

## SECTION 13

### ACCESS TO INFORMATION RULES

**(NB The below provisions are temporarily amended under the 'Coronavirus Regulations 2020' No. 392. Details of the amendments are shown at Appendix 1 to this section).**

#### **1. Scope**

- 1.1 These rules apply to all meetings of the Council, Committees, Panels and public meetings of the Cabinet (together called meetings).
- 1.2 Each Chief Officer shall be the Proper Officer for the purposes of all statutory and regulatory provisions relating to the identification listing and availability of background papers for any report where such report is within the scope of those provisions and that Chief Officer is responsible or a contributing author.
- 1.3 Each Chief Officer shall be responsible for securing compliance with the requirements of the Data Protection Act 1998 and of the Freedom of Information Act 2000 in relation to the data and information within the purview of those Acts held in his Department and shall make all necessary arrangements within his Department for that purpose.

#### **2. Additional Rights to Information**

- 2.1 These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

#### **3. Rights to attend Meetings**

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

#### **4. Notices of Meeting**

- 4.1 The Council will give at least five clear days notice of any meeting by posting details of the meeting at the County Buildings, Stafford (the designated office) and on the Council's website.

#### **5. Access to Agenda and Reports before the Meeting**

- 5.1 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 will be open to inspection from the time the item was added to the agenda and where reports are prepared after the summons has been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to councillors.
- 5.2 The designated officer for all meetings is the Director of Corporate Services .

#### **6. Supply of Copies**

6.1 The Council will supply copies of:

6.1.1 Any agenda and reports which are open to public inspection.

6.1.2 Any further statements or particulars necessary to indicate the nature of the items in the agenda; and

6.1.3 If the designated 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.

## **7. Access to Minutes etc after the Meeting**

7.1 The Council will, for six years after a meeting, make available copies of the following:-

7.1.1 The minutes of the meeting (or records of decisions taken, together with reasons, for all meetings of the Cabinet), excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;

7.1.2 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;

7.1.3 The agenda for the meeting; and

7.1.4 The reports relating to items when the meeting was open to the public.

## **8. Background Papers**

8.1 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:-

8.1.1 Disclose any facts or matters on which the report or an important part of the report is based; and

8.1.2 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 paragraph 10 below) and in respect of Cabinet reports, the advice of a political advisor.

8.2 The Proper Officer will publish the background paper(s) to a report at the same time that the report is made available for public inspection.

8.3 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**

9.1 A written summary of the public's rights to attend meetings and to inspect and copy documents will be kept at, and available to the public, at the designated office.

## 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 Meaning of confidential information

- a) information furnished to the council by a Government department upon terms (however expressed) which forbid the disclosure of the information to the public; and
- b) information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court.

### 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 Exempt Information

Exempt Information means information falling within any of the following 10 categories (subject in each case to the Public Interest Test (below) and the Planning Restriction (below) and, in the case of Categories 3, 8, 9 and 10 to the additional conditions specified in the table:-

Category		Additional Conditions
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 local authority holding that information)	Information is not exempt, 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
4	Information relating to any consultations or negotiations, in connection with any labour relations matter arising between the Authority	

Category	Additional Conditions
or a Minister of the Crown and employee 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.	Categories 8, 9 and 10 are exempt information only where a meeting of a Standards Committee is convened to consider a matter referred under the provisions of sections 60(2) or (3), 64(2), 70(4) or (5), or 71(2) of the Local Government Act 2000
8 Information which is subject to any obligation of confidentiality	
9 Information which relates in any way to matters concerning national security	
10 The deliberations of a Standards Committee or of a Sub-Committee of a Standards Committee established under Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of sections 60(2) or (3), 64(2), 70(2) or (5), or 71(2) of that Act.	

**Public Interest Test**

Information in categories 1 to 7 in the table above is only exempt if the information is not prevented from being exempt under the condition to Category 3 or the Planning Restriction 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

**Planning restriction**

Information falling within categories 1 to 7 in the table above 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.”

**Investigatory and Enforcement Functions (see below)**

For the purposes mentioned in paragraphs (g) and (h) of category 4 are:

- a) The purpose of ascertaining whether any person has failed to comply with the law
- b) The purpose of ascertaining whether any person is responsible for any conduct which is improper
- c) The purpose of ascertaining whether circumstances may exist or may arise which would justify regulatory action in pursuance of any enactment
- d) The purpose of ascertaining a person's fitness or competence in relation to the management of the authority
- e) The purpose of ascertaining the cause of an accident
- f) The purpose of securing the health safety and welfare of persons at work, and
- g) The purpose of protecting persons, other than persons at work, against the risk to health or safety arising out of or in connection with the actions of persons at work.

## **11. Exclusion of Access by the Public to Reports**

If the designated 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 paragraph 10 above, 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**

12.1 Paragraphs 13 – 24 apply to the Cabinet. If the Cabinet meet to take a key decision then it must also comply with paragraphs 1 – 11 above unless paragraph 15 (general exception) or paragraph 16 (special urgency) apply. What is a key decision is defined in Article 7 of this Constitution.

12.2 If the Cabinet 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 of Key Decisions by which it is to be decided, then it must also comply with Rules 1 – 11 unless paragraphs 15 (general exception) or paragraph 16 (special urgency) apply. This requirement does not include meetings whose sole purpose is for officers to brief members of the Cabinet.

## **13. Procedure before taking key decisions**

Subject to paragraph 15 (general exception) and paragraph 16 (special urgency), a key decision may not be taken unless:

- (a) a notice (called here a Forward Plan of Key Decisions) has been published in connection with the matter in question;
- (b) at least 28 clear days have elapsed since the publication of the Forward Plan; and
- (c) where the decision is to be taken at a meeting of the Cabinet, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

## **14. The Forward Plan of Key Decisions**

### **14.1 Period of The Forward Plan of Key Decisions**

Notices of Intention to take Key Decisions will be prepared by the Leader of the Council to cover a period of four months, beginning with the first Cabinet meeting included in the notice. They will be prepared on a monthly basis and subsequent notices will cover a period beginning with the date of the second Cabinet Meeting covered in the preceding notice.

### **14.2 Contents of The Forward Plan of Key Decisions**

The notice will contain matters which the Leader of the Council has reason to believe will be the subject of a key decision to be taken by the Cabinet, in the course of the discharge of a Cabinet function during the period covered by the notice. 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) the names and details of membership of the Cabinet;
- (c) the date on which, or the period within which, the decision will be taken;
- (d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
- (e) the means by which any such consultation is proposed to be undertaken;
- (f) the steps any person might take who wishes to make representations to the Cabinet 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.
- (h) whether the decision will be made in public or in private.

The Forward Plan of Key Decisions must be published at least 28 days before the start of the period covered.

## **15. General Exception**

15.1 If a matter which is likely to be a key decision has not been included in the Forward Plan of Key Decisions, then subject to paragraph 16 (special urgency), the decision may only be made:

- (a) where the proper officer has informed the chairman of the relevant overview and scrutiny committee or, if there is no such person, each member of the relevant overview and scrutiny committee by notice in writing, of the matter about which the decision is to be made;

- (b) where the proper officer has made a copy of the notice available for inspection by the public at the County Council's offices and published it on the County Council's website.
- (c) after five clear days have elapsed following the day on which the proper officer made the notice available.

15.2 Where such a decision is taken collectively, it must be taken in public, unless paragraph 10.1 or paragraph 10.3 (Exclusion of the Public) applies.

## **16. Special Urgency**

16.1 If by virtue of the date by which a key decision must be taken paragraph 15 above (general exception) cannot be followed, then the key decision can only be taken if the Leader of the Council obtains the agreement of the Chairman of the relevant Scrutiny Committee that the taking of the decision cannot reasonably be deferred. If there is no Chairman of the relevant Scrutiny Committee, or if the Chairman of the relevant Scrutiny Committee is unwilling or unable to act, then the agreement of the Chairman of the Council, or in his absence the Vice Chairman of the Council will suffice.

16.2 As soon as reasonably practicable after the decision maker has obtained agreement under paragraph 16.1 that the decision is urgent, the decision maker must:

- (a) make a notice available at the County Councils Offices that sets out the reasons why the meeting is urgent and cannot reasonably be deferred; and
- (b) publish the notice on the County Council's website.

## **17. Report to Council**

### **17.1 When Scrutiny Committees 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 of Key Decisions; or
- (b) the subject of the general exception procedure under paragraph 15; or
- (c) the subject of an agreement under paragraph 16;

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

### **17.2 Cabinet's report to Council**

The Cabinet will prepare the report referred to in paragraph 17.1 for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 14 days of 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, and by whom it was taken and if the Leader of the Council 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 of the Council will submit quarterly reports to the Council on the Cabinet decisions taken in the circumstances set out in paragraph 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 Cabinet Sub-Committee whether held in public or private, the designated officer 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**

19.1 The Cabinet will from time to time decide whether meetings relating to matters which are not key decisions will be held in public or private.

19.2 The Cabinet will normally hold in public any meetings at which a decision which is not a key decision is to be taken.

### **20. Notice of Private Meeting of the Cabinet**

Members of the Cabinet or any Cabinet Sub-Committee will be entitled to receive five clear days notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.

### **21. Attendance of Officers at Meetings of the Cabinet**

21.1 The Chief Executive, the Director of Corporate Services and the Director of Finance and Resources or their nominees are entitled to attend any meeting of the Cabinet or a Cabinet Sub-Committee. The Cabinet may not meet unless each of them has been given reasonable notice that a meeting is to take place.

21.2 A private Cabinet meeting may only take place in the presence of the designated officer or her nominee.

## **22. Key decisions by individual members of the Cabinet**

No provision is made for key decisions to be taken otherwise than by the Cabinet acting collectively.

## **23. Scrutiny Committee Access to Documents**

### **23.1 Rights to copies**

Subject to paragraph 23.2 below a Scrutiny Committee (and any of its Scrutiny Sub-Committees) will be entitled to copies of any document which is in the possession or control of the Cabinet or its Sub-Committees (if any) and which contains material relating to any business transacted at a public or private meeting of the Cabinet or its Sub-Committees.

### **23.2 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 the Committee are reviewing or scrutinising or intend to scrutinise; or
- (c) the advice of a political adviser.

## **24. Additional Rights of Access for Members**

### **24.1 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 Cabinet and contains material relating to any business previously transacted at a private meeting of the Cabinet unless either (a) or (b) or (c) below applies.

- (a) it contains exempt information falling within the categories of confidential or exempt information in paragraphs 10.1 and 10.2 or 10.3 and 10.4; or
- (b) it contains the advice of a political adviser; or
- (c) it is a document which the member is not entitled to inspect by reason of paragraph 18.2 or paragraph 18.3 of Appendix 2 (Procedural Standing Orders) of this Constitution.

### **24.2 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 Cabinet which relates to any key decision unless paragraph 24.1 (a) or (b) or (c) above applies.

### **24.3 Additional rights of access to documents for members**

Subject to the provisions of paragraphs 18.2 and 18.3 of Appendix 2 (Procedural Standing Orders) of this Constitution, Members of the Council are not entitled to inspect any document which appears to the Proper Officer to disclose exempt information as referred to in paragraph 10.4 above, but a member is entitled to inspect a document if the information falls within category 3 therein (except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract); or if it falls within category 6 therein.

### **24.4 Nature of rights**

The rights of a member are additional to any other right he may have.

### **25. Confidentiality**

No member of the Council, nor any co-opted member of any Committee, Panel or Sub-Committee, shall without the permission of the Council or the Cabinet (in respect of Cabinet functions) or the appropriate Committee, Panel or Sub-Committee (in respect of functions which are not Cabinet functions) disclose any exempt or confidential matter unless and to the extent only that that matter shall have been placed in the public domain by the Council the Cabinet or the appropriate Committee, Panel or Sub-Committee (as the case may be).