

# **Appendix 6 - Access to Information Procedure Rules**

## **1. SCOPE**

- 1.1 These rules apply to all public meetings of the Council, the Cabinet, Improvement and Scrutiny Committees, the Regulatory Committee and other committees of the Council (together called meetings).
- 1.2 Where the Governance, Ethics and Standards Committee is convened to consider or review, as the case may be, an allegation that a Member has contravened the Council's Code of Conduct for Members, the provisions set out in the Council's procedure for considering complaints that Members have breached the Code of Conduct shall apply and the meeting and papers will not be open to the public.

## **2. ADDITIONAL RIGHTS TO INFORMATION**

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law nor do these rules limit or diminish the Council's duties to protect certain information, including personal information. This includes the rights and duties arising from the provisions of the Access to Information Legislation.

## **3. RIGHTS TO ATTEND MEETINGS**

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

## **4. NOTICES OF MEETING**

The Council will give at least five clear days' notice of any meeting by posting details of the meeting at County Hall, Matlock and on its website at [www.derbyshire.gov.uk](http://www.derbyshire.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 office and on the website 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 (where reports are prepared after the summons have 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).

## **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 Director of Legal and Democratic Services thinks fit, copies of any other documents supplied to councillors in connection with an item

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

## **7. ACCESS TO MINUTES ETC AFTER THE MEETING**

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

- (a) the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of the 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.
- (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 Director of Legal and Democratic Services 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 any 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.

## **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 County Hall.

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

10.1 The public may only be excluded under 10.2 or 10.3 for the part or parts of the meeting during which it is likely that confidential or exempt information will be disclosed.

### **10.2 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.

### **10.3 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

### Schedule 12A LGA 1972

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

Category		Condition
1	Information relating to any individual.	
2	Information which is likely to reveal the identity of an individual.	
3	Information relating to the financial or business affairs of any particular person (including the authority holding that information)	Information is not exempt information if it is required to be registered under: <ul style="list-style-type: none"> <li>(a) the Companies Act 1985;</li> <li>(b) the Friendly Societies Act 1974</li> <li>(c) the Friendly Societies Act 1992</li> <li>(d) The Industrial and Provident Societies Acts 1965 to 1978</li> <li>(e) the Building Societies Act 1986;</li> <li>or</li> <li>(f) the Charities Act 1993</li> </ul> “Financial or business affairs” includes contemplated, as well as past or current, activities.
4	Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office-holders under, the authority.	“Labour relations matters” are any matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ie matters which may be the subject of a trade dispute or any dispute about any of those matters.

		For the purposes of this paragraph this shall apply to office-holders under the authority as it applies in relation to employees of 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 any 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.	

Information falling within any of paragraphs 1 to 7 is not exempt by virtue of that paragraph if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and County Planning General Regulations 1992.

In all cases the Director of Legal and Democratic Services shall determine whether the public interest as set out above is satisfied.

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

If the Director of Legal and Democratic Services 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" pursuant to Schedule 12A together with the category of information likely to be disclosed.

#### **12. APPLICATION OF RULES TO THE CABINET**

- 12.1 Rules 13-28 apply to the Cabinet and its committees. If the Cabinet or its committees meet to take a key decision then it must also comply with Rules 1-11 unless Rule 14 (general exception) or Rule 15 (special urgency) apply. A key decision is as defined in Article 15 of this Constitution.
- 1.2 If the Cabinet or its committees meet to discuss a key decision to be taken collectively, within 28 days of the date according to the Notice of key decision by which it is to be decided, then it must also comply with Rules 1-11 unless Rule 14 (general exception) or Rule 15 (special urgency) apply. A key decision is as defined in Article 7 of this Constitution. This requirement does not include meetings whose sole purpose is for officers to brief members.

### **13. PROCEDURE BEFORE TAKING KEY DECISIONS**

#### **13.1 Notice of Key Decision**

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

- (a) a notice (called here a Notice 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 Notice of Key Decision; 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).

#### **13.2 Contents of Notice of Key Decision**

The Notice of Key Decision will state that a key decision is to be made by the Cabinet, a Committee, an individual member of the Cabinet or under joint arrangements in the course of a discharge of a function. It will describe the following particulars:-

- (a) the matter in respect of which the decision is to be made;
- (b) where the decision maker is an individual, that individual's name and title, if any, and, where the decision-maker is a decision-making body, the name of the body and a list of the membership of the body making the decision;

- (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;
- (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;
- (g) the procedure for requesting details of those documents (if any) as they become available.

Where in relation to any matter the public may be excluded from the meeting at which the matter is to be discussed or documents relating to the decision need not be disclosed to the public, the document referred to must contain particulars of the matters but may not contain any confidential, exempt information or particulars of the advice of a political adviser or assistant.

### **13.3 Publication of the Notice of Key Decision**

The Notice of Key Decision must be made available for inspection by the public at County Hall, Matlock and on the Council's website at least 28 clear days before the decisions is made.

## **14. GENERAL EXCEPTION**

Where the publication of the intention to make a key decision (the Notice of Key Decision) is impracticable, then subject to Rule 15 (special urgency), the decision may only be made if:

- (a) the Director of Legal and Democratic Services has informed the Chairman of a relevant Improvement and Scrutiny Committee, or in his absence the Civic-Chairman, in writing, 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;
- (b) the Director of Legal and Democratic Services has made copies of that notice available to the public at the offices of the Council and on the Council's website; and

- (c) at least 5 clear days have elapsed since the Director of Legal and Democratic Services complied with (a) and (b).

As soon as is reasonably practicable after the Director of Legal and Democratic Services has complied with Rule 14 (a-c) he must make available at County Hall, Matlock and publish on the Council's website a notice setting out the reasons why compliance with Rule 13 is impractical.

## **15. SPECIAL URGENCY**

- (a) If by virtue of the date by which a decision must be taken Rule 14 (general exception) cannot be followed, then the key decision can only be taken if the decision maker (if an individual) or the chairman of the body making the decision, obtains the agreement of the chairman of a relevant Improvement and Scrutiny Committee that the taking of the decision is urgent cannot be reasonably deferred. If there is no chairman of a relevant Improvement and Scrutiny Committee, or if the chairman of each relevant Improvement and Scrutiny Committee is unable to act, then the agreement of the Chairman of the Council, or in his/her absence the Civic Chairman will suffice.
- (b) As soon as is reasonably practicable after the decision maker has obtained agreement under Rule 15(a) he must make available at the Council's offices and publish on the website a notice setting out the reasons that the meeting is urgent and cannot reasonably be deferred.

## **16. REPORT TO COUNCIL**

- 16.1 The Improvement and Scrutiny Committee can require a report if it thinks that a key decision has been taken which was not:
  - (a) the subject of a Notice of Key Decision; or
  - (b) the subject of the general exception procedure under Rule 14; or
  - (c) the subject of an agreement with a relevant Improvement and Scrutiny Committee chairman, or the Chairman of the Council or Civic Chairman of the Council under Rule 15.

The committee may require the Cabinet to submit a report to the Council within such reasonable time as the committee specifies. The report must include details of the decision and the reasons for the decision, the decision-maker, and the reasons for the Cabinet believing that the decision was a key decision. The power to require a report rests with the



committee, but is also delegated to the Director of Legal and Democratic Services who shall require such a report on behalf of the committee when so requested by the chairman of the Improvement and Scrutiny Committee or any 5 members of the Improvement and Scrutiny Committee. Alternatively the requirement may be raised by resolution passed at a meeting of the relevant Improvement and Scrutiny Committee.

## **16.2 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 the particulars of the decision, the individual or body making the decision, and if the Cabinet is of the opinion that it was not a key decision the reasons for that opinion.

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

In any event, the Cabinet will submit quarterly reports to the Council on the cabinet decisions taken in the circumstances set out in Rule 15 (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.

## **17. NOTICE OF MEETING OF THE CABINET**

Members of the Cabinet or its committees will be entitled to receive five clear working days' notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.

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

### **18.1 Cabinet Members**

All members of the Cabinet will be served notice of all (both those to be held in public and those to be held in private) meetings of committees of the Cabinet, whether or not they are members of that committee. All Members of the Cabinet are entitled to attend private meetings of the Cabinet and its committees. Members who are not a Member of the Cabinet or a member of the Committee making the decision are not entitled to attend private meetings save for Chairs and Vice Chairs of Committees Cabinet Support Members, Leader of the Main Opposition Group and Members of the Shadow Cabinet.

## **18.2 Officers**

- (a) The Head of Paid Service, the Chief Financial 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 Director of Legal and Democratic Services has been given reasonable notice that a meeting is to take place.
- (b) Executive Directors, or their nominees, may attend meetings of the Executive or its sub-committees to provide advice on relevant issues.

## **19. MEETINGS OF THE CABINET TO BE HELD IN PUBLIC**

Meetings of the Cabinet and its Committees will be held in public, unless it is likely that exempt or confidential information would be disclosed or whenever a lawful power is used to exclude a member or members of the public in order to maintain orderly conduct or prevent misbehavior at a meeting. The public may only be excluded for the part or parts of the meeting during which it is likely that exempt or confidential information will be disclosed.

## **20. NOTICE OF PRIVATE MEETINGS OF THE CABINET**

- 20.1 At least 28 clear days before a private meeting of the Cabinet or any of its committees, the decision making body must make available at the designated offices a notice of its intention to hold the meeting in private (a Notice of Private Meeting) and publish that notice on the Council's website.
- 20.2 At least 5 clear days before a private meeting, the decision making body must make available at the offices of the Council a further notice of its intention to hold the meeting in private and publish that notice on the Council's website.
- 20.3 A notice under paragraph 20.2 must include:-
  - (a) a statement of the reasons for the meeting to be held in private;
  - (b) details of any representations received by the decision making body about why the meeting should be open to the public; and
  - (c) a statement of its response to any such representations.

## **21. GENERAL EXCEPTION**

- (a) Where the date by which a meeting must be held makes compliance with this rule impracticable, the meeting may only be held in private where the decision making body has obtained the agreement of the Chairman of a relevant Improvement and Scrutiny Committee that the taking of the decision cannot reasonably be deferred. If there is no chairman of a relevant Improvement and Scrutiny Committee, or if the chairman of each relevant Improvement and Scrutiny Committee is unable to act, then the agreement of the Chairman of the County Council, or in his/her absence, the Civic-Chairman of Derbyshire County Council will suffice.
- (b) As soon as is reasonably practicable after the decision making body has obtained agreement to hold a private meeting under paragraph 21(a) above, it must make available at the office of the Council 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.

## **22. RECORD OF DECISIONS**

22.1 After any meeting of the Cabinet or any of its committees, whether held in public or private, the Director of Legal and Democratic Services 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 record of the decision including the date that it was made, a statement of the reasons for each decision and any alternative options considered and rejected at that meeting, together with details of any conflict of interest relating to the matter decided which was declared by any member of the decision making body which made the decision and in respect of any declared conflict of interest, a note of dispensation.

### **22.2 Record of Individual Decision**

As soon as is reasonably practicable after a cabinet decision has been taken by an individual member of the Cabinet, he will prepare a report containing a record of the decision including the date it was made. The record will include a statement of the reasons for each decision and any alternative options considered and rejected by the member when making the decision. The record will also include details of any conflict of interest declared by any cabinet member who is consulted by the member which

relates to the decision and in respect of any declared conflict of interest, the record will also contain a note of dispensation granted.

### **23. INSPECTION OF DOCUMENTS FOLLOWING CABINET DECISIONS**

- (a) Subject to rule 29, after a meeting of a decision making body at which a cabinet decision has been made, or after an individual member of an officer has made a cabinet decision the Director of Legal and Democratic Services must ensure that a copy of any records prepared in accordance with Rule 22 (record of decisions) and any report considered at the meeting or, as the case may be, considered by the individual member relevant to a decision recorded in accordance with Rule 22 must be available for inspection by members of the public as soon as is reasonably practicable at the offices of the Council and on the Council's website. Where only part of the report is relevant to such a decision, that part must be available for inspection by members of the public as soon as is reasonably practicable at the offices of the Council and on the Council's website.
- (b) Where a request on behalf of a newspaper is made for a copy of any of the documents available for public inspection under Rule 6, those documents must be supplied for the benefit of the newspaper by the Council on payment by the newspaper to the Council of postage, copying or other necessary charge for transmission.

### **24. INSPECTION OF BACKGROUND PAPERS**

Subject to rule 29 where a copy of the whole or part of a report for a meeting is made available for inspection by members of the public in accordance with Rule 5 or 22 at the same time, a copy of the list compiled by the author of the background papers to the report or part of the report, must be included in the report or, as the case may be, part of the report and at least one copy of each of the documents included in that list must be available for inspection by the public at the offices of the Council and on the Council's website.

### **25. CABINET MEETINGS RELATING TO MATTERS WHICH ARE NOT KEY DECISIONS**

The Cabinet will decide whether meetings relating to matters which are not key decisions will be held in public or private. Meetings of the Cabinet and its committees will be held in public, unless it is likely that exempt or

confidential information would be disclosed or whenever a lawful power is used to exclude a member or members of the public in order to maintain orderly conduct or prevent misbehaviour at a meeting. The public may only be excluded for the part or parts of the meeting during which it is likely that exempt or confidential information would be disclosed.

## **26. IMPROVEMENT AND SCRUTINY COMMITTEE ACCESS TO DOCUMENTS**

### **26.1 Rights to Copies**

Subject to Rule 26.2 below, an Improvement and Scrutiny Committee (including its sub-committees) 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 meeting of the Cabinet or its committees; or
- (b) any decision taken by an individual member of the Cabinet.

### **26.2 Limit on Rights**

An Improvement and Scrutiny Committee will not be entitled to:

- (a) any document that is in draft form;
- (b) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise; or
- (c) the advice of a political assistant.

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

### **27.1 Material relating to business to be transacted at a Public Meeting**

All members will be entitled to inspect any document which is in the possession or under the control of the Cabinet or its committees (except those in draft form) and which contains material relating to any business previously transacted at a public meeting unless (a), (b) or (c) below applies

- (a) it contains exempt information falling within paragraphs 1, 2,4,5 or 7 of the categories of exempt information; or
- (b) it contains exempt information falling within paragraph 3 of the categories of exempt information and that information relates to any terms proposed or to be proposed to the Council in the course of negotiations for a contract.
- (c) it contains the advice of a political adviser.

27.2 Any document which is required by Rule 27.1 to be available for inspection by any Member of the Council must be available for such inspection for at least five clear days before the meeting except for:-

- (a) where a meeting is covered at shorter notice, such a document must be available for inspection when the meeting is convened; and
- (b) where an item is added to the agenda at short notice, a document that would be required to be available under Rule 27.1 in relation to that time, must be available for inspection when the item is added to the agenda.

### 27.3 **Material relating to previous business**

- (a) All members will be entitled to inspect any document (except those only available in draft form) which is in the possession or control of the Cabinet or its committees and contains material relating to any business previously transacted at a private meeting or to any decision made by a Member in accordance with cabinet arrangements 27.1 (a), (b) or (c) applies.
- (b) Any documents required to be made available for inspection under 27.3 must be made available when the relevant meeting concludes or, where an Cabinet decision is made by an individual member, immediately after the decision has been made, and in any event, within 24 hours of the conclusion of the meeting or the decision having been made as the case may be.

### 27.4 **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 of, or under the control of, the Cabinet or its committees which relates to any key decisions unless it contains exempt information falling within the table at 10.5.

## 27.5 Nature of rights

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

## 28. MEMBERS OTHER RIGHTS TO INFORMATION

28.1 A Member of the Council may, for the purposes of his or her duty as a Member and no other, inspect any document that has been considered by a public meeting of the committee or the Council including background papers unless the Director of Legal and Democratic Services considers that the exempt information is of a nature that members be required to demonstrate a need to know. Applications should be made to the Director of Legal and Democratic Services and, if available, copies will be supplied upon request.

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

(a) is professionally interested; or

(b) has a registerable or non-registerable personal interest within the meaning of the Code of Conduct for Members as set out in this Constitution.

28.3 This shall not preclude the Director of Legal and Democratic Services from declining to allow inspection of any document which is or would be protected by privilege in the event of legal proceedings arising from the relationship of solicitor and client and should be exempt under access to information legislation.

28.4 Subject to 28.1 above all reports, background papers to reports and minutes kept by any committee shall be open for the inspection of any member of the Council, as soon as the committee has concluded action on the matter to which such reports or minutes relate.

## 29. CONFIDENTIAL INFORMATION, EXEMPT INFORMATION AND ADVICE OF A POLITICAL ADVISER OR ASSISTANT

29.1 Nothing in these Rules is to be taken to authorize or require the disclosure of confidential information in breach of the obligation of confidence.

29.2 Nothing in these Rules:-

- (a) authorises or requires the Council to disclose to the public or make available for public inspection any document or part of document if, in the opinion of the Director of Legal and Democratic Services, that document or part of a document contains or may contain confidential information; or
- (b) requires the Council to disclose to the public or make available for public inspection any document or part of document if, in the opinion of the Director of Legal and Democratic Services, that document or part of a document contains or is likely to contain exempt information or the advice of a political adviser or assistant.

29.3 Where a Member of the Cabinet makes a cabinet decision in accordance with cabinet arrangements, nothing in these Rules:-

- (a) authorises or requires documents relating to that decision to be disclosed to the public, or made available for public inspection where, the documents contain confidential information; or
- (b) requires documents relating to that decision to be disclosed to the public, or made available for public inspection where the disclosure of the documents would, in the opinion of the Member making the decision, give rise to the disclosure of exempt information or the advice of a political adviser or assistant.