

# Part 4

## Access to Information Procedure Rules

### 1. SCOPE

These rules shall apply to all meetings of the Council, the Overview and Scrutiny Committees, area Committees (if any), the Standards Committee, Regulatory Committees and public meetings of the Executive (together called meetings) unless Rule 14 (general exception) or Rule 15 (special urgency) apply or unless provided otherwise by law.

### 2. ADDITIONAL RIGHTS TO INFORMATION

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

### 3. RIGHTS TO ATTEND MEETINGS

- (a) Members of the public may attend all meetings subject only to the exceptions in these rules and subject also to the constraints of the buildings where the meetings are held having regard to matters of health and safety.
- (b) Save as specified in Rule 3 (c) below, Members of the Council may attend all meetings both when the meetings are open to the public and also when confidential or exempt information is to be discussed.
- (c) In the case of the Licensing and General Purposes Committee, that part of its meeting when confidential or exempt information is to be discussed shall not be open to Members of the Council other than to a Member wishing to attend and speak in support of applications for benefits and discretionary relief insofar as such applications affect the Ward which the Member represents on the Council.

### 4. NOTICE OF MEETING

The Council will give at least 5 clear days notice, or at the time the meeting is convened, if it is convened at shorter notice as a matter of urgency, of any meeting by posting details of the meeting at the Town Hall and Rother Community Help Points at 6 Market Square, Battle, TN33 0XB, Town Hall, Bexhill-on-Sea, TN39 3JX and 30A High Street, Rye TN31 7JG and on the Council's website ([www.rother.gov.uk](http://www.rother.gov.uk)).

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

The Council will make copies of the agenda and reports open to the public available for inspection at the designated offices referred to in Rule 4 above, at least 5 clear days before the meeting or at the time the meeting is convened, if it is convened at shorter notice as a matter of urgency. If an item is added to the agenda later, the revised agenda (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) will be open to inspection from the time the item was added to the agenda.

## **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 Head of Paid Service thinks fit, 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 for inspection copies of the following for 6 years after a meeting:

- (a) the minutes of the meeting or records of decisions taken, together with reasons, for all meetings, 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 report author 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) have been relied on to a material extent in preparing the report;

but this does not include published works or those which disclose exempt or confidential information (as defined in Rule 10 below).

### **8.2 Public inspection of background papers**

The Council will make available for public inspection for 4 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 at the Community Help Points in Battle, Bexhill and Rye will be kept at and be available to the public at the Town Hall, Bexhill-on-Sea.

## **10. EXCLUSION OF ACCESS OF THE PUBLIC TO MEETINGS**

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 introduced new procedures in relation to private meetings of the Executive and these are detailed at Paragraphs 22 and 23 of these Procedure Rules.

### **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 Court Order.

### **10.4 Meaning of exempt information**

Exempt information means information falling within the following categories under the Local Government (Access to Information) (Variation) Order 2006 [Statutory Instrument 2006 No. 88] which came into effect on 1 March 2006.

All local authority information which it is desired should not be disclosed has to be categorised under one or more of the "Exempt Information" reasons and subject to the public interest test. If the information does not fall under any one of the categories shown there is no basis under which the information can be deemed exempt and kept from the public domain.

When using these exemptions officers should have regard to the presumption for openness as stated in Part 2, Article 13 of the Council's Constitution. Particular attention is drawn to condition 10 which requires a public interest test to be made before maintaining an exemption.

	<b>Category</b>	<b>Condition No.</b>
1.	Information relating to any individual.	See conditions 9 and 10 below.
2.	Information which is likely to reveal the identity of an individual.	See conditions 9 and 10 below.
3.	Information relating to the financial or business affairs of any particular person (including the authority holding that information).	See conditions 8, 9, 10 and 12 below.
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.	See conditions 9, 10, 11 and 12 below.
5.	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	See conditions 9 and 10 below.
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.	See conditions 9, 10 and 12 below.
7.	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	See conditions 9 and 10 below.

	<b>Conditions</b>
8.	Information is not exempt information 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; or (f) the Charities Act 1993.  “Financial or business affairs” includes contemplated as well as past or current activities.
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.	<p>Information which:</p> <p>(a) falls within any of paragraphs 1 to 7 above; and</p> <p>(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.</p> <p><i>For guidance on the application of the public interest test see Information Commissioner Guidance at:</i></p> <p><a href="http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/fep038_public_interest_test_v3.pdf">http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/fep038_public_interest_test_v3.pdf</a></p> <p><i>or seek advice from the Council's Monitoring Officer.</i></p>
11.	<p>"Labour relations matter" means:</p> <p>(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</p> <p>(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;</p> <p>"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.</p> <p>"Employee" means a person employed under a contract of service.</p>
12.	<p>"The authority" is a reference to the council or a committee or sub-committee of the council or a joint committee of more than one council.</p>

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

If the Head of Paid Service 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. PROCEDURE BEFORE TAKING KEY DECISIONS

Subject to Rule 14 (general exception) and Rule 15 (special urgency), a key decision may not be taken unless:

- (a) a document (called here a Forward Plan) has been published in connection with the matter in question;

- (b) at least 5 clear (consecutive) 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, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

### **13. THE FORWARD PLAN**

#### **13.1 Period of Forward Plan**

Forward Plans will be prepared by the Leader to cover a period of 4 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. The Forward Plan will be made available for inspection by the public at the Council offices and on the Council's website.

#### **13.2 Contents of Forward Plan**

The Forward Plan will contain matters which the Leader has reason to believe will be the subject of a key decision to be taken by 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 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 maker is an individual, his/her name and title, if any and where the decision maker is a body, its name and a list of its members;
- (c) the date on which, or the period within which, the decision is to be made;
- (d) a list of the documents submitted to the decision maker for consideration in relation to the matter in respect of which the key decision is to be made;
- (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.

### **14. 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 15 (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 Head of Paid Service has informed the Chairman of the 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 Head of Paid Service has made copies of that notice available to the public at the offices of the Council; and
- (d) at least 5 clear days have elapsed since the Head of Paid Service complied with (b) and (c).

As soon as reasonably practicable after the Head of Paid Service has complied with the above he or she must make available at the offices of the relevant local authority a notice setting out the reasons why compliance with the publicity requirements are impractical and publish the notice on the Council's website.

## **15. SPECIAL URGENCY**

If by virtue of the date by which a key decision must be taken Rule 14 (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 which is to make the decision, obtains the agreement of the Chairman of the relevant Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chairman of the relevant Overview and Scrutiny Committee, or if the Chairman of the relevant Overview and Scrutiny Committee is unable to act, then the agreement of the Chairman of the Council, or in his/her absence the Vice-Chairman will suffice.

As soon as reasonably practicable after the Head of Paid Service has complied with the above he or she must make available at the offices of the relevant local authority a notice setting out the reasons why compliance with the publicity requirements are impractical and publish the notice on the Council's website.

## **16. REPORT TO COUNCIL**

### **16.1 When the Overview and Scrutiny Committees 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 the relevant Overview and Scrutiny Committee Chairman, or the Chairman/Vice-Chairman of the Council under Rule 15;

the Committee may, by resolution passed at a meeting, 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 Head of Paid Service, who shall by notice require such a report on behalf of the Committee when so requested by the Chairman or any 5 Members.

### **16.2 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 clear 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, and if the Leader is of the opinion that it was not a key decision the reasons for that opinion.

### **16.3 Quarterly reports on special urgency decisions**

The Leader will submit quarterly reports to the Council if any Executive decisions have been taken in the circumstances set out in Rule 15 (special urgency) in the

preceding 3 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.

## **17. RECORD OF DECISIONS**

After any public meeting of the Executive, whether or not it is one to which paragraph 10 applies, the Head of Paid Service or his/her nominee 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. The record will also include any conflicts of interest relating to the matter(s) decided declared by any Member of the Executive and a note of any dispensation granted by the Head of Paid Service in respect thereof.

## **18. ATTENDANCE AT MEETINGS OF THE EXECUTIVE**

- (a) Notice of public meetings of the Executive, whether or not it is one to which paragraph 10 applies, will be served on all Members of the Council at the same time as notice is served on Members of the Executive.
- (b) Public meetings of the Executive may only take place in the presence of the Head of Paid Service, or the Chief Finance Officer, or the Monitoring Officer or their nominee with responsibility for recording and publicising the decisions.

## **19. KEY DECISIONS BY OFFICERS**

### **19.1 Record of individual decision**

As soon as reasonably practicable after a key decision has been taken by an officer, he/she will prepare, or instruct the Head of Paid Service to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The record will also include any conflicts of interest declared by any Member of the Executive consulted by the officer and which relates to the decision and a note of any dispensation granted by the Head of Paid Service in respect thereof.

## **20. OVERVIEW AND SCRUTINY COMMITTEES ACCESS TO DOCUMENTS**

### **20.1 Rights to copies**

The Overview and Scrutiny Committees (including its Sub-Committees) will be entitled to copies of any document which is in the possession or control of the Executive and which contains material relating to any business transacted at a public meeting of the Executive, whether or not it is one to which paragraph 10 applies.

## **21. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS**

### **21.1 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 and which contains material relating to any business previously transacted unless it contains exempt information falling within paragraphs 1-2, 4-5 and 7 of the categories of exempt information.



## **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 Executive which relates to any key decision unless it contains information falling within the paragraphs as stated in Rule 21.1 above.

## **21.3 Nature of rights**

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

## **22. EXCLUSION OF ACCESS OF THE PUBLIC TO PRIVATE EXECUTIVE MEETINGS**

At least 28 clear (consecutive) days before notice is given of a private meeting, the Head of Paid Service must make available, at the Council offices, a notice of the intention to hold a meeting in private and publish it on the Council's website. The notice must include a statement of the reasons for the meeting to be held in private.

A private meeting of the Executive (Cabinet) will only be held to consider legitimate business that is confidential or exempt in accordance with the descriptions in Schedule 12A to the 1972 Local Government Act (Access to Information: exempt information), as amended and detailed at Paragraph 10.4 above.

If any representations are made during the 28 day notice period, the Head of Paid Service will consider the representations, in consultation with the Leader of the Council and determine whether or not the meeting, or part thereof, will be held in private.

At least 5 clear days before the private meeting, the Head of Paid Service must make available at the Council offices a further notice of the intention to hold the meeting, or part thereof, in private and publish it on the Council's website. The publication of the formal Agenda for the meeting will constitute this notice.

The notice must include a statement of the reasons for the meeting to be held in private, details of any representations received by the Head of Paid Service about why the meeting should be open to the public and a statement of the response to any such representations.

## **23. EXCLUSION OF ACCESS OF THE PUBLIC TO URGENT PRIVATE EXECUTIVE MEETINGS**

Where the date by which a private meeting, or part thereof, must be held makes compliance with the 28 day notice period impracticable, the meeting may only be held in private where the Head of Paid Service has obtained agreement from —

(a) the chairman of the overview and scrutiny committee; or

- (b) if there is no such person, or if the chairman of the relevant overview and scrutiny committee is unable to act, the chairman of the Council; or
- (c) where there is no chairman of the overview and scrutiny committee or of the Council, the vice-chairman of the Council,

that the meeting is urgent and cannot reasonably be deferred.

As soon as reasonably practicable after the Head of Paid Service has obtained agreement to hold an urgent private meeting, a notice must be made available at the Council offices setting out the reasons why the meeting is urgent and cannot reasonably be deferred and published on the Council's website.