

Access to Information Procedure Rules

(Revised April 2009)

References:

Sections 100A-H and Schedule 12A Local Government Act 1972

Local Government (Access to Information) Act 1985

Data Protection Act 1998

Section 22 of the Local Government Act 2000

Chapter 7, DETR Guidance

Freedom of Information Act 2000

Environmental Information Regulations 2004

Local Government (Access to Information) (Variation) Order 2006

The Standards Committee (England) Regulations 2008

There is a general right to access recorded information (such as e-mails, meeting minutes, research or reports) held by the Council. In all cases, the Council will endeavour to supply the requested information promptly, although some information could be exempt from disclosure. These rules relate specifically to information concerning meetings of the Council.

1. SCOPE

These rules apply to all statutory meetings of the Council, the Executive and their Committees and Sub-Committees (together called meetings).

2. ADDITIONAL RIGHTS TO INFORMATION

These rules do not limit or diminish any more specific rights to information conferred on the public or on Members elsewhere in this Constitution or the law; nor do these rules limit or diminish or limit the Council's duties to protect certain information, including personal information. This includes the rights and duties from the provisions of the Freedom of Information Act 2000 and the Data Protection Act 1998.

3. RIGHTS TO ATTEND MEETINGS

- 3.1 Members of the public may attend all meetings subject only to the exceptions in these rules.
- 3.2 If a member of the public or press interrupts the proceedings at any meeting the Mayor or Chairman may warn him/her. If s/he continues the interruption and a warning has previously been given, the Mayor or Chairman may order his/her removal from the meeting place.
- 3.3 In the event of a general disturbance in any part of the meeting place open to the public, the Mayor or Chairman may order that part to be cleared.
- 3.4 If the Mayor or Chairman considers the orderly dispatch of business impossible, s/he may without question adjourn the meeting.
- 3.5 The above powers of the Mayor/Chairman are in addition to any other power vested in him/her.
- 3.6 The public shall be excluded from any meeting during an item of business whenever confidential or exempt information is likely to be disclosed.

4. **NOTICES OF MEETING**

The Council will give at least five clear working days notice of any statutory meeting by posting details of the meeting at the Town Hall, Hendon, NW4 4BG (the designated office) or other designated place and on its website at www.barnet.gov.uk.

5. **ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING**

The Council will make copies of the agenda and reports for meetings open to the public available for inspection at the designated office at least five clear working 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, to the public as soon as the report is completed and sent to councillors) will be open to inspection from the time the item was added to the agenda.

6. **SUPPLY OF COPIES**

The Council can also supply copies of:

- (a) any agenda 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 Democratic Services Manager thinks fit) copies of any other documents supplied to councillors in connection with an item

to any person on payment of a charge for postage and any other costs.

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 Democratic Services Manager 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 he considers discloses exempt or confidential information, the categories which are set out in paragraph 10.4, and in respect of executive reports, the advice of a political assistant.

These documents are also accessible on the Council's website.

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

Rules 3 – 8 constitute the written summary of the public's rights to attend meetings and to inspect and copy documents.

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 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 **any enactment or Court Order**.

10.4 Meaning of exempt information

Exempt information means information falling within the following categories:

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.

QUALIFICATIONS

8. Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to 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
- (f) the Charities Act 1993.

9. 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.
10. Information which –
 - (a) falls within any of paragraphs 1 to 7 above; and
 - (b) is not prevented from being exempt by virtue of paragraph 8 or 9 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.

Definitions:

“employee” means a person employed under a 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 (matters which may be the subject of a trade dispute, within the meaning of that 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, means recorded in the public file of any building society (within the meaning of that Act).

Explanatory Note Box

Examples of the types of information that will NOT be disclosed to the public either within committee documents or at the meetings are as follows:

- Where the information is forbidden to be disclosed by a Government Department or by a provision of the law or by court order eg child protection records, information the subject of court proceedings etc

- Where the information discloses any personal information about an individual that would tend to breach his or her privacy, unless he or she has consented to its disclosure e.g. names, addresses, telephone numbers, information about the family, finances, health, religion etc
 - Where the information is commercially sensitive and is likely to disclose matters relating to the financial or business affairs of an particular person including the Council e.g details of financial and business viability, procurement related information, research and plans relating to a potential new product or service, product sales forecast information, strategic business plans, information relating to the preparation of a competitive bid, marketing plans to promote a new or existing product, information provided in respect of an application for a licence or as a requirement of a licence condition or under a regulatory regime etc
 - Any information relating to employment details between individual employees/office holders and the Council including any proposed changes e.g contracts of employment, salary details, sickness records, expense claims, mileage claims, disciplinary records, other details on a personal file, negotiations on contractual terms etc. General employment information would be NON EXEMPT if it is general and not attributable to a particular individual or individuals
 - Legal professional privilege e.g confidential advice received by the Council from its legal advisers (internal, external or by Counsel) for the purpose of providing legal advice or assistance as to the rights or obligations of the Council or legal advice that comes into existence where there is a reasonable prospect of litigation or is being contemplated or in existence
 - Information which reveals that the authority proposes (a) to give under any enactment a notice or by virtue of which requirements are imposed on a person or (b) to make an order or direction under any enactment . This relates to information relating to the Council's quasi judicial functions such as the Council's proposals to take action or serve notice or make an order or direction under its planning, environmental health, trading standards, licensing, building control, health and safety and other regulatory functions
- Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime eg investigation files, surveillance evidence and authorisations, witness statements, facilities records, telephone records etc

In all cases, an assessment should still be made by the Council that, the public interest in withholding the information outweighs the public interest in disclosing it.

10.5 **Standards Sub-committees**

Where a Standards Sub-committee meets to make an assessment of an allegation, or, to review an assessment of an allegation (i.e to decide whether an allegation should be investigated), then public notice will be given of the meeting but the meeting will take place in private. Where it meets to make a determination following an investigation this meeting will normally be held in public.

11. **EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS**

- 11.1 If the Democratic Services Manager 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.
- 11.2 The relevant body is requested in the agenda to confirm the action set out in 11.1 by resolution. Arrangements will be made to recall the press and public immediately should the motion not be passed.
- 11.3 If the matter is considered in public, any related report will also become available to the public.

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 Article 13.03 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. A key decision is as defined in Article 13.03 of this Constitution. This requirement does not include meetings, whose principal 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 five clear working 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 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.

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 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 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 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 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 14 days before the start of the period covered. The Democratic Services Manager 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, and made available on the Council's website;
- (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, and on the Council's website.

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 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 Democratic Services Manager has informed the Chairman of a relevant overview 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 Democratic Services Manager has made copies of that notice available to the public at the offices of the Council, and on the Council's website; and
- (d) at least five clear working days have elapsed since the Democratic Services Manager 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 Chairman of the body making the decision, obtains the agreement of the Chairman of a relevant Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chairman of a relevant Overview and Scrutiny Committee, or if the Chairman of each relevant Overview and Scrutiny Committee is unable to act, then the agreement of the Mayor, or in his/her absence the Deputy Mayor will suffice.

17. REPORT TO COUNCIL

17.1 When an overview and scrutiny committee can require a report

If an overview 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 overview and scrutiny committee chairman, or the Mayor/Deputy 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 Democratic Services Manager, who shall require such a report on behalf of the committee when so requested by the chairman or any 5 members of the— relevant overview and scrutiny Committee that has responsibility for dealing with call-in of decisions and the Chairman or any 3 members of any other overview and scrutiny committee. Alternatively, the requirement may be raised by resolution passed at a meeting of the relevant overview 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 Democratic Services Manager 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.

20. NOTICE OF PRIVATE 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.

Notice only of private meetings of the Executive shall also be published by the Democratic Services Manager the Town Hall and on the Intranet.

21. ATTENDANCE AT PRIVATE MEETINGS OF THE EXECUTIVE

(a) All members of the Executive will be served notice of all private meetings of the committees of the Executive, whether or not they are members of that committee.

(b) All members of the Executive are entitled to attend a private meeting of any committee of the Executive.

(c) Members other than Executive members will not be entitled to attend private meetings of the Executive, and its committees.

(d) The Head of Paid Service, the Chief Financial Officer and the Monitoring Officer, and their nominees are entitled to attend any meeting of the Executive and its committees.

The Executive may not meet unless the Democratic Services Manager has been given reasonable notice that a meeting is to take place.

(e) The Democratic Services Manager shall arrange for an officer to attend private Executive meetings to record and publish the decisions. In the absence of such officer this will be the responsibility of the Chairman of the meeting.

There is no requirement for the Executive to meet in the presence of the officers named in paragraphs (d) and (e).

22. DECISIONS BY INDIVIDUAL MEMBERS OF THE EXECUTIVE

22.1 Reports intended to be taken into account

Where an individual member of the Executive receives a report which s/he intends to take into account in making any decision, then s/he will not make the decision until at least 5 clear working days after receipt of that report.

22.2 Provision of copies of reports to overview 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 Chairman of every relevant Overview and Scrutiny Committee as soon as reasonably practicable, and make it publicly available at the same time.

22.3 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 Democratic Services Manager 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 assistant.

23. Joint Committees

These Rules apply to the Council's Joint Committees as follows:

(a) If all the members of a joint committee are members of the Executive in each of the participating authorities, then its access to information regime is the same as that applied to the Executive.

(b) If the joint committee contains members who are not on the Executive of any participating authorities then the access to information rules in Part VA of the Local Government Act 1972, as applicable to meetings of the Full Council and its committees will apply.

24. OVERVIEW AND SCRUTINY COMMITTEES ACCESS TO DOCUMENTS

24.1 Rights to copies

Subject to Rule 24.2 below, an overview and scrutiny Committee (including its sub-committees) will be entitled to copies of any document that is relevant to its terms of reference and 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 its committees

(b) any decision taken by an individual member of the Executive.

24.2 Limit on rights

An overview 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 assistant.

25. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS TO EXECUTIVE INFORMATION

25.1 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 as set out in paragraph 10.4 above, save that if the information falls within paragraph 3 (information relating to the financial or business affairs of any particular person) they shall be entitled to inspect the document except to the extent that it relates to terms proposed by or the Council in the course of negotiations for a contract or would reveal the Council's proposals to give notice or make an order or direction under any enactment; or
- (b) it contains the advice of a political assistant.

25.2 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 committee which relates to any key decision unless paragraph 24.1 (a) or (b) above applies.

25.3 Nature of rights

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

26. MEMBERS' OTHER RIGHTS TO INFORMATION

26.1 A member of the Council may, for the purposes of his or her duty as a Member and no other, inspect any document that has been considered by a committee or the Council including background papers. Applications should be made to the Democratic Services Manager and, if available, copies will be supplied upon request.

26.2 A Member shall not knowingly inspect or request a copy of any document relating to a matter in which s/he:

25.2.1 is professionally interested; or

25.2.2 has a personal and prejudicial interest within the meaning of the Local Code of Conduct for Members as set out in this Constitution.

26.3 This shall not preclude the Head of Legal from declining to allow inspection of any document which is or would be protected by privilege in the event of legal proceedings arising from the relationship of solicitor and client and should be exempt under either

the Freedom of Information Act or the Data Protection Act.

- 26.4 All reports, background papers to reports and minutes kept by any committee shall be open for the inspection of any member of the Council, as soon as the committee has concluded action on the matter to which such reports or minutes relate.

Explanatory Note

Rights to Information

Members have always had a wider common law and statutory right to information than members of the general public. This is being extended by these proposals so that a “right to know” does not need to be demonstrated by a member to inspect relevant papers relating to the Council’s work subject to the exclusions set out.

Finance Information

Members also have a legal right under the Local Government Finance Act 1982 to inspect “books, deeds, contracts, bills, vouchers and receipts”.

Requests for information should be directed to the Director or Chief Officer concerned. If a member is unhappy with a particular Director or Chief Officer’s decision, the Chief Executive will review the Director’s decision. If the member is still unhappy, the request for the information will be put before the relevant committee who may decide.