

## **PART 4 – CODES AND PROTOCOLS**

### **1. Access to Information Protocol**

#### **Scope**

1. This protocol applies to all formal meetings of the Council, Cabinet, Overview & Scrutiny committees, Regulatory committees, and any sub-committees, boards and joint committees (together called meetings).

#### **Councillors Rights to Information**

2. Members are free to request from the Council such information as they may reasonably need in order to assist them in discharging their role as councillors, having regard to any special responsibility, e.g. as Cabinet Member or committee Chair. Such request should normally be directed to the relevant Director.
3. The legal rights of members to inspect council documents arise partly from statute and partly from the common law (judicial decisions).
4. In principle (and subject to certain exemptions described below), members have, in addition to the ordinary rights of access to information enjoyed by the general public, the right to access any information held by the Council. This right of access may not extend to publishing or otherwise making public such information and, indeed, members may be asked to sign a confidentiality undertaking before being provided with certain information.

#### **The Statutory Position**

5. Section 100F of the Local Government Act 1972 (as amended) (the Act) provides that any document that is in the possession or under the control of a principal council, and contains material relating to any business to be transacted at a meeting of the Council or a committee or sub-committee of the Council, shall be open to inspection by any member of the Council.
6. This does not require the document to be disclosed if it appears to the Proper Officer that it contains exempt information under Schedule 12A of the Act. However, under the Local Government (Access to Information) (Variation) Order 2006, the document will still be open to inspection by members if it contains the following:
  - (a) Information relating to the financial or business affairs of any particular person (including the Council holding that information), except to the extent that the information relates to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract; or
  - (b) Information which reveals that the Council proposes:
    - (i) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
    - (ii) to make an order or direction under any enactment.

7. All agendas, reports and other documents and proceedings of committees and sub-committees shall be treated as confidential and shall not be disclosed unless and until they become public in the ordinary course of the Council's business.
8. The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (the Regulations) apply to local authorities in England that operate Executive arrangements under Part 1A Local Government Act 2000, as amended by s.21 and Schedule 2 of the Localism Act 2011. The Regulations:
  - (a) Clarify and extend the circumstances in which Executive decisions are public. There is a presumption that a meeting will be open to the public unless the nature of the business being transacted would result in confidential information being disclosed;
  - (b) Make provision for the publicity that must be given before a Key Decision is taken by the Executive and for the inclusion of prescribed information in a written statement of the Executive decision;
  - (c) Set out additional rights of members generally, and members of overview and scrutiny committees in particular, to access documents; and general provisions relating to information that is exempt from disclosure (including advice from a political adviser).

### **All Members**

9. Regulation 16 contains rights for any member to access documents that:
  - (a) are in the possession or under the control of the Executive; and
  - (b) contain material relating to any business to be transacted at a public meeting.
10. Any such document must be available for inspection for at least five clear days before the meeting, except that:
  - (a) where the meeting is convened 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 shorter notice, a document that would be required to be available in relation to that item, must be available for inspection when the item is added to the agenda.
11. Any document which:
  - (a) is in the possession or under the control of the Executive and
  - (b) contains material relating to:
    - (i) any business transacted at a private meeting;
    - (ii) any decision made by an individual member in accordance with executive arrangements; or

- (iii) any decision made by an officer in accordance with executive arrangements

must be available for inspection by any member when the meeting concludes or, where an Executive decision is made by an individual member or an officer, immediately after the decision is made. Any such document must be available for such inspection, in any event, within 24 hours of the conclusion of the meeting or the decision being made.

12. Neither of these provisions applies if it discloses Exempt information (see paragraph 41, below). However, the document will still be open to inspection if it contains information:
  - (a) information relating to the financial or business affairs of any person (including the Council holding that information), except to the extent that the information relates to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract, or
  - (b) information which reveals that the authority proposes:
    - (i) to give a notice under which requirements are imposed on a person; or
    - (ii) to make an order or direction

### **Overview and Scrutiny Members**

13. Regulation 17 provides additional rights of access for members of Overview & Scrutiny committees, who are entitled to a copy of any document that:
  - (a) is in the possession or under the control of the Executive; and
  - (b) contains material relating to:
    - (i) any business that has been transacted at a meeting of a decision-making body of the authority;
    - (ii) any decision that has been made by an individual member of the Executive; or
    - (iii) any decision that has been made by an officer in accordance with Executive arrangements.
14. The Executive must provide that document as soon as reasonably practicable and in any case no later than 10 clear days after it receives the request.
15. No member of an Overview & Scrutiny committee is entitled to a copy:
  - (a) of any document or part of a document that contains Exempt or Confidential information, unless that information is relevant to:
    - (i) an action or decision that the member is reviewing or scrutinising; or
    - (ii) any review contained in any programme of work of such a committee or sub-committee of such a committee; or

- (b) of a document or part of a document containing advice provided by a political adviser or assistant.

16. Where the Executive determines to refuse such a request it must provide the Overview & Scrutiny committee with a written statement setting out its reasons for that decision.

### **FOIA and EIR**

17. Councillors can, like a member of the general public, also request information from the Council under the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR). The Information Commissioner's Office publishes guidance on access rights and the exemptions that may be applicable under FOIA and EIR.

### **Local authority accounts**

18. The Local Audit and Accountability Act 2014, and the Accounts and Audit Regulations 2015 provide a right to inspect, question and make objections to the Council's auditor, take copies of statements of accounts and auditors' reports. These rights are explained fully in the National Audit Office guidance, but are restricted to prevent access to documents containing personal information about staff.
19. In addition, s.228(3) of the Act provides that: "The accounts of a local authority and of any proper officer of a local authority shall be open to the inspection of any member of the authority, and any such member may make a copy of or extract from the accounts".

### **The common law 'need to know'**

20. Under common law principles, all members have the right to access information held by their authority where it is reasonably necessary to enable them to properly perform their duties as a councillor.
21. However, if the member's motive for seeing documents is indirect, improper or ulterior, this may be raised as a bar to their entitlement. Members are not, therefore, allowed to go on a 'fishing expedition' through their council's documents.
22. If a councillor is a member of a particular committee or sub-committee, then they have the right to inspect documents relating to the business of that committee or sub-committee. If not a member of that committee or sub-committee, the Councillor would have to show good cause why sight of them is necessary to perform their duties.

### **Notice of Meetings**

23. The Council will give at least five clear days' notice of any meeting by posting details of the meeting at council offices and on its website. Where exceptionally this period of notice cannot be given, notice will be given as soon as the meeting is convened.

### **Key Decisions**

24. At least 28 clear days before a Key Decision is made, the Key Decisions Plan must contain the following information:

- (a) that a Key Decision is to be made on behalf of the Council;
  - (b) the matter in respect of which the decision is to be made;
  - (c) where the decision maker is an individual, that individual's name, position and, where the decision maker is a decision-making body, its name and list of members;
  - (d) the date on which, or the period within which, the decision is to be made;
  - (e) a list of the documents the decision-maker is likely to consider, including what other documents may be submitted to the decision-maker;
  - (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
  - (g) that other documents relevant to those matters may be submitted to the decision maker;
  - (h) the procedure for requesting details of documents;
  - (i) whether the public are likely to be excluded from the meeting at which the matter is to be discussed, or whether papers relating to the matter may be excluded from publication.
25. Except in cases of urgency (see Part 2 Section 10), where the publication of the intention to make a Key Decision is impracticable, that decision may only be made:
- (a) where the clerk has informed the chair of the Cheshire West & Chester Overview & Scrutiny Committee or, in their absence, each member of the committee by notice in writing, of the matter about which the decision is to be made and setting out the reasons why publication is impracticable;
  - (b) where the clerk has made available for inspection and published on the website a copy of the notice given under (a); and
  - (c) after five clear days have elapsed following the day on which the clerk made available the notice referred to under (b).
26. If an Overview & Scrutiny committee considers that a decision taken should have been treated as a Key Decision but was not, it may require the Leader to report to Full Council within a specified reasonable time, giving details of the decision, the reasons for it, who made it and why it was not considered to be a Key Decision.
27. In accordance with Regulation 19 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the Leader will submit a report to the next Ordinary Council containing particulars of all Key Decisions taken as urgent since the last meeting.

### **Access to agendas and reports before meetings**

28. The Council will publish the agenda and reports (that are not exempt from publication) on its website at least five clear days before the meeting, or if a meeting is convened at less than five clear days' notice as soon as it is convened.

29. 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.
30. Where reports are prepared after the summons has been sent out, the clerk shall make each such report available to the public as soon as the report is completed and sent to councillors.

### **Background Papers**

31. 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 their opinion:
  - (a) discloses 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; and
  - (c) do not include:
    - (i) published works or
    - (ii) exempt or confidential information or
32. Background papers are published on the Council's website and available for public inspection at council offices.
33. The Council will make background papers available for public inspection for four years after the date of the meeting/decision.

### **Supply of copies**

34. The Council will supply copies of any agenda, reports and background papers that are open to public inspection to any person, electronically (wherever possible) or, on payment of a charge for copying and postage, in hard copy.

### **Access to minutes etc after meetings**

35. The Council will retain and make available copies of the following for six years after a meeting or the taking of a decision:
  - (a) the minutes of the meeting and/or records of decision taken, together with the reasons, excluding any part of the minutes that discloses exempt or confidential information and also excluding, if appropriate in the opinion of the Director of Governance any part of the minutes of proceedings when the meeting was not open to the public;
  - (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.

### **Public Rights to Attend Meetings**

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

### **Exclusion of the Public**

37. Where a 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 below for the meeting to go into private session.
38. The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted that Confidential information would be disclosed.
39. 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.
40. 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.

### **Exempt Information**

41. Exempt information means information falling within the following categories, determined by reference to the description in Schedule 12A of the Local Government Act 1972:
- (a) information relating to any individual;
  - (b) information which is likely to reveal the identity of an individual;
  - (c) information relating to the financial or business affairs of any particular person (including the authority holding that information), unless it is required that the information be registered under the Companies, Friendly Societies, Industrial and Provident Societies, Building Societies or Charities Acts;
  - (d) information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority of a Minister of the Crown and employees of, or office holders under, the authority;
  - (e) information in respect of which a claim to legal professional privilege could be maintained in legal proceedings;
  - (f) information which reveals that the authority proposes:
    - (i) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
    - (ii) to make an order or direction under any enactment. (g) Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

- (g) information which is subject to any obligation of confidentiality;
- (h) Information which relates in any way to matters concerning national security

42. Information not Exempt information if it

- (a) is required to be registered under:
  - (i) the Companies Act 1985
  - (ii) the Friendly Societies Act 1974
  - (iii) the Friendly Societies Act 1992
  - (iv) the Industrial and Provident Societies Acts 1965 to 1978
  - (v) the Building Societies Act 1986
  - (vi) the Charities Act 1993
- (b) relates to proposed development for which the Council as Local Planning Authority may grant itself planning permission or permission in principle pursuant to regulation 3 of the Town and Country Planning General Regulations 1992 (as amended from time to time).

43. Information that falls within paragraph 41(a)-(g) 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.

**Public Interest Test**

44. There is no legal definition of 'public interest', but the following are relevant considerations in favour of disclosure:

- (a) The information would assist public understanding of an issue that is subject to current public debate.
- (b) Proper debate cannot take place without wide availability of all the relevant information.
- (c) The issue affects a wide range of individuals or companies.
- (d) Facts and analysis behind major policy decisions.
- (e) Allowing individuals to understand decisions made by public authorities affecting their lives and, in some cases, assisting individuals in challenging those decisions.
- (f) Accountability for proceeds of sale of assets in public ownership.
- (g) Openness and accountability for tender processes and prices.
- (h) Public interest in public bodies obtaining value for money.



- (i) Public health or public safety.
  - (j) Damage to the environment.
  - (k) Contingency plans in an emergency.
  - (l) Promoting accountability and transparency for decisions taken by public authorities and the spending of public money.
45. A practice of applying "Exempt" status to a report without reasons being set out and consideration of the public interest is not acceptable.
46. 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.

### **Private meetings**

47. At least 28 clear days before a private Cabinet meeting, e.g. where one or more of the reports on the agenda includes exempt or confidential information, a notice of the intention to hold part or all of the meeting in private must be included in the Key Decisions Plan published on the Council's website and be available for inspection.
48. The notice must state the reasons for the meeting to be held in private and advise that any representations about why the meeting should be open to the public must be received at least 10 clear days before the meeting (so these can be considered by the Director of Governance and responded to).
49. At least 5 clear days before any private meeting, a notice of the intention to hold part or all of the meeting in private must be included in the agenda published on the Council's website and be available for inspection.
50. The notice must:
- (a) state the reasons for the meeting to be held in private;
  - (b) provide details of any representations received about why the meeting should be open to the public;
  - (c) include a statement of the Council's response to any such representations.
51. Where the whole or any part of a report for a public meeting or as part of a decision is not available for inspection by the public:
- (a) every copy of the whole report or the part of the report, as the case may be, must be marked "not for publication"; and
  - (b) there must be stated on every copy of the whole or the part of the report:
    - (i) that it contains confidential or exempt information;
    - (ii) by reference to the categories in Schedule 12A to the Local Government Act 1972, the description of exempt information by virtue of which the decision-making body discharging the function is likely to exclude the public during the item to which the report relates.

### **Urgent decisions in private Cabinet meetings**

52. Where the date by which a private Cabinet meeting must be held makes compliance with the notice periods above impracticable, the meeting may only be held in private where agreement has been obtained in writing from the Chair of the Cheshire West & Chester Overview & Scrutiny Committee or, in their absence, the Chair of the Council or, in their absence, the Deputy Chair of the Council, that the meeting is urgent and cannot reasonably be deferred.
53. As soon as reasonably practicable after such agreement has been obtained, a further notice must be published on the agenda on the website and be available for inspection, setting out the reasons why the meeting is urgent and cannot reasonably be deferred.
54. If the matter is Confidential or Exempt from publication, then the item will not be made available to the public. However, the clerk will be required to ensure that a separate public report and minute is produced containing all information that is not confidential or exempt from publication.
55. If an item is later added to the agenda, 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 has been sent out, the report author shall make each such report available to the public as soon as the report is completed.
56. In the case of items or reports that fail to meet the deadline of five clear days, the report will only be included on the agenda where the Director of Governance is satisfied that:
  - (a) the item/report is genuinely urgent and cannot wait until a later meeting;  
and
  - (b) the report author will be responsible for including those reasons in the report.