

PART 4 D - ACCESS TO INFORMATION PROCEDURE RULES

1.0 These Rules Apply to the Following:

- (a) Rules 2-10 apply to all meetings of:
 - (i) the Council
 - (ii) the Cabinet
 - (iii) the Overview and Scrutiny Committees
 - (iv) Joint Executive Committees
 - (v) Non-Executive Joint Committees; and
 - (vi) All other Panels and Committees which may be established with decision making powers (together called meetings)
- (b) Rules 6, 7 and 10 also apply to decisions made by officers and cabinet members.
- (c) Rules 11-20 apply to Cabinet, Committees of the Cabinet, Cabinet Members, officers making Executive Decisions, and any Executive joint committees
- (d) Rules 15 and 19 also apply to the Overview and Scrutiny Committees

2.0 Other Rights to Information

- 2.1 The rights of members of the public explained in these Rules are in addition to any other legal rights and any other rights contained in this Constitution.

3.0 Rights to Attend and Record Meetings

- 3.1 Members of the public may attend all meetings to which these Rules apply, unless they are asked to leave a meeting, or part of a meeting, because the meeting needs to discuss exempt or confidential items. This is explained in more detail in Rule 10 below.
- 3.2 Members of the public attending a meeting may also film or record the meeting, but if they are asked to leave the meeting they may also be asked to stop filming or recording the meeting.

4.0 Notices of Meetings

- 4.1 If the Cabinet, any committee of the Cabinet,(including any area committee), or any Executive joint committee or sub-committee, is likely to ask members of the public to leave a meeting, or part of a meeting, because they need to discuss exempt or confidential items (see Rule 10 below) the Council must post a notice at the Council Offices, Priory Road, Spalding, and on the Council's website, at least 28 clear days before the meeting, and again at least 5 clear days before the meeting, of its intention to hold the meeting in private. If it is not possible to do this then members of the public may only be asked to leave the meeting where the Chairman of the Overview and Scrutiny Committee(s) or, where not available, the Chairman of the Council(s) or, where none, the vice-Chairman of the Council(s) has agreed that the meeting may be

held in private. The Council(s) must then post a notice explaining why the meeting is so urgent that the usual procedure cannot be followed

4.2 A list of all meetings will be uploaded to the Council's website. Alternatively, you can visit the Council Offices

4.3 The Council will normally give at least five clear Working Days notice of any meeting by posting details of the meeting at the Council Offices, and on the Council's website.

4.4 If the meeting is a joint committee, details of the meeting will be posted at the offices of each of the Councils who have members on that joint committee.

4.5 a committee meeting will be held at a location other than the Council Offices the Council will normally also post a notice at the premises at which the meeting will be held.

5.0 **Access to Agendas and Reports Before the Meeting**

5.1 Unless Rule 11 below applies, the Council will make copies of agendas and reports available for the public to view at the Council Offices at least five clear Working Days before a meeting. The Council will at the same time also upload copies to the Council's website.

5.2 Sometimes the Council will not be able to meet this deadline, as follows:

(a) If an agenda item is added later, the revised agenda will be available to view from the time the item is added to the agenda.

(b) When a meeting is called at shorter notice copies of the agenda and reports will be available to view from the time the meeting is called.

(c) When a report is prepared after the agenda has been sent out, the Council will make the report available for the public to view as soon as the report is completed and sent to councillors.

6.0 **Members of the Public can ask for Copies of Agendas and Reports**

6.1 The Council will supply to any person, on payment of postage and other relevant costs, any copies of:

(a) any agenda and reports which are available for the public to view;

(b) if the proper officer thinks fit, any other documents supplied to councillors in connection with an item.

7.0 **Access to Minutes, Agendas, Reports, Decision Notices etc. after a Meeting/Decision**

7.1 The Council will make available copies of the following for at least six years after a meeting/decision:

(a) agendas, reports and records of decisions (minutes) made by the Cabinet, any committee of the Cabinet, and any Executive joint committees

- (b) reports and notices of Executive Decisions made by individual Cabinet Members and officers
- (c) agendas, reports and minutes of all other meetings to which these Rules apply
- (d) written records of decisions made by officers under a specific express delegated power, or under a general delegated power where the effect of the decision:
 - (i) is to grant a permission or licence or
 - (ii) affects the rights of an individual or
 - (iii) awards a contract or incurs expenditure which materially affects the Council's financial position.

7.2 Where any meeting is not open to the public (see Rule 10 below) the Council will make available a summary of any decision.

7.3 The Council will not make available any report which contains exempt or confidential information or where members of the public are likely to be asked to leave the meeting when the report is considered. When this applies the reports will be marked "Not for publication" and will state which of the categories detailed in Rule 10 below apply.

8.0 **Background Papers**

8.1 **List of Background Papers**

8.1.1 The proper officer will set out in every report a list of those documents (called background papers) 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
- (c) The following need not be listed:
 - (i) Published works (ie books, magazines, consultation papers)
 - (ii) Documents which disclose exempt or confidential information as defined in Rule 10 below
 - (iii) The advice of a political adviser

8.2 **Public Inspection of Background Papers**

8.2.1 The Council will make available for the public to view for at least four years after the date of the meeting one copy of each of the documents on the list of background papers.

9.0 **Summary of Public's Rights**

9.1 A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept, and be made available for members of the public to view, at the Council Offices.

10. **Exclusion of Public Access to Meetings**

10.1 **Disorderly Conduct and Misbehaviour**

10.1.1 The public may be excluded from a meeting if this is necessary in order to maintain order or prevent misbehaviour.

10.2 **Confidential Information - Requirement to Exclude the Public**

10.2.1 The public **must** be asked to leave a meeting whenever it is likely that confidential information will be disclosed. This is a legal requirement under section 100A (3) of the Local Government Act 1972.

10.3 **Meaning Of Confidential Information**

10.3.1 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, or by law.

10.4 **Exempt information - discretion to exclude the public**

10.4.1 The public may be asked to leave a meeting whenever it is likely that exempt information will be disclosed.

Where the meeting will make a decision about any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 ensures that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6, i.e. in the interests of protecting morals, public order, national security, juveniles, protection of private life and in special circumstances where publicity would prejudice the interests of justice.

10.5 Meaning of exempt information

10.5.1 Exempt information means information falling within the following categories 1 to 7C as described in Part I of Schedule 12A of the Local Government Act 1972.

Category	Qualification
1. Information relating to any individual	<p>Information is exempt 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>Information is not exempt if it relates to proposed development for which the Council being the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.</p>
2. Information which is likely to reveal the identity of an individual	<p>Information is exempt 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>Information is not exempt if it relates to proposed development for which the Council being the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.</p>
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)	<p>Information is exempt 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>Information is not exempt if it relates to proposed development for which the Council being the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992, or if it is required to be registered under:-</p> <ul style="list-style-type: none"> (a) the Companies Act 1985; (b) the Friendly Societies Act 1974; (c) the Friendly Societies Act 1992;

	<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>
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	<p>Information is exempt 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>Information is not exempt if it relates to proposed development for which the Council being the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.</p>
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings	<p>Information is exempt 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>Information is not exempt if it relates to proposed development for which the Council being the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.</p>
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	<p>Information is exempt 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>Information is not exempt if it relates to proposed development for which the Council being the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.</p>
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	<p>Information is exempt 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>Information is not exempt if it relates to proposed development for which the Council being the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.</p>

* There is no definition of "public interest" but see the Information Commissioner's guidance note on the public interest test under the Freedom of Information Act 2000.

10.5 Cabinet, Committees Of The Cabinet, Individual Cabinet Members, Officers And Executive Joint Committees

10.5.1 Rules 11-20 apply to Cabinet, Committees of the Cabinet, Individual Cabinet Members, Officers and any Joint Arrangements.

11.0 Procedure Before Taking Key Decisions

11.1 A Key Decision may not be taken unless:

- (a) a notice has been published by the Council stating:
 - (i) What the Key Decision relates to,
 - (ii) who will be making the decision,
 - (iii) the date on/period within which the decision is expected to be made,
 - (iv) a list of documents (including reports) submitted to the decision maker
 - (v) the address from which copies or extracts from any document on the list is available (unless confidential or exempt)
 - (vi) that other documents may be submitted to the decision maker, and the procedure for requesting details of those documents; and
- (b) at least 28 clear days have passed since the notice was published; and
- (c) where the decision is to be taken at a meeting of the Cabinet or a Committee of the Cabinet, notice of the meeting has been given in accordance with Rule 4 (notice of meetings); or
- (d) the decision is subject to Rule 12 (General Exception) or Rule 13 (Special Urgency) below.

(The time periods resulting from compliance with (b) and (c) are not cumulative.)

12.0 General Exception - Key Decisions not Subject to Notice

12.1 When Rule 11 cannot be complied with then, unless Rule 13 (Special urgency) applies, the Key Decision may only be made if:

- (a) the Proper Officer has informed the chairman of the Overview and Scrutiny Committee (or if there is no such person, each member of that Committee) in writing of the matter to which the decision relates;
- (b) the Proper Officer has made copies of that notice available for the public to view at the offices of the Council and on the Council's website; and
- (c) at least 5 clear days have passed since the Proper Officer complied with (a) and (b).

12.2 When this Rule 12 applies the Proper Officer must, as soon as possible after complying with the above paragraphs, make available at the Council Offices and on the website a notice stating why Rule 11 cannot be complied with.

12.3 Where a Key Decision is taken at a meeting, it must be taken in public, unless the item is exempt or confidential as defined in Rule 10 above.

12.4 (Call-In does not apply to key decisions taken under Rule 12)

13.0 **Special Urgency - Key Decisions Not Subject to a Rule 12 Notice**

13.1 If a Key Decision is so urgent that Rule 12 (general exception) cannot be followed, then the 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 the Performance Monitoring Panel. If there is no chairman of the Committee or if the chairman is unable to act, then the agreement of the chairman of the Council, or in his/her absence, the vice chairman of the Council, will suffice.

13.2 When this rule applies the decision maker must, as soon as possible after complying with the above procedure, make available at the Council Offices and on the website a notice setting out the reasons why the decision is urgent and cannot reasonably be deferred.

13.3 (Call-In does not apply to Key Decisions taken under Rule 13)

14.0 **Special Urgency – Non-Key Decisions – Application of Call-in**

14.1 Where for any Non-Key Decision any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interest the Executive Decision shall not be subject to call-in subject to:

- the Chairman of the Performance Monitoring Panel agreeing both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency (in the absence of the Chairman, the Chairman of the Council or in his/her absence the Vice-Chairman of the Council's consent shall be required. In the absence of all three, the Head of the Paid Service or his/her nominee's consent shall be required); and
- the decision notice stating that the decision is not subject to call-in and the reasons why the delay caused by the call-in procedure is considered to be seriously detrimental to the Council's or the public's interest; and
- a report being submitted to the next available meeting of full Council indicating the reasons for the urgency.

15.0 **Special Urgency – Executive Decisions subject to External Deadlines – Application of Call-in**

15.1 Where any Executive Decision (whether Key Decision or Non-Key Decision) is subject to external (eg Government) deadlines such that it is not possible for the decision to be subject to the usual call-in procedure the proposed decision may instead be subject to a pre-decision scrutiny by the Performance Monitoring Panel subject to:

- the Leader, Deputy Leader, relevant Portfolio Holder or (where the decision will be taken by an officer) the relevant officer being in attendance at the meeting of the Panel to answer relevant questions;
- the Performance Monitoring Panel being required to set out in writing any concerns about the proposed decision;

- the decision-maker then making the final decision taking into account any concerns raised by the Panel, and the final decision notice explaining the decision in relation to the concerns raised by the panel;
- the decision taking effect immediately the decision is made.

15.2 When this Rule applies such scrutiny could, if need be, take place on the same day as (but before) the Executive Decision is made.

16.0 **REPORTS TO COUNCIL**

16.1 **Key Decisions - When the Overview and Scrutiny Committee can require a report**

16.1.1 If the Overview and Scrutiny Committee thinks that a decision has been taken which it considers was a Key Decision but which was not treated as a Key Decision then unless the decision was:

- (a) the subject of Rule 12 (general exception); or
- (b) the subject of Rule 13 (special urgency);
the Committee may require the decision maker to submit a report to the Council explaining why it was not treated as a Key Decision. A report may be requested:
 - (a) by notice in writing submitted to the Senior Legal Officer by the Chairman of the Performance Monitoring Panel, or by a minimum of 5 members of the Committee
 - (b) by the Performance Monitoring Panel by resolution passed at a meeting of the Committee.

16.1.2 The decision maker will submit a report to the next available meeting of the Council detailing the decision, and if the Leader considers that it was not a Key Decision, the reasons for that opinion.

17.0 **Record of Decisions**

17.1 **Cabinet, Committees of the Cabinet, Executive Joint Committees and Sub-Committees**

17.1.1 After any meeting, the Proper Officer or, where the Proper Officer was not present, the person presiding at the meeting, will as soon as possible but normally within 3 Working Days, produce a record of every decision taken at the meeting, and make the record available for the public to view at the offices of the Council and on the website. The record will include:

- (a) a statement of the reasons for each decision;
- (b) any alternative options considered and rejected at that meeting;
- (c) a statement of any personal/prejudicial interests;
- (d) a note of any dispensation granted by the Head of the Paid Service;
- (e) the date on which the decision was made; and
- (f) a statement (where this applies) that the decision was urgent.

17.2 **Individual Cabinet Members and officers**

17.2.1 As soon as possible, but normally within 3 Working Days, after a decision has been made by a Cabinet Member or an officer the Proper Officer (where a cabinet

member decision) or the officer (where an officer decision) will produce a record of that decision, including the details shown above, and make the record available for the public to view at the offices of the Council and on the website.

18.0 Meetings of the Cabinet and its Committees to be Open to the Public

18.1 The Cabinet and any Committee of the Cabinet will meet in public for all its decisions whether key or non-key, except when considering any documents which contain exempt or confidential information as set out in Rule 10 above.

19.0 Access to Documents by Members of the Overview and Scrutiny Committee(s)

19.1 Rights to Copies

19.1.1 Subject to Rule 17.2 below, a member of the Overview and Scrutiny Committee(s) (including their task-groups) is entitled to copies of any document which is in the possession or control of the Cabinet or a Committee of the Cabinet and which contains material relating to:

- (a) any business transacted at a meeting of the Cabinet or a Committee of the Cabinet;
- (b) any decision taken by an individual cabinet member; or
- (c) any Executive Decision made by an officer.

19.2 Limit on Rights

19.2.1 The Overview and Scrutiny Committees are not entitled to:

- (a) any document that is in draft form; or
- (b) any document or part document containing the advice of a political adviser.

20.0 Additional Rights of Access for Members

20.1 All members of the Council are entitled to inspect any document which is in the possession or under the control of the Cabinet or a Committee of the Cabinet and contains material relating to:

- (a) any business to be transacted at a public meeting – the information must be available for inspection at least 5 clear days before the meeting unless the meeting is called at shorter notice or an item is added at shorter notice when the document must be made available immediately;
- (b) any business transacted at a private meeting; any decision made by a Cabinet Member; and any Executive Decision made by an officer – the information must be available for inspection immediately after the decision has been made but in any event within 24 hours of the conclusion of the meeting or the decision being made.

20.2 unless:

- (a) the member has a disclosable pecuniary interest in the matter; or
- (b) it contains the advice of a political adviser.

20.3 **Additional Rights**

20.3.1 The rights of a member set out in these rules are additional to other rights he/she may have in statute or common law. Common law rights give members the right to inspect Council documents insofar as this is reasonably necessary to enable a member to perform his/her duties as a councillor. (i.e. on a “need to know” basis) but does not give a member a right to a roving commission through the Council’s documents. The Freedom of Information Act 2000 generally makes non-personal information freely available to all, with only limited exceptions. The Data Protection Act 1998 protects personal information which is generally not available except in certain circumstances.