

12.2 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. The Council will take into account the requirements of the Human Rights Act 1998 in deciding whether to exclude the public.

12.3 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 because of a Court Order.

12.4 Meaning of ‘exempt’ information

Exempt information means information falling within one or more of the following categories:

| | DESCRIPTION | QUALIFICATION |
|---|---|---|
| 1 | Information relating to any individual | The public interest in the exemption must outweigh the public interest in disclosure |
| 2 | Information which is likely to reveal the identity of an individual | Public interest |
| 3 | Information relating to the financial or business affairs of any particular person (including the authority holding that information) | Information is not exempt if it is required to be registered under: <ul style="list-style-type: none"> (a) the Companies Act (as defined in Section 2 of the Companies Act 2006) (b) the Friendly Societies Act 1974(b) (c) the Friendly Societies Act 1992(c) (d) the Industrial and Provident Societies Acts 1965 to 1978(d) (e) the Building Societies Act 1986(e); or (f) the Charities Act 1993(f) |
| 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 | The public interest in the exemption must outweigh the public interest in disclosure |
| 5 | Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings | The public interest in the exemption must outweigh the public interest in disclosure |
| 6 | Information which reveals that the authority proposes: <ul style="list-style-type: none"> (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 | The public interest in the exemption must outweigh the public interest in disclosure |
| 7 | Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime | The public interest in the exemption must outweigh the public interest in disclosure |

Exempt information relating to Standards Committee only (in addition to paragraphs 1-7 above)

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| Information which is subject to any obligation of confidentiality | The public interest in the exemption must outweigh the public interest in disclosure |
| Information which relates in any way to matters concerning national security | The public interest in the exemption must outweigh the public interest in disclosure |

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| The deliberations of a Standards Committee or a sub-committee of a Standards committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of Section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act | The public interest in the exemption must outweigh the public interest in disclosure |
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12.5 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 (9).

12.6 **Qualification**

The exemption applies 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.

12.7 **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.

13. Exclusion of access by the public to reports

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.

Section 3 – the Cabinet

14. Meetings in public

14.1 A meeting of the Cabinet or a committee of the Cabinet will be held in public if:

- (a) the Cabinet or the committee so determines;
- (b) a key decision is likely to be made at this meeting;
- (c) there is likely to be discussion of matters relating to a key decision expected to be made within the following 28 days or, if there is to be a discussion with an officer (unless the officer is a political adviser or the principal purpose of the meeting is to brief the Members), at any time

14.2 When a meeting is held in public, the rules in Section 2 apply, in addition to such of the rules in this section as are applicable.

15. Meaning of 'Key' Decision

A 'key' decision means:

- 15.1 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 unprogrammed capital scheme of £50,000 or more, or
- 15.2 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.

16. Procedure before taking Key Decisions

Subject to Rule 18 (General Exception) and Rule 19 (Special Urgency), a key decision may not be taken in respect of a matter unless:

- (a) the matter has been listed in a previously published Forward Plan
- (b) at least 5 clear days have elapsed since the publication of that Forward Plan; and
- (c) where the decision is to be taken at a meeting of the Cabinet or a committee of the Cabinet, notice of the meeting has been given in accordance with Rule 4 – Notice of Meetings.

17. Forward Plans

17.1 Period covered

Forward Plans will be prepared by or on behalf of the Executive Leader. They must cover a period of four months, beginning with the first day of any month. They are to be prepared on a monthly basis. Subsequent Plans will cover a period beginning with the first day of the second month covered in the preceding Plan.

17.2 Contents

A Forward Plan will contain the matters which the Executive Leader has reason to believe will be the subject of a key decision to be made by the Cabinet, a committee of the Cabinet, individual members of the Cabinet or officers in the course of discharge of an Executive function during the period covered by the Plan. It will describe the following particulars, insofar 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 maker is an individual, his or her name and designation, if any

- (c) where the decision maker is a body, its name and details of its membership
- (d) the date on which, or the period within which, the decision will be taken
- (e) the identity of the principal groups or organisations the decision maker proposes to consult before taking the decision
- (f) the means by which any such consultation is proposed to be undertaken
- (g) the steps that may be taken by any person who wishes to make representations to the Cabinet or decision maker about the matter in respect of which the decision is to be made and the date by which those steps must be taken; and
- (h) a list of the documents submitted to the decision maker for consideration in relation to the matter.

17.3 **Publication**

The Forward Plan must be published at least 14 days before the start of the period covered. In addition, the Proper Officer will publish once a year a notice in at least one newspaper circulating in the Borough, 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 maker for consideration in relation to the key decisions in 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 are available
- (g) that other documents may be submitted to decision makers
- (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.

17.4 Confidential or Exempt Information

Where it is likely that the public will be excluded from a meeting during consideration of any matter, the relevant Forward Plan must contain particulars of the matter, but:

- (a) the Forward Plan may not contain the confidential or exempt information; and
- (b) the documents containing the information need not be disclosed.

18. Key decisions – general exception

If a matter that is likely to be a key decision has not been included in a Forward Plan, then subject to Rule 19 (Special Urgency), the decision may still be made 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, by notice in writing, informed the Chair of the appropriate 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 three clear days have elapsed since the Proper Officer complied with (a) and (b) above.

19. Key Decisions - Special Urgency

19.1 If a matter that is likely to be a key decision has not been included in a Forward Plan and because of the date by which a decision needs to be made, Rule 18 (General Exception) cannot be followed, the decision may only be made if the decision maker (if an individual) or, if the decision maker is a body, its Chair, obtains the agreement of the Chair of the appropriate scrutiny committee that the making of the decision is urgent and cannot reasonably be deferred.

19.2 If there is no Chair of the appropriate scrutiny committee, or the Chair is unwilling or unable to act, the agreement of the Mayor, or in his or her absence the Deputy Mayor, shall be obtained instead.

19.3 The Leader of the Council shall submit to the Council at quarterly intervals a report containing details of each Executive decision made during the preceding three months where the making of the decision was agreed as urgent under this Rule. The report shall include:

- (a) particulars of each decision made; and

- (b) a summary of the matters in respect of which each decision was made.

20. Key Decisions – contraventions

20.1 If the scrutiny committee thinks a key decision has been made that was not:

- (a) included in the Forward Plan; or
- (b) made in accordance with the General Exception procedure in Rule 18 or the Special Urgency procedure in Rule 19

the Committee may require the Cabinet to submit a report to the Council within such reasonable time as the Committee may specify.

20.2 The Cabinet will then prepare a report for submission to the next Ordinary Meeting of the Council. However, if the next meeting of the Council is within 7 days of the resolution of the Committee, the report may instead be submitted to the next Ordinary Meeting after that. The report to Council will set out particulars of the decision, the individual or body that made the decision and, if the Leader of the Council is of the opinion that it was not a key decision, the reasons for that opinion.

21. Records of decisions

As soon as reasonably practicable after a meeting of the Cabinet or a committee of the Cabinet, whether held in public or private, the designated officer will produce a record of every decision taken at that meeting. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

22. Cabinet meetings relating to matters that are not key decisions

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

23. Executive decisions by individuals

23.1 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 Cabinet 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.

23.2 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 appropriate scrutiny committee.

23.3 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 in Rule 23.1 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. In this Rule, 'background papers' has the same meaning as in Rule 10.1.

23.4 **Records of decisions – individual Members**

- (a) As soon as reasonably practicable after a Cabinet decision has been taken by an individual Cabinet Member (whether or not it is a key decision), it is his or her legal duty to produce, or instruct the designated officer to produce a written statement of the decision. That statement must include:
 - (i) a record of the decision;
 - (ii) a record of the reasons for the decision;
 - (iii) details of any alternative options considered and rejected by the Member at the time he or she made the decision'
 - (iv) a record of any conflict of interest declared by any other Cabinet Member who was consulted by the Member, in relation to the decision; and
 - (v) in respect of any declared interest a note of any dispensation granted by the Council's Standards Committee. The form for dispensations is at Annex ... of Appendix 18.
- (b) The policy and practice of the Council is that the Chief Executive should be present or represented when an individual Cabinet Member makes a Cabinet decision and will assume responsibility on behalf of the Member for the production of the required record.

23.5 **Records of decisions – individual officers**

- (a) As soon as reasonably practicable after an officer has made a decision which is a key decision, it is his or her legal duty to produce a written statement which must include:
 - (i) a record of the decision
 - (ii) a statement of the reasons for the decision
 - (iii) details of any alternative options considered and rejected by the Member at the time he or she made the decision
 - (iv) a record of any conflict of interest declared by any other Cabinet Member who was consulted by the Member, in relation to the decision; and
 - (v) in respect of any declared interest a note of any dispensation granted by the Council's Standards Committee.

- (b) The policy and practice of the Council is that the Chief Executive should be present or represented when an individual Cabinet Member makes a Cabinet decision and will assume responsibility on behalf of the Member for the production of the required record.
- (c) There is no legal requirement for a written statement to be prepared in respect of an individual Cabinet decision made by an officer that is not a key decision. It is nevertheless the policy and practice of the Council that a written statement shall be prepared in respect of every such decision by the officer who makes it.
- (d) The Chief Executive will normally not be present when an officer makes a decision that is not a key decision and the responsibility for preparing the written statement is to be discharged by the officer personally unless the Chief Executive or an officer on his or her behalf agrees otherwise. The same information shall be included as above. The written statement shall be completed, signed and delivered to the Chief Executive or an officer on his or her behalf within five working days of the decision. A copy of the relevant form is attached at Annex 1 to this Appendix.

24. Additional Rights for Members of the Council

24.1 Material relating to public business

All Members of the Council are entitled to inspect any document that is in the possession or under the control of the Cabinet and contains material relating to any business to be transacted at a public meeting.

24.2 Material relating to non-public business

All Members of the Council are entitled to inspect any document that is in the possession or under the control of the Cabinet and contains material relating to:

- (i) any business transacted at a private meeting
- (ii) any Cabinet decision made by an individual Cabinet Member, or
- (iii) any key decision made by an officer in accordance with Executive Arrangements

immediately after the decision is made.

24.3 Exempt information

The rights conferred by Rules 24.1 and 24.2 do not extend to a document, the inspection of which would involve the disclosure of exempt information falling within paragraphs 1 to 6, 9, 11, 12 or 14 of the categories of exempt information in Rule 12.4 above, or advice provided by a political adviser or assistant.

24.4 Nature of rights

These rights of a Member of the Council under this Rule are additional to any other right the Member may have.

Additional rights of access for Members of Scrutiny Committees and Scrutiny Task Groups

24.5 Rights to copies

Subject to Rule 25.2 below, a member of a scrutiny committee or a scrutiny task group is entitled to copies of any document that is in the possession or control of the Cabinet and contains material relating to:

- (i) any business transacted at a private or public meeting of a decision making body of the Council
- (ii) any decision that has been made by an individual Cabinet Member in accordance with Cabinet Arrangements; or
- (iii) any key decision that has been made by an officer in accordance with Executive Arrangements.

24.6 Limit on rights

No such Member is entitled to a copy of:

- (i) such part of a document as contains exempt or confidential information unless that information is relevant to an action or decision they are reviewing or scrutinising or intending to scrutinise; or
- (ii) a document or part of a document containing advice provided by a political adviser or assistant.

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