

ACCESS TO INFORMATION PROCEDURE RULES

The Council considers that Local Government derives an important part of its authority and influence from the trust and confidence of the individuals and communities it serves. Access to Information in respect of decision making is a necessary prerequisite for generating that trust and confidence. Informed members of the local community are better able to contribute to, and take part in, the work of Local Authorities. Access to information is central to this process and requires Local Authorities to establish the appropriate balance between:

- making information readily and openly available to the public; and
- ensuring that certain areas of personal/public life remain the legitimate object of confidentiality.

1. SCOPE

Rules 1 to 11 outline the rights of members of the public and apply to all meetings of the Council, the Overview and Scrutiny Committees, Cabinet, Audit Committee, Human Resources and Council Tax Committee, Licensing and Registration Committee (and its sub-committees), Local Plan Committee, Planning Committee, Standards Committee and the Town and Parish Council Standards Sub-Committee, collectively called meetings.

Rule 12 relates to recording of Decisions by Officers.

Rule 13 deals specifically with Cabinet's schedule of key decisions by which future major decisions of the Council are publicised.

2. ADDITIONAL RIGHTS TO INFORMATION

These rules do not affect any, more specific, rights to information contained elsewhere in this Constitution or the law for example the Data Protection Act 1998 and the Freedom of Information Act 2000.

3. RIGHTS TO ATTEND MEETINGS

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

Any person is permitted to film or record any meeting of the Council, a Committee, Sub-Committee or the Cabinet, save where the public have been excluded for consideration of exempt or confidential business. The rules, as prescribed by legislation, will allow for the reporting of meetings via social media of any kind. The Council will provide reasonable facilities to facilitate reporting.

Any person exercising such rights must not disrupt the proceedings. Examples of what will be regarded as disruptive include, but are not limited to, moving outside the area designated for

the public, making excessive noise, intrusive lighting/flash or asking a Councillor to repeat a statement. In addition, members of the public or the public gallery should not be filmed as this could infringe on an individual's right to privacy, if their prior permission has not been obtained. Any person considered being disruptive or filming the public will be requested to cease doing so by the Chairman and may be asked to leave the meeting.

4. NOTICES OF MEETING

The Council will give at least five clear working days notice of any meeting, except where an urgent meeting is convened, by making the agenda and reports publically available at the Town Hall, Station Road, Clacton-on-Sea, CO15 1SE (the "designated office") and on the Council's website.

5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

The Council will make copies of the agenda, accompanying reports and background papers that are open to the public available for inspection at the designated office and on the website at least five clear working days before the meeting. If an item is added to the agenda after publication the revised agenda will be open to inspection from the time the item was added to the agenda.

Copies of the agenda and accompanying reports will be sent to the Councillors who serve on the decision-making body in question.

6. SUPPLY OF COPIES

Agendas, reports and background papers listed within Cabinet reports are available to view on the Council's website. The Council will on request, and for such reasonable charge as is from time to time agreed, supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any background papers listed within the reports; and
- (c) copies of any other documents supplied to Councillors in connection with an item to any person, on payment of a charge for postage and other costs, if the Proper Officer (Monitoring Officer) thinks fit.

7. ACCESS TO MINUTES ETC AFTER THE MEETING

In addition to publishing information on the Council's website, the Council will make available, upon request copies of the following for six years after a meeting:

- (a) the minutes of the meeting which will include a record of decisions taken, together with reasons. However where the meetings discussed exempt or confidential information the minutes open to the public will only include a record of the proceedings and the

decision. The Council aims to publish minutes of meetings within 5 working days following the meeting;

- (b) records of executive decisions taken by individual Cabinet Members or Officers, including the reasons for the decision and any alternative options considered and rejected. They will be published and made available as soon as reasonably practicable after they have been taken;
- (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

In every report a list will be included of those documents (called background papers) relating to the subject matter of the report which in the report author's 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 do not include published works or those which disclose exempt or confidential information as defined in Rule 10.

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.

Public reports must include not only a list of background papers but at least one copy of each of the documents in the list for public inspection. Arrangements for inspection should be made through the Council's Committee Services at the Town Hall and on the Council's website.

In the case of reports to Cabinet, the background papers will be published on the Council's website, subject to Rule 10 below.

The Council may now charge "a reasonable fee" for access to background papers to be inspected at the Council's offices.

9. SUMMARY OF PUBLIC'S RIGHTS

A written summary of the public's rights to attend meetings and to inspect and copy documents will be kept and be available to the public at the Town Hall, Station Road, Clacton-on-Sea.

10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

10.1 Confidential Information – Requirement to Exclude Public

The public will 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

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.

10.3 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 which falls into one of the seven definitions of information that is exempt from disclosure to the public and press.

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 any information falling within the following seven categories (subject to any condition) as defined in Part 1 of Schedule 12A of the Local Government Act 1972 (as amended):

Category	Condition
1. Information relating to any individual.	
2. Information which is likely to reveal the identity of an individual.	

<p>3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).</p> <p>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.</p> <p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p> <p>6. Information which reveals that the authority proposes:-</p> <p>(a) To give under any enactment or notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) To make an order or direction under any enactment.</p> <p>7. Information relating to any action or any action proposed to be taken in connection with the prevention, investigation or prosecution of crime.</p>	<p>Information is not exempt information if it is required to be registered under:-</p> <p>(a) The Companies Act 1985;</p> <p>(b) The Friendly Societies Act 1974;</p> <p>(c) The Friendly Societies Act 1992;</p> <p>(d) The Industrial and Provident Societies Acts 1965 to 1978;</p> <p>(e) The Building Societies Act 1986; or</p> <p>(f) The Charities Act 1993.</p> <p>“Financial and business affairs” includes contemplated, as well as past or current activities.</p> <p>Employee means a person employed under a contract of service. “Labour relations matters” means any matters specified in section 218(1)(a) to (g) of the Trade Union and Labour Relations (Consolidation) Act 1992. These matters also apply to office holders as to employees.</p>
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Notes:

- (a) Information falling within any of categories 1-7 is not exempt by virtue of that category if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.
- (b) Information which:-
 - (a) falls within any of categories 1 to 7 above; and
 - (b) is not prevented from being exempt by virtue of the condition 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.
 - (c) Where the meeting will determine any person's civil rights or obligations, 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 that Article.

11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

If the Proper Officer (Monitoring Officer) thinks fit, the Council may exclude access by the public to reports which, in their 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 category of information likely to be concerned.

12. RECORDING OF DECISIONS BY OFFICERS

12.1 Written Record

A written record must be produced, as soon as reasonably practicable, after a decision has been made, which was delegated to an Officer by Council, a Committee or Sub-Committee either:

- (a) under an express authorisation; or
- (b) a general authority to take decisions which grant a permission or licence, affect an individual's rights or award a contract or incur expenditure, which in either case, materially affects the Council's finances.

12.2 Prescribed Format

The written record must be in the prescribed format approved by the Monitoring Officer and Committee Services and contain the following information:

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- (a) the date the decision was made;
 - (b) a record of the decision taken along with the reasons for the decision;
 - (c) details of alternative options, if any, considered and rejected; and
 - (d) where relevant, any conflicts of interest declared.

12.3 Public Inspection of Decision and Background Papers

The Officer making the decision must ensure that the written record and background papers are made available for inspection by the public and published on the Council's website.

APPLICATION OF RULES TO THE CABINET

Rules 13 to 21 apply to the Cabinet, any decisions taken by the Leader, Cabinet Members or Officers under the Scheme of Delegation. If any of these decision makers intend to take a key decision then it must also comply with Rule 13 unless Rule 15 (general exception) or Rule 16 (special urgency) applies. A "key decision" is defined in Article 13.03 of this Constitution.

13. ~~THE FORWARD PLAN &~~ PROCEDURE BEFORE TAKING KEY DECISIONS OR DECISIONS THAT WOULD INVOLVE THE DISCLOSURE OF CONFIDENTIAL OR EXEMPT INFORMATION

~~13.1 The Council's Forward Plan provides a published schedule of key decisions to give advance notice to the public and other interested parties of key decisions, as defined in Article 13 of this Constitution, which are due to be taken.~~

~~13.2~~ 13.1 Subject to Rules 14 and 15 below, a key decision or a decision that would involve the disclosure or likely disclosure of confidential information must not be made until a notice has been published ~~within the Forward Plan on the Council's website (under Forthcoming Decisions)~~ for at least 28 clear days, containing the following details:

- (a) that a key decision is to be made, and details of the matter excluding (if applicable) any details that would reveal confidential or exempt information; or ~~as referred to in Rules 10(2) and 10(4) above;~~
- (b) that a decision that would involve the disclosure or likely disclosure of confidential information is to be made and details of the matter excluding any details that would reveal such confidential or exempt information;
- ~~(b)~~(c) the decision-maker's name and title, if an individual, or if it is a body, its name and full membership;
- ~~(e)~~(d) the date on which, or period during which, the decision is to be made;

(e) a list of the documents already submitted to the decision-maker for consideration in relation to the matter and details of how to obtain copies; and

(f) a statement that documents relevant to the decision may be submitted to the decision-maker and details of how to receive copies.

13.2 DEFINITIONS

A “Key Decision” is an executive decision that meets the description of a Key Decision set out in Article 13.03 of the Constitution.

“Confidential” and “Exempt” information are defined in, respectively, Access to Information Procedure Rules 10.2 and 10.4.

14. GENERAL EXCEPTION

Subject to Rule 15, if publication under Rule 13 above is impracticable, a key decision may only be made:

- (a) where the Proper Officer has **informed** the Chairman of the relevant Overview and Scrutiny Committee in writing of the matter about which the decision is to be made;
- (b) notice is given and published on the Council’s website of the details of the decision to be made and the reasons why it is impracticable to give 28 clear days’ notice; and
- (c) at least five clear working days have elapsed between notice being given and the decision being taken.

15. SPECIAL URGENCY

If the general exception rule is impracticable, due to the date by which a key decision must be made, the key decision can only be taken if the decision-maker has **received the agreement** of the Chairman of the relevant overview and scrutiny committee, or if they are unable to act, the Chairman or Vice-Chairman of the **Council** and has published a notice on the Council’s website, stating that the making of the decision is urgent and the reasons why it cannot reasonably be deferred.

16. REPORTS TO COUNCIL

16.1 When an Overview and Scrutiny Committee can require a Report

If the relevant overview and scrutiny committee thinks that a key decision has been made and was not:

- (a) ~~included in the Forward Plan~~ **published in accordance with Rule 13.1**; or
- (b) the subject of the general exception procedure; or

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- (c) the subject of an agreement under Rule 15;

the Committee, by resolution at one of its meetings, may require the Cabinet to submit a report to full Council, within such reasonable time as the Committee specifies. The report to Council must include details of the decision, the decision maker and reasons why the Cabinet are of the opinion that the decision was not a key decision. The power to require a report rests with the Committee but may also be exercised by the Proper Officer on receipt of a written request, providing valid reasons to do so, from five members of the Committee.

16.2 Reports on Special Urgency Decisions

The Leader will submit a report to the next practicable ordinary meeting of the Council on Cabinet decisions or executive decisions taken by individual Portfolio Holders or Officers where the making of the decision was agreed as urgent in accordance with Rule 15 since the last such report. The report will include the number of decisions made, the particulars of each decision made and a summary of the matters in respect of which those decisions were made.

17. RECORD OF DECISIONS

A written record must be produced, as soon as reasonably practicable, after a Cabinet (executive) decision has been made, including where Cabinet Members have made individual decisions and Officer's decisions have been made exercising executive functions in accordance with the Responsibility of Functions – Delegated Powers contained within Part 3 of this Constitution.

Each record must be in the prescribed format approved by the Monitoring Officer and Committee Services and contain the following information:

- (a) the decision and the date it was made;
- (b) the reasons for the decision;
- (c) details of any alternative options considered and rejected; and
- (d) declarations of interest and details of any dispensations granted in respect of those interests.

The Record of the Executive Decision will be published on the Council's website together with any report considered at the meeting or by the individual Portfolio Holder or Officer and must be available for inspection, as soon as reasonably practicable. Any background paper must also be listed and one of each of the documents available for public inspection and published on the Council's website.

18. PROCEDURES PRIOR TO A PRIVATE MEETING

18.1 At least 28 days before a private meeting of the Cabinet:-

- (a) notice of intention to hold the meeting must be made available at the Council's offices and **include a statement of the reasons for the meeting to be held in private; and**
- (b) **details of any representations received about why the meeting should be held in public and a statement of its response to any such representations;**
- (c) **that Notice must list any decision that would involve the disclosure or likely disclosure of confidential information that is due to be made at that meeting together with details of the matter excluding any details that would reveal such confidential or exempt information; and**
- ~~(b)~~(d) that Notice must be published on the Council's website.

~~The Council's Forward Plan will be used to publish notice under this rule.~~

18.2 The Notice under 18.1 must include a statement of the reasons for the meeting being held in private.

18.3 At least five clear days before a private meeting, a further notice of the intention to hold a meeting must be available and published on the Council's website. This will form the Cabinet agenda for the meeting.

19. ATTENDANCE AT PRIVATE MEETINGS OF THE CABINET

All Members of the Cabinet will be served notice of, and are entitled to attend, all private meetings of the Cabinet or Committees of the Cabinet.

The Chief Executive, the Deputy Chief Executive, the Chief Financial Officer, the Monitoring Officer (or Deputies) and the Corporate Directors in the light of items to be discussed, or their nominated representatives, at the discretion of the Chief Executive can attend.

20. RIGHTS OF OVERVIEW AND SCRUTINY MEMBERS

20.1 Upon request from a member of an overview and scrutiny committee, the Cabinet **must** make available any document which contains material relating to any business transacted at a public or private meeting of the Cabinet and any decisions made (whether by individual Cabinet Members or Officers).

20.2 This request must be complied with and the documentation provided as soon as reasonably practicable, but no later than 10 clear days after the request is made.

20.3 If the Cabinet determines that material will not be provided, it must provide the member of the overview and scrutiny committee with a written statement, setting out its reasons for that decision.

Limits on Rights

The member of an overview and scrutiny committee will not be entitled to:

- (a) any document in draft form; or
- (b) any part of a document which contains exempt or confidential information unless it relates to an action or decision that is being scrutinised or to any review in a relevant overview and scrutiny committee's work programme; or
- (c) any exempt material which contains advice provided by a political adviser or assistant.

21. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS

21.1 Material Relating to Previous Business

All Members will be entitled to inspect any document that is in the possession of, or under the control of, the Cabinet and contains material relating to any business previously transacted at a private meeting unless it contains exempt or confidential information, or the advice of a political adviser or assistant.

21.2 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 21.1 above applies.

21.3 Nature of Rights

These rights of a Member are additional to any other rights they may have.