

Access to information procedure rules

Access to Information Procedure Rules

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Access to Information Procedure Rules

1. PRINCIPLES

1.1 Scope

These rules apply to all meetings of the Council, scrutiny committees, advisory committees, other council committees and meetings of the cabinet and its committees (together called “meetings”).

Rules 7(b), 12, 13, 14, 15, 16, 19, 20, and 21 apply only to a decision made or to be made by a decision maker in connection with the discharge of a function which is the responsibility of the executive of the council (“executive decision”)

1.2 Presumption of openness

The Council is committed to accountable and open government and will ensure that all reports are drafted so as to maximise the amount of business conducted in public. If practicable “exempt information” (see rule 10.4) will be set out in a separate appendix to a report so that most of the report is publicly available.

2. ADDITIONAL RIGHTS TO INFORMATION

These rules do not reduce 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 parts of all meetings subject only to the exceptions in these rules.

4. NOTICES OF MEETING

(a) The Council will give at least five clear days’ notice of any meeting by posting details of the meeting at Ealing Town Hall, London W5 2BY [*the designated office*].

(b) Once a meeting open to the public has been placed in the Council’s meetings programme, it will not be rearranged save in exceptional circumstances (as confirmed by the proper officer).

(c) Where it is necessary by reason of the urgency of the business to be transacted, a meeting may be called at less than five clear days’ notice (subject to agreement of the Director of Legal and Democratic Services and the Chair of the meeting that the circumstances are sufficiently urgent).

5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

- (a) The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least five 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 proper officer shall make each such report available 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.
- (b) Where it is sought to add an item to an agenda less than five clear days before a meeting, this shall only be done where the proper officer has agreed that the item cannot reasonably wait until the next meeting.
- (c) Nothing in this section requires a copy of the agenda, item or report to be available for inspection by the public until a copy is available to members of the decision making body concerned

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 councillors in connection with an item to any person on payment of a charge for postage and any other costs (including copying costs).

7. ACCESS TO DECISION MAKING DOCUMENTS

- (a) The Council will make available copies of the following after a public meeting:
 - (i) the minutes of the meeting, or records of decisions taken, together with reasons and background papers, for all meetings of the cabinet, excluding any documents which disclose exempt or confidential information;
 - (ii) the agenda for the meeting; and
 - (iii) reports relating to items when the meeting was open to the public.
- (b) In relation to executive decisions, the proper officer will make available copies of the following, as soon as practicable after a decision has been made:
 - (i) A record of the decision, including the date it was made;
 - (ii) A record of the reasons for the decision;

- (iii) Details of any alternative options considered and rejected by the decision-making body or person;
 - (iv) A record of any conflict of interest relating to the matter decided which is declared by any member of the decision making body or individual which made the decision; and
 - (v) In respect of any declared conflict of interest, a note of dispensation granted by the Chief Executive
- (c) In relation to decisions taken by an officer and which fall within the remit of paragraph 7 of the Openness of Local Government Bodies Regulations 2014, the proper officer will publish and make available for inspection the following information, as soon as reasonably practicable after the decision has been taken:
- (i) The date the decision was taken
 - (ii) A record of the decision, with reasons
 - (iii) Details of any alternative options considered, and
 - (iv) Where appropriate, details of any declarations of interest declared

8. BACKGROUND PAPERS

8.1 List of background papers

The 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 cabinet reports, the advice of a political advisor.

The proper officer will make available for inspection by the public at the council's offices and on the council's website a copy of all background papers.

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 Ealing Town Hall, London W5 2BY. These Rules constitute that written summary.

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 Executive decisions: confidential information

- (a) Where it is sought to exclude the public from a meeting making an executive decision, notice of the intention to do so (giving a statement of the reasons for doing so) must be given at least 28 days in advance and :
- Published on the council's website, and
 - Made available for inspection at the council's offices
- And at least 5 clear days before such a private meeting, the proper officer must :
- Make available for inspection at the council's offices a further notice of its intention to hold the meeting in private (including a statement of the reasons for the meeting to be held in private and any details of any representations received about why the meeting should be open to the public), and
 - Publish that notice on the council's website
- (b) Where the date by which a meeting must be held makes compliance with the section impracticable, the meeting may only be held in private where the decision making body or individual has obtained agreement from the chair of the Overview and Scrutiny Committee or of the Mayor or of the deputy Mayor that the meeting is urgent and cannot reasonably be deferred
- (c) As soon as possible after the decision making body has obtained agreement under paragraph (b) to hold a private meeting, it must make available at the council offices a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred and publish that notice on the council's website

Any reference in the above section 10.2 to a meeting includes reference to part of a meeting.

10.3 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.

10.4 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.

10.5 Meaning of exempt information

Exempt information means information falling within one or more of the following 7 categories (subject to any condition):

- (1) Information relating to any individual
- (2) Information which is likely to reveal the identity of any individual
- (3) Information relating to the financial or business affairs of any particular person (including the council)
- (4) Information relating to any consultations or negotiations, or contemplated consultation or negotiations, in connection with any labour relations matter arising between the council or a Minister of the Crown and employees of, or office holders under, the council
- (5) Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings
- (6) Information which reveals that the council 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 a crime

Guidance on the interpretation of these exemptions is set out in the schedule of the Local Government (Access to Information) (Variation) Order 2006

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 CABINET

These Rules apply to the cabinet and its committees unless Rule 15 (general exception) or Rule 16 (special urgency) apply, or where they are inconsistent with those parts of these Rules that apply only to the cabinet and its committees and to executive decision making.

If the cabinet or one of 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 these Rules unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is defined in Article 13.03 of this Constitution. This requirement does not include meetings, whose sole purpose is for officers to brief members.

13. PROCEDURE BEFORE TAKING KEY DECISIONS

- (1) 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 on the council's website in connection with the matter in question and made available for inspection at the council's offices;
 - (b) at least 28 days have elapsed since the publication of the forward plan; and
 - (c) Where the decision is to be taken at a meeting of the cabinet or its committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings)

- (2) A key decision means an executive decision, which is likely :
 - (a) To result in the council incurring expenditure which is, or the making savings which are, significant having regard to the council's budget for the service or function to which the decision relates, or
 - (b) To be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the council

For the purpose of this definition savings or expenditure will not normally be considered to be significant if less than £500,000.

14. THE FORWARD PLAN

14.1 Period of forward plan

A forward plan will be prepared by the proper officer on a monthly basis. The Forward Plan will be available for inspection by the public, both on the council's website and at the council's offices, at least 28 days before the key decisions referred to in it are made.

The forward plan will normally only include key decisions. A decision can only be a key decision if it is also an executive decision, that is to say a decision for which the Cabinet (and not full council) is ultimately responsible.

14.2 Contents of forward plan

The forward plan will contain matters which the proper officer has reason to believe will be subject of a key decision to be taken by the cabinet, a committee of the cabinet, individual cabinet portfolio holders, officers, or under joint arrangements in the course of the discharge of an cabinet 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 and where known the venue and time;
- (d) a list of the documents submitted to the decision taker for consideration in relation to the matter.
- (e) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available
- (f) that other documents relevant to those matters may be submitted to the decision maker, and
- (g) The procedure for requesting details of those documents (if any) as they become available

15. GENERAL EXCEPTION

- (1) If it is impracticable to comply with the Forward Plan requirements of Rule 14 above then, subject to Rule 16 (special urgency), the decision may still be taken if:
 - (a) the proper officer is satisfied that it is appropriate for the decision to be taken in any event; the proper officer has informed the chair of the overview and scrutiny committee, or if there is no such person, each member of that committee by notice in writing, of the matter about 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 on the Council's website; and
 - (d) at least 5 clear days have elapsed since the proper officer complied with (b) and (c).
- (2) Where this rule applies, Rule 14 need not be complied with.
- (3) As soon as reasonably practicable after the proper officer has complied with Rule 15(1), he or she must:
 - (a) Make available at the council offices a notice setting out the reasons why compliance with Rule 14 is impracticable,
 - (b) Publish that notice on the council's website

16. SPECIAL URGENCY

(1) Where the date by which a key decision must be made, makes compliance with Rule 15 (general exception) impracticable, the decision may only be made where the decision maker has obtained agreement from:

- (a) the chair of overview and scrutiny committee; or
- (b) If there is no such person, or if the chair of overview and scrutiny committee is unable to act, the Mayor, or
- (c) Where there is no chair of overview and scrutiny committee or Mayor, the deputy Mayor

that the making of the decision is urgent and cannot reasonably be deferred.

(2) As soon as reasonably practicable after the decision maker has obtained agreement under Rule 16(1) that the making of the decision is urgent and cannot reasonably be deferred, the decision maker must:

- (a) Make available at the council's offices a notice setting out the reasons that the decision is urgent and cannot reasonably be deferred; and
- (b) Publish that notice on the council's website

17. REPORT TO COUNCIL

17.1 When a scrutiny committee can require a report

If a 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 scrutiny committee chair, or the Mayor/Deputy Mayor under Rule 16;

the committee may require the cabinet 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 chair or any 5 members). Alternatively the requirement may be raised by resolution passed at a meeting of the relevant scrutiny committee.

17.2 Cabinet's report to Council

The cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the 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 cabinet 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 cabinet 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. CABINET MEETINGS RELATING TO MATTERS WHICH ARE NOT KEY DECISIONS

The cabinet has decided that meetings relating to matters which are not key decisions will be held in public.

20. NOTICE OF AND ATTENDANCE AT MEETINGS OF THE CABINET

- (a) All members of the Council will be given five clear working days notice of all meetings of the cabinet and its committees unless the meeting is convened at shorter notice;
- (b) All members of the Council are entitled to attend meetings of the cabinet and its committees;
- (c) Only members of the cabinet may speak and vote at its meetings, except that the Leader of the Opposition and the leader of any other opposition party* (or at their request another nominated member of the Opposition or of any other opposition party) may upon giving at least one clear day's notice to the Leader speak upon specific items;
*for the purposes of this section, "any other opposition party" shall mean a political group having three or more members
- (d) Members of the cabinet may speak at its committees but may only vote if a member of the committee;
- (e) The head of the paid service, the chief finance officer and the monitoring officer, and their nominees are entitled to attend any

meeting of the cabinet and its committees. The cabinet may not meet unless the proper officer has been given reasonable notice that a meeting is to take place;

- (f) A cabinet meeting may only take place in the presence of the proper officer or his/her nominee with responsibility for recording and publicising the decisions;
- (g) Where a scrutiny committee has so resolved, their chair may speak at a cabinet meeting on a matter being reconsidered by the cabinet after a call in.

21. DECISIONS BY INDIVIDUAL MEMBERS OF THE CABINET

The procedure set out in the appendix will apply to decisions taken by individual cabinet members.

21.1 Forward plan

Decisions to be taken by individual cabinet members will be included in the forward plan including the particulars in paragraph 14.2 (a)-(g).

21.2 Reports intended to be taken into account

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

21.3 Provision of copies of reports to 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 chair of every relevant scrutiny committee as soon as reasonably practicable, and make it publicly available at the same time.

21.4 Record of individual decision

As soon as reasonably practicable after an cabinet decision has been taken by an individual member of the cabinet or a key decision has been taken by an officer, he/she will prepare, or instruct the proper officer to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The provisions of Rules 7 and 8 (inspection of documents after meetings) will also apply to the making of decisions by individual members of the cabinet. This does not require the disclosure of exempt or confidential information or advice from a political assistant.

22. SCRUTINY COMMITTEES ACCESS TO DOCUMENTS

22.1 Rights to copies

Subject to Rule 23.2 below, a scrutiny committee (including its sub-committees) and the Leader of the Opposition will be entitled to copies of any document which is in the possession or control of the cabinet or its committees and which contains material relating to

- (a) any business transacted at a public or private meeting of the cabinet or its committees; or
- (b) any decision taken by an individual member of the cabinet.

22.2 Limit on rights

A 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.

23. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS

23.1 Exempt information (as defined at 10.4 above)

All members will be entitled on request to see copies of council exempt information (where it does not relate to a council-side function), save where the director of the department holding the information determines that disclosure will not be in the best interests of the council.

23.2 Material relating to key decisions

All members of the Council will be entitled to inspect any document (except exempt information, those available only in draft form, those evaluating options on the way forward, or the advice of a political adviser) in the possession or under the control of the cabinet or its committees which relates to a key decision.

23.3 Nature of rights

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

24. SUBMISSION OF QUESTIONS/STATEMENT BY MEMBERS OF THE PUBLIC

24.1 Scope

Any person resident in the borough or whose place of work is in the borough may ask the chair of the regulatory committee or a scrutiny committee a question or make a statement to the committee about a matter falling within that committee's responsibilities. One objector (s) [or their representative] to a planning application being considered by the Planning Committee may make a statement to the committee about the application in which case the applicant [or their representative] will be offered a similar facility.

24.2 Order of questions

Questions/statements will be asked in the order notice of them was received, except that the chair may group together similar questions.

24.3 Notice of questions/statements

A question may only be asked or statement made if notice has been given in writing, by electronic mail or by fax to the proper officer no later than midday two clear days before the day of the meeting. Each question/statement must give the name of the questioner or person making the statement and name the member of the Council to whom it is to be put.

24.4 Number of questions/statements

At any one meeting no person may submit more than one question/statement and no more than one question/statement may be asked on behalf of one organisation. There shall be a maximum of five questions/statements under this Rule at each committee meeting; each person will be allowed no more than three minutes to put their question or make their statement.

24.5 Scope of questions/statements

The proper officer may reject a question if:

- ❖ it is defamatory, frivolous or offensive;
- ❖ is substantially the same as a question/statement which has been put at a meeting of the committee in the past six months;
- ❖ requires the disclosure of confidential or exempt information.

24.6 Record of questions

The proper officer will keep a record open to public inspection of all questions asked or statements made and immediately upon receipt will send a copy of the question/statement to the member to whom it is to be put.

24.7 Asking the question at the meeting

The chair will invite the questioner to put the question to the member named in the notice or make the statement. If a questioner who has submitted a written question is unable to be present, they may ask the chair to put the question on their behalf. The chair may ask the question on the questioner's behalf, indicate that a written reply will be given or decide, in the absence of the questioner, that the question will not be dealt with.

24.8 Supplementary questions

A questioner who has put a question in person may also put one supplementary question without notice to the member who has replied to his or her original question. A supplementary question must arise directly out of the original question or the reply. The chair may reject a supplementary question on any of the grounds in rule 24.5 above.

24.9 Reference of question/statement to the cabinet

No discussion will take place on any question/statement, but any member may move that a matter raised by a question/statement be referred to the cabinet. Once seconded, such a motion will be voted on without discussion.

25. Urgent decisions on non-cabinet matters

Where a non-cabinet decision (which is not a decision that can only be taken by full Council) needs to be dealt with urgently then the Chair of the body normally authorised to take such a decision may take that decision provided that:

- ✓ the decision must be taken by such a date that it is impracticable to defer the decision until the next meeting of the body normally authorised to take that decision.
- ✓ if the Chair is unavailable then any urgent action will be taken by the Vice Chair.
- ✓ urgent decisions may only be taken after consideration of a report prepared in accordance with the Council's agreed procedures, consultation with all relevant parties, and the agreement of the opposition spokesperson that the matter is urgent. Where the opposition spokesperson is absent or has declared an interest the Leader of the Opposition may take any necessary decisions.
- ✓ any action taken by the Chair or Vice Chair under this authority will be reported to the next meeting of the relevant decision making body and recorded in the minutes.
- ✓ the proper officer shall determine any question as to whether a matter is urgent and reports submitted under these arrangements shall not be considered unless they are so certified.

INDIVIDUAL CABINET MEMBER DECISION MAKING - PROCEDURE

Introduction

1. This document sets out the scope and procedural arrangements for the exercise of the Council's functions by individual cabinet members.

Legal position

2. Section 15 of the Local Government Act 2000 (LGA 2000) provides that under leader and cabinet executive arrangements those functions which are the responsibility of the cabinet may be delegated to an individual member of the cabinet. The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012 require all decisions taken by members (individually or collectively) to be recorded and published as soon as reasonably practicable after a decision is taken. The regulations also require reasons for decisions to be recorded.

Procedure

3. A cabinet member decision is the formal exercise of the authority's functions. Therefore the procedure is designed to ensure that decisions are properly made on the basis of appropriate advice so that they are robust and capable of withstanding challenge. The procedure below draws on statute, existing practice and government guidance.

Normal procedure

4. The following procedure will apply in most circumstances:

(a) reports

When an individual cabinet member intends to exercise functions delegated to them a report will be prepared in accordance with the Council's report preparation procedures. The matter to be decided will be set out the cabinet forward plan. The report will be published at least *five* clear days before the date on which the decision is to be made. The length and amount of detail in reports will be appropriate to the circumstances; the revised procedures emphasise conciseness and brevity.

(b) recording and publication

All decisions made by cabinet members will be recorded in a format specified by the proper officer (or nominee) and published within *five* clear days of the date on which the decision was made. A decision is subject to call in for *five* clear days after publication. The proper officer will keep a central record of all

decisions made under these arrangements and issue more detailed guidance if necessary.

(c) call in

All decisions made under this procedure are subject to the Council's call in procedure and its regulations (*paragraph 16 of the Scrutiny Procedure Rules*), save where special urgency has been agreed, in accordance with these Rules and with the provisions of the Scrutiny Procedure Rules.

(d) deputising

Where a cabinet member is absent or has declared an interest the Leader of the Council (or the Deputy Leader in his absence) may take any necessary decisions within that portfolio. Where the decision is being made jointly by two cabinet members and one is absent the Leader of the Council (or the Deputy Leader in his absence) may take any necessary decisions within that portfolio.

Urgent procedure

5. Each cabinet member may deal with any matters within their portfolio that need to be dealt with urgently provided that:
 - (i) the urgent decision procedure may not be used as a substitute for cabinet consideration;
 - (ii) if a cabinet member is unavailable, any urgent action will be taken by the Leader of the Council (or the Deputy Leader in his absence);
 - (iii) urgent decisions may only be taken after consideration of a report prepared in accordance with the Council's agreed procedures, consultation with other cabinet members and the agreement of the Leader of the Opposition that the matter is urgent. Where the Leader of the Opposition is absent or has declared an interest the deputy leader of the Opposition may take any necessary decisions.
 - (iv) any action taken by a cabinet member under this authority will be reported to the next meeting of the cabinet and recorded in the minutes;
 - (v) paragraphs 15 & 16 of the Access to Information Procedure Rules are followed;
 - (vi) the proper officer shall determine any question as to whether a matter is urgent and reports submitted under these arrangements shall not be considered unless they are so certified.

Specific delegations

6. The Cabinet has delegated some specific matters to some cabinet members. These delegations are set out in Part 3, Section 3 of the Constitution.

Recording decisions

- 7, The proper officer will issue detailed guidance to officers about the operation of these procedures and keep a central record of all decisions made. All decisions will be recorded in a format specified by the proper officer.