



# Part 4B

## Access to Information Procedure Rules

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## **PART 4 - ACCESS TO INFORMATION PROCEDURE RULES**

### **1. SCOPE**

- 1.1 These Procedure Rules apply to all meetings of the Council, of Council , Committees (as identified in Section 4 to Part 3 of this Constitution), of Overview and Scrutiny Committees (as identified in Section 5 to Part 3), and of the Cabinet and Committees and Boards of the Cabinet (as identified in Section 7 to Part 3) (together called meetings).
- 1.2 These Procedure Rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

### **2. RIGHTS TO ATTEND MEETINGS**

Members of the public may attend all meetings unless confidential or exempt information as defined in Procedure Rule 9 is to be considered and the meeting has resolved to exclude the public.

### **3. NOTICE OF MEETING**

The Council will give at least five clear days' notice of any meeting by posting details of the meeting at the Civic Centre, Oldham, and on the Council's website.

### **4. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING**

- 4.1 The Council will make copies of the agenda and reports available for public inspection at the Civic Centre, Oldham and on the Council's website at least five clear days before the meeting unless the meeting is convened at shorter notice, in which case the agenda and reports will be available as soon as convened. 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 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.
- 4.2 For all purposes of these Rules and the Constitution in general, the terms "notice", "summons", "agenda", "report", "written record" and "background papers" when referred to as being a document that is:
- a) "open to inspection", shall include for these and all other purposes as being published on the website of the Council; and

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- b) to be published, posted or made available at offices of the Authority, shall include publication on the website of the Authority.

### **5. SUPPLY OF COPIES**

The Council will supply copies of the following documents to any person on payment of a charge for postage and any other costs:

- 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 Chief Executive thinks fit, copies of any other documents supplied to Councillors in connection with an item.

## **6. ACCESS TO AGENDA, MINUTES, DECISION RECORDS AND REPORTS**

- 6.1 The Council will make available copies of the following for six years:
- a) the minutes of a meeting excluding any part which discloses exempt or confidential information;
  - b) records of decisions taken, together with reasons, for all decisions taken by the Cabinet, Cabinet Committees and Boards, and for key decisions taken by individual Cabinet Members and by Officers, excluding any part which would disclose exempt or confidential information;
  - c) a summary of any proceedings of any meeting not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
  - d) the agenda for any meeting; and
  - e) reports relating to any items which would not disclose confidential or exempt information.

- 6.2 The relevant Chief Officer or report author will make available copies of the background papers referenced in any report available to the public for a period of four years.

## **7. MATTERS TO BE CONSIDERED IN EVERY REPORT TO ALL MEETINGS AND TO INDIVIDUAL DECISION MAKERS**

- 7.1 Every report shall consider under separate headings the following matters:
1. Legal Implications
  2. Financial Implications
  3. Equality Impact – including implications for Children and Young People

Other relevant corporate issues such as Human Resources implications, Property or Procurement implications should be considered within the body of the report.

7.2 The person compiling a report must also set out a list of those documents (called background papers) relating to the subject matter of the report which in the opinion of the author disclose any facts or matters on which the report, an important part of the report is based and which have been relied on to a material extent in preparing the report.

- 7.3 The requirement to list background papers does not include published works, documents which would disclose exempt or confidential information (as defined in Procedure Rule 9) or, in respect of executive reports, the advice of a political advisor.

- 7.4 Background papers must be available for public inspection and where the report relates to an executive decision the background papers must also be available on the Council's website
- 7.5 If the person compiling the report is to recommend that the public be excluded from the meeting during consideration of the report and/or from having access to the report on the grounds that the report contains exempt information, the person must give a consideration to the balance of public interest when recommending confidentiality.
- 7.6 Paragraph 7.1 does not apply to Planning Committee, Commons Registration Committee and Charitable Trust Committee meetings.

## **8. 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 the Civic Centre, West Street, Oldham.

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

### **9.1. Business to be considered in private – public notice**

- 9.1.1 Prior to any executive meeting, public notice must be given at least 28 clear working days before any meeting of the Cabinet or of a Cabinet Committee or Board or of an area committee or called under joint arrangements where there is an intention to consider an item of business in private. The reason for the item of business to be considered in private must also be included. The notice provides an opportunity for representations to be made by the public as to why the business should be transacted in public.
- 9.1.2 A further notice must be published five clear days before the meeting, restating the reasons for consideration of business in private. The notice must also include details of any representations made about why the business should be transacted in public, and the Executive's response to the representations.
- 9.1.3 If the above timetable is impracticable, the business may still be considered in private if the Executive has had agreement from the Chair of the relevant Overview and Scrutiny Committee (or if he/she is unable to act, from the Mayor or the Deputy Mayor). Public notice must then be given setting out the reasons why consideration of the business is urgent and cannot reasonably be deferred.

### **9.2 Confidential information – requirement to exclude public**

- 9.2.1 The public must be excluded from any meeting 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.
- 9.2.2 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.

**9.3 Exempt information – discretion to exclude public**

- 9.3.1 The public may be excluded from any meeting 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.
- 9.3.2 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.
- 9.3.3 In all cases, before the public is excluded the meeting must be satisfied that, in all circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 9.3.4 Exempt information means information falling within the following categories (subject to any condition):

<b>Category</b>	<b>Qualification/Interpretation</b>
1. Information relating to any particular individual.	Information is not exempt information unless it relates to an individual of that description in the capacity indicated by the description, i.e. it must relate to and be recognisable as referring to a particular individual.
2. Information which is likely to reveal the identity of any individual	A "protected informant" means a person giving the Council information which tends to show that (a) a criminal offence; (b) a breach of statutory duty; (c) a breach of planning control; or (d) a nuisance, has been, or is being, or is about to be committed.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).	“Financial or business affairs” includes contemplated, as well as past or current, activities;  Information is not exempt if it must be registered under (a) the Companies Acts (as defined in section 2 of the Companies Act 2006); (b) the Friendly Societies Act 1974; (c) the Friendly Societies Act 1992; (d) the Co-Operative and Community Benefits Societies Act 2014; (e) the Building Societies Act 1986; or (f) the Charities Act 2011.

	<p>“Registered” in relation to information required to be registered under the Building Societies Act 1986, means recorded in the public file of any building society (within the meaning of that Act).</p>
<p>4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the Council, or a Minister of the Crown, and any employees of, or office holders under, the Council.</p>	<p>“Employee” means a person employed under a contract of service.</p> <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;</p> <p>the enactments in paragraph (a) applying, with the necessary modifications, also to office-holders under 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>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>	
<p>6. Information reveals that the Council proposes:</p> <p>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) to make an order or direction under any enactment.</p>	
<p>7. Information relating to any action taken or to be taken in connection with the</p>	

prevention, investigation or prosecution of crime.	
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9.3.5 Information falling within any of paragraphs 1-7 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 or permission in principle under Regulation 3 of the Town and Country Planning General Regulations 1992.

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

If the Chief Executive 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 Procedure Rule 9, 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.

## 11. KEY DECISION DEFINITION

### 11.1 Key decision definition

A key decision is any decision taken by the Cabinet, a Board or Committee of the Cabinet or by an individual Cabinet member, or by an area committee, under joint arrangements or by an officer under delegated executive powers which -

- a) is likely to result in a local Council incurring expenditure which is, or the making of savings which are, significant having regard to the local Council's budget for the service or function to which any decision relates; or
- b) be significant in terms of its effects on communities living or working in the area comprising two or more wards in the area of the local Council; or
- c) require an application to be made for planning permission, listed building, ancient monument or conservation area consent; or
- d) comprise or include the making, approval or publication of a draft or final scheme which may require, either directly or in the event of objection, the approval of the Secretary of State or of a Minister of the Crown; or
- e) require the passage of local legislation or the adoption by the Council of national legislation or
- f) propose a response on behalf of the Council to consultation by the Secretary of State or a Minister of the Crown, where the consultation response could have a potential impact upon the Council to the extent defined in a or b above; or
- g) propose an alteration in the standard charges which the Council makes for any of its services.

### 11.2 Key Decision Definitions – qualification/interpretation

For the purposes of this definition, ‘significant’ with regard to expenditure or savings is defined as:

- a) revenue expenditure or saving that is neither provided for within the Budget, nor virement permitted by the Constitution;
- b) capital expenditure that is not provided for within:

- i. the capital estimate for a specific scheme; or
  - ii. a lump sum capital estimate;
- c) the declaration of land or property, the estimated value of which exceeds £250,000, as surplus to the Council's requirements;
- d) securing approval in principle to the acquisition or disposal of land or property the value of which is estimated to exceed £250,000;
- e) securing approval in principle to the taking of, or the granting, renewal, assignment, transfer, surrender, taking of surrenders, review, variation or termination of any leases, licences, easements or wayleaves, at considerations in excess of £250,000 over the term of the agreement or a premium of £250,000;
- f) any decision which involves expenditure or savings over £250,000.

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

- 12.1 A key decision may not be taken unless 28 clear days Notice has been given of the intention to take a key decision and that Notice has been made available at the Civic Centre, Oldham and on the Council's website. The Notice will contain matters which will be the subject of a key decision to be taken by the Cabinet, a Board or Committee of the Cabinet, an individual member of the Cabinet, by an Officer or under joint arrangements during the period covered by the plan. It will describe the following 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 taker is an individual, his/her name and title, if any and where the decision taker is a body, its name and details of membership;
  - c) the date on which, or the period within which, the decision will be taken;
  - d) a list of the documents submitted to the decision taker for consideration in relation to the matter;
  - e) the address from which 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
- 12.2 Exempt information need not be included in a Key Decision Document and confidential information cannot be included.

## **13. GENERAL EXCEPTION**

- 13.1 If 28 clear days notice of a matter likely to be a Key Decision has not been given, then the decision shall only be made:
- a) if the date by which the decision must be taken makes it impractical to defer until it has been included on a later Notice issued in accordance with Procedure Rule 12 above
  - b) where the Director of Legal has obtained agreement in writing from the Chair of the appropriate Overview and Scrutiny Committee (or his/her nominee), that the matter about which the decision is to be made cannot be deferred;

- c) where the Director of Legal has made available at the Civic Centre, Oldham and on the Council's website, a 'General Exception Key Decision Notice'; and
- d) after five clear days have elapsed following the day on which the Director of Legal made available the notice referred to in paragraph (c).;

13.2 Where this paragraph is complied with in any matter, Procedure Rule 12 above need not be complied with.

#### **14. CASES OF SPECIAL URGENCY**

14.1 Where the date by which an executive decision that would be a key decision must be made makes compliance with Key Decision procedures at Procedure Rule 12 and General Exception procedures at Procedure Rule 13 above impracticable, the decision shall only be made where the decision maker has obtained agreement from the Chair of the relevant Overview and Scrutiny Committee (or his/her nominee) or if not available, the Mayor or in absence of the Mayor, the Deputy Mayor. Where this Procedure Rule applies, the decision is also exempt from call-in.

14.2 As soon as reasonably practicable after agreement has been sought, a notice must be published at the Civic Centre, Oldham, and on the Council's website, setting out the reasons why that the decision is urgent, and why it cannot reasonably be deferred.

#### **15. REPORTS TO COUNCIL**

##### **15.1 When an Overview and Scrutiny Committee can require a report**

If an Overview and Scrutiny Committee is of the opinion that a key decision has been taken which was not subject to Key Decision, General Exception or Special Urgency procedures, the Committee may require the decision taker 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 Chief Executive, who shall require such a report on behalf of the Committee when so requested (by the Chair or any 5 members).

##### **15.2 Cabinet's report to Council**

The decision taker will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 9 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, the individual or body making the decision, and if the Leader is of the opinion that it was not a key decision the reasons for that opinion.

##### **15.3 Annual report on special urgency decisions**

The Leader will submit at least annually a report to the Council on all executive decisions taken in the circumstances set out in Procedure Rule 14 (Special

Urgency) since the last such report was submitted. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

## **16. PROCEDURE AFTER TAKING KEY DECISIONS**

After any meeting of the Cabinet or any of its Committees or Boards, whether held in public or private, the Director of Legal 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. In the event of an individual Member or of an Officer taking a key Decision, the Director of Legal will ensure that the decision taker or a relevant Officer is responsible for the production of a record of that decision. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting, alongside the date of the decision, and any declarations of interest made.

The Proper Officer will ensure that such minutes and records are published in accordance with Procedure Rule 6 above. Key Decisions taken under delegated authority are eligible for call-in in accordance with the processes contained in the Overview and Scrutiny Procedure Rules at Part 4E of this Constitution.

## **17. PROCEDURES AFTER TAKING PRINCIPAL AND ADMINISTRATIVE DECISIONS**

- 17.1 After a Principal Decision of either the Council or the Executive, as defined at Article 14 of Part 2 and at Section 11 to Part 3 of this Constitution, has been taken, the Proper Officer will ensure that minutes and records of the decision, including the considered report, drafted in accordance with the requirements of Procedure Rule 16 above, are published in accordance with Procedure Rule 6 above.
- 17.2 After an Administrative Decision of either the Council or the Executive, as defined at Article 14 of Part 2 and at Section 11 to Part 3 of this Constitution, has been taken, Chief Officers must retain a record of the decision and the reasons for the decision, such record being drafted sufficiently for audit and evidential purposes.

## **18. OVERVIEW AND SCRUTINY COMMITTEE ACCESS TO DOCUMENTS**

### **18.1 Rights to documents**

Subject to Procedure Rule 18.2 below, a member of an Overview and Scrutiny Committee will be entitled to copies of any document which is in the possession or control of the executive and which contains material relating to:-

- a) any business transacted at a meeting of the Cabinet or its committees;
- b) any decision taken by an individual member of the Cabinet; or

- c) Any key decision taken by an officer.
- 18.2 This must be provided as soon as reasonably practicable and no later than 10 clear days after the request is made.
- 18.3 **Rights in relation to private decisions of the Cabinet**  
The Chairs of all Overview and Scrutiny Committees shall be entitled to foresight of papers in relation to private decisions of the Cabinet before the decision is made.
- 18.4 **Limit on rights**  
A member of an Overview 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 in accordance with the Scrutiny Work Programme; or
  - c) the advice of a political adviser appointed under s9 of Local Government and Housing Act 1989.
- 18.5 **Rights to make material relating to decisions available**  
The Cabinet, or other decision making body, is also required to provide a report upon request by the relevant Overview and Scrutiny Committee if:
- a) A Key Decision was taken which was not in accordance with Procedure Rule 12 (Subject to Rule 13 (General Exception) or Procedure Rule 17 (Special Urgency), or;
  - b) A decision was taken which was not treated as a Key Decision but in the opinion of the Overview and Scrutiny Committee should have been a Key Decision.

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

### **19.1 Material relating to previous business**

All members are entitled to inspect any document which is in the possession or under the control of the executive and contains material relating to any business previously transacted in private at a meeting or by an individual Member or by an Officer making a key decision unless it contains confidential information; exempt information insofar as it relates to information relating to the business or financial affairs of any particular person (including the Authority holding that information), with the exception of information that relates to any terms proposed or to be proposed by or to the Authority in the course of negotiations for a contract, or which reveals that the authority proposes to give a notice imposing requirements on a person or make an order or direction under any enactment; or the advice of a political adviser.

### **19.2 Nature of rights**

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