

## 1. **Access to Information Procedure Rules**

### **Overview**

This part of the Constitution describes the legal rights that members of the public have to attend formal Council meetings. It describes the rules on publishing agendas, reports and background documents relating to items on the agenda. Rules on recording decisions made by Council Officers are also included.

Councillors have additional rights to access information and these are described later in this part of the Constitution.

As well as the rights described here there are many other ways of obtaining information from the Council. Much information is available on the Council's website and particularly the transparency pages <https://www.york.gov.uk/AllowancesAndExpenses> where information can be found including details of all Council expenditure, Members' remuneration and expenses and payments to senior staff.

In addition to the rights described here there are other rights to information including those set out in the Data Protection Act 1998, the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Accounts and Audit (England) Regulations 2011.

### 1.1 **Scope**

These rules:

- 1.1.1 Apply to all meetings of the Council, the, Executive, Policy and Scrutiny Committees, the Health and Well Being Board, the Joint Standards Committee, and Regulatory Committees.
- 1.1.2 Set out arrangements for the recording of decisions made by individual Executive Members or by Officers.
- 1.1.3 Describe additional rights to information which apply to Councillors in their official capacity

## 1.2 **Rights to Attend Meetings**

Members of the public have a right to attend any meeting covered by these rules. There are limited exceptions where the Council is considering confidential or exempt information. These terms are explained below.

## 1.3 **Notices of Meeting**

- (a) The Council will normally give at least five clear days' notice of any meeting by posting details of the meeting at West Offices, Station Rise, York and on its website. In calculating "five clear days" the Council does not include the day of publication, the day of the meeting, weekends or bank holidays.
- (b) Exceptionally a meeting may be convened at shorter notice. In that case notice of the meeting will be given once it has been convened.

## 1.4 **Access to Agenda and Reports Before the Meeting**

- 1.4.1 The Council will make copies of the agenda for a meeting and related reports open to the public available for inspection at West Offices, Station Rise, York and on its website at least five clear days before the meeting.
- 1.4.2 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.
- 1.4.3 No document will be available for public inspection until it has been made available to Councillors.
- 1.4.4 If the Monitoring Officer or in his/ her absence the Head of Civic & Democratic Services thinks fit, the Council may decide not to make available for inspection reports or part of reports which, in his or her opinion, relate to items during which the meeting is likely not to be open to the public.

## 1.5 **Supply of Copies**

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

- 1.5.1 any agenda and reports which are open to public inspection;
- 1.5.2 any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- 1.5.3 if the Monitoring Officer or in his/ her absence the Head of Civic & Democratic Services thinks fit, copies of any other documents supplied to Councillors in connection with an item

## 1.6 **Access to Minutes etc after the Meeting**

The Council will make available either electronic or hard copies of the following for a period of six years after the date of a meeting:

- 1.6.1 the minutes of the meeting or record of decisions taken by the Executive. These will not include any part of the minutes when the meeting was not open to the public because exempt or confidential information was being considered;
- 1.6.2 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;
- 1.6.3 the agenda for the meeting; and
- 1.6.4 reports relating to items when the meeting was open to the public.

## 1.7 **Background Papers**

### 1.7.1 List of Background Papers

An Officer preparing a report for a meeting will set out in the report a list of any background papers or confirm that there are none. A background paper is a document relating to the

subject matter of the report which in the opinion of the relevant Officer:

- (a) discloses any facts or matters on which the report or an important part of the report is based; and
- (b) which has been relied on to a material extent in preparing the report.

It does not include published works or those which disclose exempt or confidential information as defined in Rule ~~1.81.8~~1.8 nor, in respect of executive decisions, does this include the advice of a political adviser, or any draft report or document

#### 1.7.2 Public Inspection of Background Papers

When the Council publishes a report for a meeting it will, also make available for inspection a copy of each background paper. In the case of an Executive meeting the background paper must also be published on the Council's website. Background papers will remain available for inspection for at least four years from the date of the decision.

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

#### 1.8.1 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.

#### 1.8.2 Meaning of Confidential Information

“Confidential information” for these purposes has a particular definition. It 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.

#### 1.8.3 Exempt Information – Discretion to Exclude Public

- (a) 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.
- (b) 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 [of the Human Rights Act 1998](#).
- (c) The decision as to whether or not to exclude the public is made at the meeting by the members of the relevant decision making or scrutiny body.

#### 1.8.4 Meaning of Exempt Information

Exempt information means information which falls within one or more of the following seven categories and meets any condition set out below in relation to that category:

No.	Category of Exempt Information	Condition
1.	Information relating to any individual.	Public interest test applies (see below). 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

No.	Category of Exempt Information	Condition
2.	Information which is likely to reveal the identity of an individual.	Public interest test applies (see below). 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
3.	Information relating to the financial or business affairs of any particular person (including the authority holding that information).  <i>Note: the word "person" refers to a "legal person" so includes companies, Councils etc."</i>	Information falling within paragraph 3 is not exempt information by virtue of that paragraph if it is required to be registered under: <ul style="list-style-type: none"> <li>• The Companies Acts;</li> <li>• The Friendly Societies Act 1974;</li> <li>• The Friendly Societies Act 1992;</li> <li>• The Co-operative and Community Benefits Act 2014;</li> <li>• The Building Societies Act 1986; or</li> <li>• The Charities Act</li> </ul>

No.	Category of Exempt Information	Condition
		<p>2011.</p> <p>Public interest test applies (see below).</p> <p>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</p>
4.	<p>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.</p>	<p>Public interest test applies (see below).</p> <p>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</p>
5.	<p>Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>	<p>Public interest test applies (see below).</p> <p>Information is not exempt information if it relates to proposed development for which</p>

No.	Category of Exempt Information	Condition
		the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992
6.	<p>Information which reveals that the authority proposes:</p> <ul style="list-style-type: none"> <li>• to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</li> <li>• to make an order or direction under any enactment.</li> </ul>	<p>Public interest test applies (see below). 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</p>
7.	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	<p>Public interest test applies (see below). 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</p>



No.	Category of Exempt Information	Condition
		Regulations 1992

## 1.9 **Public Interest Test**

### 1.9.1 Information which:

- (a) falls within any of paragraphs 1 to 7 above; and
- (b) is not prevented from being exempt by virtue of the specific conditions described above relating to the Council's own planning applications and registration under other legislation,

is only exempt information if it meets a public interest test.

1.9.2 The public interest test says that information can only be exempt 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.

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

1.10.1 The Council aims to prepare reports in such a way that as much information as possible is made public. Where, in the public interest, information has to be excluded from public access, Officers must consider whether that information can be placed in a separate annex allowing the main report to be published.

1.10.2 Any exempt report or part of a report will be marked "Not for Publication", together with the category of information likely to be disclosed.

## 1.11 **The Forward Plan**

### 1.11.1 Purpose of the Forward Plan

- a) The Forward Plan gives advance notice of "key decisions" which are to be made by Executive. If

the Leader or Chief Executive intends to make a key decision (which is only permitted in a case of urgency) that decision must also be recorded in the Forward Plan before the decision is taken.

- b) The Council also aims to include all “non key decisions” to be made by Executive or by individual Executive Members in the Forward Plan.
- c) Unless urgency rules apply a “key decision” cannot be taken unless the proposed decision has been included on a published forward plan for at least 28 clear days. That means calendar days but the date of publication and the date of the decision are not included.
- d) The Council aims to give the same 28 days clear notice of non key decisions. Exceptionally this may not be possible and, if a satisfactory reason is given, a non key decision may be added to the the Forward Plan at shorter notice but before the decision is taken.

#### 1.11.2 Period of Forward Plan

The Forward Plan will be prepared by the Head of Civic and Democratic Services to cover a period of four months. An updated plan will usually be published weekly but items may be added to the plan where the Head of Civic and Democratic Services considers that to be appropriate.

#### 1.11.3 Contents of the Forward Plan

The Forward Plan will:

- (a) describe the matter in respect of which a decision is to be made;
- (b) identify whether the Council consider that the decision to be made is a key or non-key decision;

- (c) where the decision maker is an individual, give that individual's name, and title if any and, where the decision maker is the Executive, include a list of its members;
- (d) include the date on which, or the period within which, the decision is to be made;
- (e) include 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) give the address from which copies of, or extracts from, any document listed is available. This is subject to any restrictions on releasing that information;
- (g) advise that other relevant documents may be submitted to the decision maker; and
- (h) state the procedure for requesting details of those documents (if any) as they become available.

## 1.12 **Key Decisions**

### 1.12.1 Definition

A key decision is an executive decision which is likely:

- (a) to result in the Council incurring expenditure, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or
- (b) to be significant in terms of its effects on communities living or working in the area.

### 1.12.2 Financial significance

For the purposes of further defining a key decision the Council describes savings or expenditure as significant if they are:

- (a) equal to or greater than £500,000 or
- (b) equal to or greater than £100,000 where the savings or expenditure exceeds 10% of the budget for the service.

Expenditure in excess of the above levels will not constitute a key decision if it is made:

- (a) as part of the implementation of a decision which itself was a key decision e.g. the award of a contract *or*
- (b) where the expenditure is routine expenditure as described in the Contract procedure rules.

### 1.13 **Urgency and Special Urgency Rules**

1.13.1 A key decision which has not been included in the published Forward Plan for at least 28 clear days cannot be taken unless either the urgency or special urgency rules apply.

#### 1.13.2 Urgency Rules

If it is impracticable to include a proposed key decision in the Forward Plan for the required period, that decision may still be taken if:

- (a) the Head of Civic and Democratic Services has given the Chair of the relevant overview and scrutiny committee written notice, of the matter about which the decision is to be made;

(b) a copy of that notice has been made available for inspection at the Council offices and published on the Council's website;

(c) the decision is made after five clear days following the notice referred to in sub-paragraph (b) being made available.

1.13.3 The Head of Civic and Democratic Services must also make available at the Council offices and publish on the Council's website a notice setting out the reasons why it is impracticable to comply with the usual forward plan rules.

#### 1.13.4 Special Urgency

(a) Where the date by which a key decision must be made means that it is impracticable to comply with the urgency procedures described above these special urgency procedures apply.

(b) A key decision can be taken as a matter of special urgency if either:

(i) the Chair of the relevant overview and scrutiny committee; or

(ii) if there is no such person, or if the Chair of the relevant overview and scrutiny committee is unable to act, the Lord Mayor

agrees that the making of the decision is urgent and cannot reasonably be deferred

1.13.5 Where agreement has been obtained to using the special urgency procedures a notice must be published at the Council offices and on the website setting out the reasons that the meeting is urgent and cannot reasonably be deferred.

1.14 **Record of Decisions of the Executive and Executive Members**

1.14.1 The Decision Record

- (a) A written record will be made of every Executive Decision made by the Executive or by individual Executive Members. These rules will also apply to executive decisions made by any other decision making body which the Council establishes with powers to make Executive Decisions.
- (b) This decision record will include a statement, for each decision, of:
  - (i) the decision made;
  - (ii) the date the decision was made;
  - (iii) the reasons for that decision;
  - (iv) details of any alternative options considered and rejected by the decision maker
  - (v) any conflict of interest declared;
  - (vi) any dispensation granted by the Head of Paid Service;

1.14.2 Preparing the Decision Record

- (a) The Monitoring Officer or his or her representative shall attend any meeting of the Executive or other decision making body and shall, as soon as reasonably practicable after the meeting, produce a decision record.
- (b) Where an individual Executive Member has made any Executive Decision that Member shall as soon as reasonably practicable instruct the Monitoring Officer to produce a decision record.

1.15 **Record of Executive Decisions made by Officers**

- 1.15.1 As soon as reasonably practicable after an officer has made a decision which is an executive decision, the officer must produce 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 any 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 dispensation granted by the relevant local authority's head of paid service; ~~and~~
  - (f) if appropriate, a statement of the reason why the decision is not regarded as a "key decision" as defined in this Constitution.
- 1.15.2 This statement will be made available for inspection at the Council offices and on the website together with a copy of any report considered by the officer and relevant to the decisions. No document is required to be published, however, where it contains confidential or exempt information or the advice of a political assistant.
- 1.15.3 In deciding which decisions constitute executive decisions which must be recorded Officers must comply with guidance issued by the Monitoring Officer

1.16 **Record of other Officer decisions**

1.16.1 This rule covers decisions which are not executive decisions and are made either:

- (a) under an authorisation expressly delegating to the Officer the power to take the specific decision; or
- (b) under a general authorisation to officers (contained in the scheme of delegations). In this case decisions only have to be recorded if the effect of the decision is to—
  - (i) grant a permission or licence;
  - (ii) affect the rights of an individual; or
  - (iii) award a contract or incur expenditure which materially affects the Council's financial position.

1.16.2 As soon as reasonably practicable after an officer has made a decision covered by this rule the officer must prepare a written record including:

- (a) the date the decision was taken;
- (b) details of the decision taken and the reason for it;
- (c) details of alternative options, if any, considered and rejected; ~~and~~
- (d) the name of any member of the Council who has declared a conflict of interest in relation to any decision made under an expressly delegated power relating to the specific decision; and
- (e) if appropriate, a statement of the reason why the decision is not regarded as a "key decision" as defined in this Constitution.

1.16.3 The written record will be made available for inspection at the Council offices and on the website for a minimum



of six years after the date of the decision. The Council will also make available a copy of any background papers which were relied on to a material extent in making the decision. These will be available for a minimum of four years. No document is required to be published, however, where it contains confidential or exempt information

## 1.17 **Members' Additional Rights of Access to Documents**

### 1.17.1 Rights of Access

- (a) All Members are entitled to inspect any document which is in the possession or control of the Council or Executive and which contains material relating to:
  - (i) any business to be transacted at a meeting of the Executive. These documents must be available five clear days before the meeting; or
  - (ii) any decision taken by an individual Member of the Executive or executive decision taken by an Officer. These documents must be available within 24 hours of the decision being taken.
- (b) All Members are also entitled to inspect any document which is in the possession or under the control of the 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. These documents must be available five clear days before the meeting

### 1.17.1 Limit on Rights under this Rule

Members are not entitled to inspect any part of a document that contains:

- (a) confidential information
- (b) advice provided by a political assistant
- (c) exempt information within categories 1,2, 4, 5, 7 and 8 as set out in paragraph 1.8.4 above

- (d) Information relating to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract.

## 1.18 **Additional Rights of Access for Members of Policy and Scrutiny Committees**

### 1.18.1 Rights of Access

A Member of a Policy and Scrutiny Committee is entitled be provided with a copy of any document which is in the possession or under the control of the Executive and which contains material relating to:

any business to be transacted at a meeting of the Executive; or

any decision taken by an individual Member of the Executive or executive decision taken by an Officer.

In each case a copy of the document must be supplied as soon as practicable and within ten clear days of a request for a copy being received.

### 1.18.2 Limitation on Rights

A Member will not be entitled to:

- (a) any part of a document where it contains exempt or confidential information unless that information is relevant to:
- (i) an action or decision that that member is reviewing or scrutinising; or
  - (ii) any review contained in any programme of work of such a committee or of such a committee; or
- (b) of a document or part of a document containing advice provided by a political assistant

### 1.18.3 Other Rights for Councillors to access information

- (a) Members have a common law right to inspect information which it is necessary for them to inspect in order to carry out their functions as a Councillor. The relevant Director will determine whether these rights apply with advice from the Monitoring Officer.
- (b) A Member wishing to exercise these rights must be prepared to justify specifically why the information is needed for them to carry out their functions
- (c) Any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, i.e. in connection with the proper performance of the Member's duties as a Member of the Council.