

# Access to Information Procedure Rules

## **1.0 Scope**

These rules apply to all meetings of the Council, Overview and Scrutiny Committees, area Committees (if any), the Standards Committee and regulatory and other Committees and meetings of the Cabinet (together called meetings). Where additional rules that apply only to Cabinet are included, they are clearly marked as such.

## **2.0 Additional Rights to Information**

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law, including the Freedom of Information Act 2000

## **3.0 Rights to Attend Meetings**

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

## **4.0 Notices of Meeting**

Unless the Meeting is called at shorter notice, the Council will give at least five clear working days' notice of any meeting by posting details of the meeting on its website and at Thanet Gateway Plus, Cecil Street, Margate, Kent CT9 1RE (the designated office).

## **5.0 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 at least five clear working days before the meeting except that:

- a) where the meeting is convened at shorter notice, copies of the agenda and report shall be published on the Council's website and open to inspection from the time the meeting is convened; and
- b) where an item is added to the agenda later, the revised agenda (where reports are prepared after the summons has been sent out, the designated officer shall make each such report available to the public and publish it on the Council's website as soon as the report is completed and sent to Councillors) will be published on the Council's website and open to inspection from the time the item was added to the agenda.

## **6.0 Items of Business**

**6.1 An item of business may not be considered at a meeting unless either:**

- a) a copy of the agenda including the item (or a copy of the item) is published on the Council's website and open to inspection by a member of the public for at least five clear working days before the meeting or, where the meeting is convened at shorter notice, from the time the meeting is convened; or
- b) by reason of special circumstances, which shall be specified in the minutes, the Chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency.

**6.2** "Special circumstances" justifying an item being considered as a matter of urgency will relate to both why the decision could not be made by calling a meeting allowing the proper time for inspection as well as why the item or report could not have been available for five clear days before the meeting.

**6.3** Where the item of business relates to a Key Decision, Rules 16, 17 and 18 also apply.

**7.0 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 Democratic Services Manager thinks fit, any other documents supplied to Councillors in connection with an item to any person on payment of a charge for postage and any other costs or electronically at no charge. A reasonable number of copies of the agenda and reports will be made available at the meeting.

**8.0 Access to Minutes etc after the Meeting**

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

- (a) the minutes of the meeting or records of decisions taken, together with reasons, for Cabinet decisions, 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.

## **9.0 Background Papers**

### **9.1 List of background papers**

The proper officer will set out in every report that is open to public inspection a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

(a) disclose any facts or matters on which the report or an important part of the report is based; and

(b) 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 11) and in respect of Cabinet reports, the advice of a political assistant.

### **9.2 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. As far as Cabinet decisions are concerned, the Council will also publish on its website any background papers that are included in the list.

## **10.0 Public's Rights**

A copy of the Access to Information Procedure Rules, which sets out the public's rights to attend meetings and to inspect and copy documents, shall be kept at and available to the public at the Council's main offices for inspection. A member of the public shall be entitled to a copy of these Rules on request.

## **11.0 Exclusion of Access by the Public to Meetings**

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

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

### **11.2 Exempt information – discretion to exclude public**

Subject to Article 6 of the Human Rights Act 1998 (right to a fair trial) 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. Any resolution to exclude the public due to disclosure of exempt information must identify the proceedings, or the part of the proceedings to which it applies, and state, by reference to the

descriptions in Schedule 12A to the Local Government Act 1972 (access to information: exempt information), the description of exempt information giving rise to the exclusion of the public.

### **11.3 Meaning of confidential information**

Confidential information means information given to the Council by a Government department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.

### **11.4 Meaning of exempt information**

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

N.B. The full rules are set out in Part V and Schedule 12A Local Government Act 1972 (as Amended)

1. Information relating to any individual.

Information is exempt if and so long as in all the circumstances of the case, the public interests in maintaining the exemption outweighs the public interest in disclosing the interests.

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2. Information that is likely to reveal the identity of an individual.

Information is exempt if and so long as in all the circumstances of the case, the public interests in maintaining the exemption outweighs the public interest in disclosing the interests.

3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).

a) Information is exempt if and so long

as in all the circumstances of the case, the public interests in maintaining the exemption outweighs the public interest in disclosing the interests;

b) Information is not exempt if it is required to be registered under:

Companies Act 1985;

Friendly Societies Acts 1974 and 1992;

Industrial and Provident Societies Acts 1965 to 1978;

Building Societies Act 1986;

Charities Act 1993.

c) The rights of access by Members are contained in Section 1007 of the 1972 Act.

4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the Authority. Information is exempt if and so long as in all the circumstances of the case, the public interests in maintaining the exemption outweighs the public interest in disclosing the interests.

5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Information is exempt if and so long as in all the circumstances of the case, the

public interests in maintaining the exemption outweighs the public interest in disclosing the interests.

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.

Information is exempt if and so long as in all the circumstances of the case, the public interests in maintaining the exemption outweighs the public interest in disclosing the interests.

7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

Information is exempt if and so long as in all the circumstances of the case, the public interests in maintaining the exemption outweighs the public interest in disclosing the interests.

Information falling within any of the paragraphs above 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 Country Planning General Regulations 1992.

### **Disclosure by Members**

Members will not make public Confidential or Exempt Information without the consent of the Authority or divulge information given in confidence to anyone other than a Member or Officer entitled to know it.

## **12.0 Exclusion of Access by the Public to Reports**

If the proper officer thinks fit, the Council may exclude access by the public to a report or a part of a report which in his or her opinion relates to an item during which, in accordance with Rule 11, the meeting is likely not to be open to the public. Every copy of such report, or part of report, as the case may be, must be marked, "not for publication" and there must be stated on every copy of the whole or the part of the report:

- (a) that it contains confidential information; or
- (b) by reference to the descriptions in Schedule 12A to the Local Government Act 1972, the description of exempt information by virtue of which the decision making body discharging the executive function are likely to exclude the public during the item to which the report relates.

## **13.0 Review of confidential / exempt information**

13.1 A confidential / exempt report or part of report will be reviewed by the Monitoring Officer one year after the ultimate decision-taking body has considered it. If, upon that review, a report or part of report is still treated as exempt, the report or part of report will be subject to a further similar review on the third anniversary of the first review.

13.2 The reviews referred to in paragraph 13.1 above do not apply to decisions taken by the Standards Committee or its sub-committees.

13.3 The Monitoring Officer will publish his decision on each review, giving reasons for such decision.

13.4 The Monitoring Officer will submit to the Council an annual report containing details of decisions reviewed, such report to include the reasons wherever it is considered not possible to release the report/information to the public.

## **14.0 Reporting of proceedings at Cabinet meetings**

While a Cabinet meeting is open to the public, any person attending the meeting for the purpose of reporting the proceedings is, so far as practicable, to be afforded reasonable facilities for taking their report.

## **15.0 Procedure prior to a Private Meeting of Cabinet**

15.1 Subject to 15.2, a decision by Cabinet to hold a meeting, or part of a meeting in private may not be taken unless:

(a) a notice has been published in the Forward Plan and Exempt Cabinet Report List at least 28 clear days before the meeting in question and made available on the council's website and at Thanet Gateway Plus, Cecil Street, Margate. This notice is to include a statement of the reasons why the meeting, or part of the meeting, is held in private;

(c) a further notice will be published on the Council's website and at Thanet Gateway Plus, Cecil Street, Margate at least five clear working days before the meeting; such notice to include:

- i. a statement of the reasons for the meeting to be held in private;
- ii. details of any representations received by the Cabinet not later than 14 calendar days in advance of the meeting about why the meeting should be open to the public; and
- iii. a statement of its response to any such representations, which will be decided upon by the Leader in consultation with the Monitoring Officer.

15.2 Where the date by which a Cabinet meeting must be held makes compliance with Rule 15.1 impracticable, the meeting, or part of the meeting, may only be held in private where Cabinet has obtained agreement from:

- a) the Chairman of the relevant Overview and Scrutiny Committee; or
- b) if there is no such person, or if the Chairman of the relevant Overview and Scrutiny Committee is unable to act, the Chairman of Council; or
- c) where there is no Chairman of either the relevant Overview and Scrutiny Committee or of Council, the Vice-Chairman of Council.

### **16.0 Publicity in connection with key decisions**

Subject to Rule 18 (general exception) and Rule 19 (special urgency), a key decision may not be taken unless:

(a) a notice has been published in the Forward Plan and Exempt Cabinet Report List in connection with the matter in question;

(b) the notice referred to at sub paragraph (a) has been available for public inspection at least 28 days at Thanet Gateway Plus, Cecil Street, Margate and on the Council's website;

(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).

### **17.0 The Forward Plan and Exempt Cabinet Report List**



### **17.1 Contents of forward plan and exempt cabinet report list**

The Forward Plan and Exempt Cabinet Report List will contain matters which will be the subject of a key decision to be taken by the Cabinet, a Committee of the Cabinet, individual members of the Cabinet, officers, area Committees or under joint arrangements in the course of the discharge of an Executive function It will provide the following details:

- (a) that a key decision is to be made on behalf of the Council;
- (b) the matter in respect of which a decision is to be made;
- (c) where the decision maker is an individual, his/her name and title, if any and where the decision maker is a body, its name and a list of its members;
- (d) the date on which, or the period within which, the decision is to be made;
- (e) a list of the documents submitted to the decision maker for consideration in relation to the matter in respect of which the key decision is to be made;
- (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 those documents (if any) as they become available.

The Forward Plan and Exempt Cabinet Report List must be published on the Council's website and at Thanet Gateway at least 28 clear days before a key decision is made.

Where in relation to any matter, the public may be excluded under Rule 11 from the meeting at which the matter is to be discussed, or the documents relating to the decision need not by virtue of Rule 12 be disclosed to the public, the forward plan and exempt cabinet report list must contain particulars of the matter but may not contain any confidential, exempt information or particulars of the advice of a political adviser or assistant.

### **18.0 General Exception**

18.1 Subject to Rule 19 (special urgency), where the publication of the intention to make a key decision under Rule 16 is impracticable, that decision may only be made:

- (a) where the proper officer has informed the Chairman of the relevant Overview and Scrutiny Committee, or, if there is no such person, each member of the Overview and Scrutiny Committee by notice in writing, of the matter about which the decision is to be made;
- (b) where the proper officer has made available at Thanet Gateway Plus, Cecil

Street, Margate for inspection by the public and published on its website a copy of the notice given pursuant to sub-paragraph (a); and

(c) after five clear working days have elapsed following the day on which the proper officer made available the notice referred to in sub-paragraph (b).

18.2 Where Rule 18.1 applies to any matter, Rule 16 need not be complied with in relation to that matter.

18.3 As soon as reasonably practicable after the proper officer has complied with Rule 18.1, he or she must make available at Thanet Gateway Plus, Cecil Street, Margate a notice setting out the reasons why compliance with Rule 16 is impracticable and publish that notice on the Council's website.

### **19.0 Special Urgency**

19.1 Where the date by which a key decision must be made makes compliance with Rule 18 impracticable, the decision may only be made where the decision maker has obtained agreement from

(a) the Chairman of the Overview and Scrutiny Committee, or

(b) if there is no such person, or if the chairman of the Overview and Scrutiny Committee is unable to act, the chairman of Council; or

(c) where there is no Chairman of either the relevant Overview and Scrutiny Committee or Council, the Vice-Chairman of Council that the making of the decision is urgent and cannot reasonably be deferred.

19.2 As soon as reasonably practicable after the decision maker has obtained agreement under Rule 19.1 that the making of the decision is urgent and cannot reasonably be deferred, the decision maker must make available at Thanet Gateway Plus, Cecil Street, Margate a notice setting out the reasons that the meeting is urgent and cannot reasonably be deferred and publish that notice on the Council's website.

### **19.3 Provision of urgent reports to Ward Members**

19.3.1 In cases where the content of the report on the urgent decision is not exempt within the meaning of Schedule 12A of the Local Government Act 2000, Ward Members will be notified of the decision as soon as the decision is taken;

19.3.2 In cases where the content of the report on the urgent decision is exempt within the meaning of Schedule 12A of the Local Government Act 2000 and that exemption does not relate to commercial or contractual matters, Ward Members will be notified of the decision as soon as the decision has been taken, but without disclosure of the exempt matters (for example, if the exemption relates to the identification of individual or personal matters, those details will not be disclosed until after the decision has been implemented);

19.3.3 In cases where the content of the report on the urgent decision is exempt within the meaning of Schedule 12A of the Local Government Act 2000 and that exemption relates to commercial or contractual matters, Ward Members will be notified of the decision as soon as the decision has been implemented.

## **20.0 Report to Council**

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

Where an executive decision has been made and:

- (a) was not treated as being a key decision; and
- (b) a relevant Overview and Scrutiny Committee are of the opinion that the decision should have been treated as a key decision, that Overview and Scrutiny Committee may require the executive which is responsible for the decision to submit a report to Council within such reasonable period as the committee may specify.

The power to require a report rests with the Committee, but is also delegated to the proper officer, who shall require such a report on behalf of the Committee when so requested by the Chairman or any 5 members. Alternatively the requirement may be raised by resolution passed at a meeting of the relevant Overview and Scrutiny Committee.

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

The Cabinet will prepare a report under Rule 20.1 for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 5 working 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 must include details of:

- (a) the decision and reasons for the decision;
- (b) the decision maker by which the decision was made; and
- (c) if the Cabinet are of the opinion that the decision was not a key decision, the reasons for that opinion.

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

The Leader of the Council will submit to the Council quarterly reports containing details of each executive decision taken during the period since the last report was submitted to the Council where the making of the decision was agreed as urgent in accordance with Rule 19 (special urgency).

### **21.0 Recording of executive decisions made at meetings**

As soon as reasonably practicable after any meeting of a decision-making body at which an executive decision was made, the proper officer, or if the proper officer was not present at the meeting, the person presiding, must ensure that a written statement is produced and published on the council's website for every executive decision made which includes:

- (a) a record of the decision including the date it was made;
- (b) a record of the reasons for the decision;
- (c) details of any alternative options considered and rejected by the decision-making body at the meeting at which the decision was made;
- (d) a record of any conflict of interest relating to the matter decided which is declared by any member of the decision-making body which made the decisions; and
- (e) in respect of any declared conflict of interest, a note of dispensation granted by the Council's Head of Paid Service, following consultation with the Monitoring Officer.

### **22.0 Recording of executive decisions made by Individual Members of the Cabinet and Officers**

#### **22.1 Recording of executive decisions made by Individual Members of the Cabinet**

As soon as reasonably practicable after an Individual Member has made an executive decision, that Member must produce or instruct the proper officer to produce and publish on the Council's website a written statement of that executive decision which includes :

- (a) a record of the decision including the date it was made;
- (b) a record of the reasons for the decision;
- (c) details of any alternative options considered and rejected by the member when making the decision;
- (d) a record of any conflict of interest declared by any executive member who is consulted by the member which relates to the decision; and
- (e) in respect of any declared conflict of interest, a note of any dispensation granted by the Council's Head of Paid Service, following consultation with the Monitoring Officer.

The provisions of Rules 7 and 8 (inspection of documents after meetings) will also apply to the making of decisions by individual members of the Cabinet. This does not require the disclosure of exempt or confidential information or advice from a political assistant.

## **22.2 Recording of executive decisions made by Officers**

As soon as reasonably practicable after an officer has made a decision which is an executive decision, the officer must produce and publish on the Council's website a written statement which must include:

- (a) a record of the decision including the date it was made;
- (b) a record of the reasons for the decision;
- (c) details of any alternative options considered and rejected by the officer when making the decision;
- (d) a record of any conflict of interest declared by an Executive Member who is consulted by the officer which relates to the decision; and
- (e) in respect of any declared conflict of interest, a note of any dispensation granted by the Council's Head of Paid Service, following consultation with the Monitoring Officer.

## **22.3 Reports intended to be taken into account**

When an individual Cabinet Member is taking a key decision they must make that decision considering a report from the relevant officer and that decision must not be made until 5 clear working days after receipt of that report.

When an officer is taking a key decision they must make that decision considering a report and that decision must not be made until 5 clear working days after receipt of that report.

## **23.0 Rights of access to documents for members of the Overview and Scrutiny Committee**

23.1 Subject to Rule 23.3 below, an Overview and Scrutiny Committee will be entitled to a copy of any document which is in the possession or under the 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 that has been made by an individual member of the Cabinet in accordance with executive arrangements; or
- (c) any decision that has been made by an officer of the Council in accordance with executive arrangements.

23.2 Subject to Rule 23.3 below, where a member of an Overview and Scrutiny Committee requests a document which falls within Rule 23.1, the Cabinet must provide that document as soon as reasonably practicable and in any case no later than 10 clear days after the Cabinet receives the request.

### **23.3 Limit on rights**

No member of an Overview and Scrutiny Committee is entitled to a copy:

(a) of any such document or part of a document as contains exempt or confidential information unless that information is relevant to:

- i) an action or decision that that member is reviewing or scrutinising
- 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

Where the Cabinet determines that a member of an Overview and Scrutiny Committee is not entitled to a copy of a document or part of any such document for a reason set out in Rule 22.1 or 22.3, the Cabinet Leader in conjunction with the Monitoring Officer will write to all Members of the Overview and Scrutiny Committee, setting out the reasons for that decision.

### **23.4 Additional rights**

The rights described in Rule 23 and 24.1 shall apply also in relation to non-Executive functions dealt with by the Council and any regulatory or other Committees and Sub- Committees.

### **24.0 Additional Rights of Access to documents for Members of the Council**

24.1 Subject to Rules 24.5 and 24.6, any document which:

- (a) is in the possession or under the control of the Cabinet; and
  - (b) contains material relating to any business to be transacted at a public meeting,
- must be available for inspection by any Member of the Council.

24.2 Any document which is required by Rule 24.1 to be available for inspection by any Member of Council must be available for such 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 under Rule 24.1 in relation to that item, must be available for inspection when the item is added to the agenda.

24.3 Subject to Rules 24.5 and 24.6, any document which:

(a) is in the possession or under the control of the Cabinet; and

(b) contains any material relating to:

- i. any business transacted at a private meeting or part of a meeting held in private;
  - 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 of the Council when the meeting concludes or where an executive decision is made by an Individual Member or an Officer immediately after the decision has been made.

24.4 Any document which is required by Rule 24.3 to be available for inspection by any Member of Council must be available for such inspection, in any event, within 24 hours of the conclusion of the meeting or the decision being made, as the case may be.

24.5 Rules 24.1 and 24.3 do not require a document to be available for inspection if it appears to the proper officer that it discloses exempt information of a description falling within Part 1 of Schedule 12A to the Local Government Act 1972 (descriptions of exempt information: England).

24.6 Notwithstanding Rule 24.5, Rules 24.1 and 24.3 do require the document to be available for inspection if the information is information of a description for the time being falling within:

(a) paragraph 3 of Schedule 12A to the Local Government Act 1972 (except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract); or

(b) paragraph 6 of Schedule 12A to the Local Government Act 1972.

24.7 Where it appears to the proper officer that compliance with Rules 24.1 or 24.3 in relation to a document or part of a document would involve the disclosure of advice provided by a political adviser or assistant, that paragraph will not apply to that document or part.

24.8 The rights conferred by Rules 24.1 and 24.3 are in addition to any other rights that a member of a local authority may have.

#### **24.9 Agendas and Reports**

All members of the Council entitled, on request, to copies of all agenda and reports when published whether relating to Executive or non-Executive functions.