

## **PART 5D - ACCESS TO INFORMATION PROTOCOL (VERSION 4.0)**

### **1 Purpose of Protocol**

- 1.1 To meet the requirements of both the Local Government Acts of 1972 and 2000 by providing a protocol to ensure that the public is given appropriate access to information about Council decisions, so that anyone can:
- (a) participate in the decision-making process;
  - (b) exercise their rights to have a say about decisions;
  - (c) understand what decisions have been taken, and why;
  - (d) have access to documents supporting decisions.
- 1.2 The spirit of this protocol is that information will be made available to the public unless there is a lawful reason why it cannot be.

### **2 What does the Protocol Apply to?**

- 2.1 All information held or produced by the Council in relation to decisions taken on its behalf by Councillors or officers, in accordance with the Delegation Scheme set out elsewhere in the Constitution. The Council must by law keep this information for 6 years from the date the decision was taken. In terms of this protocol, such information means:
- (a) Reports to Council meetings (see chart of Council Meetings in Part 1 of the Constitution)
  - (b) Agenda for meetings
  - (c) Minutes for meetings
  - (d) Officer Decision Log (for delegated decisions made by officers)
  - (e) Background papers listed in reports
- 2.2 The protocol also applies to:
- (a) The **Forward Plan**. This is basically a list of Cabinet decisions with brief details, which the Council is planning to make over a four month period. Because it is a 4 month plan, it only ever

contains information for the current 4 month period (see appendix 1 for details of what information the Forward Plan should contain, who your forward plan contact is and the process by which it is published).

- (b) **Public Participation**, giving all citizens the right to speak at public meetings.

### 3 Who is the Protocol for?

3.1 **The Public:** to explain how York residents can get information on and have their say about decisions our Councillors and Officers take to run the Council.

3.2 **Councillors:** to help clarify exactly what rights the public have, in relation to the decisions they take and make it easier to advise their constituents.

3.2 **Officers:** to help in understanding public rights in relation to the decisions they make or require from councillors.

### 4 How to Use this Protocol

4.1 It is divided into the following sections and explains what the public is entitled to in relation to each area:

- (a) **Section 1** deals with information relating to decisions made by Councillors at meetings and explains how to obtain that information at various stages in the process.
- (b) **Section 2** deals in a similar way with information relating to decisions made by Council Officers.
- (c) **Section 3** explains how the Council's Public Participation Scheme works.
- (d) **Section 4** deals with equality of access to information.
- (e) **Section 5** summarises the exceptions to the usual public access arrangements.

### 5 Section 1 – Decisions made by Councillors at meetings

#### 5.1 What are they?

5.1.1. Most Council decisions are taken by Councillors at meetings. The issues on which councillors can take decisions are set out clearly in the Council's Delegation Scheme (see Part 3 of the Constitution). Meetings

at which these decisions are taken are normally open to members of the public to attend, and to speak at.

#### 5.2 How to find out what's happening when

##### 5.2.1 Look at the Forward Plan

5.2.1.1 This contains Cabinet and Cabinet Member business for the next 4 months. It's published on or around the 14<sup>th</sup> of every month and must, at the least, contain any key decisions the Council intends to take.

5.2.1.2 Check the West Offices Noticeboard or look at 'Meetings' on the Council website

5.2.1.2 This is where the Council will give at least 'five clear days' notice of any meeting by posting details of the meeting at West Offices, York, YO1 6GA. This notice will contain;

- (a) Date, time, venue of meeting, together with details of who's attending to take any decisions
- (b) Brief details of each item to be discussed at said meeting;

**Note:** "Five clear days" means five working days, not including the day of the notice or the day of the meeting or weekends. There are some exceptions to the 'five day' rule; these are explained in Section 4 of this Protocol.

#### 5.3 How to get even more information?

##### 5.3.1 Get a copy of the reports in which you're interested

5.3.1.1 Provided the reports you want are public ones (see Section 5 for restrictions) you can get copies of any reports for public meetings involving councillors as soon as they are published. These are available from any of the following:-

- (a) West Offices, Station Rise, York
- (b) Online through the Council's website
- (c) From Democratic Services (tel: 01904 –551088)
- (d) From York Explore Library. They can also be accessed online at other public libraries.

#### 5.3.2 **Get a copy of any background papers referred to in reports:**

- 5.3.2.1 (a) Contact the report author directly, whose name and contact details are given at the bottom of the report.
- (b) Online through the Council's website.

**Note:** A small charge may be made for copies of reports, background papers or agenda requested by the public, to recover administration costs.

#### 5.3.3 **Discuss the report or matter in which you are interested with a Council Officer:**

5.3.3.1 If you want to make your views known on an issue as part of the consultation process detailed against the item in which you are interested in the Forward Plan. In this case, contact the person whose name is given in the Forward Plan for this purpose.

5.3.3.2 If you need to seek clarification about some details given in a published report. In this case, contact the report author, whose name/contact details are given at the end of the report.

5.3.3.3 Want more advice about the meeting itself at which the matter you are interested in will be discussed by councillors. In this case, contact Democratic Services, specifically the Democracy Officer, whose name/contact details are given on the published agenda.

#### 5.3.4 **Attending the meeting and Having Your Say**

5.3.4.1 You can attend a meeting to either simply listen to the debate on the matter(s) in which you are interested, or to speak if you are a York citizen or business person. (see Section 3 of this protocol for how to make arrangements to speak at a public meeting.)

#### 5.3.5 **Finding out any Decision taken at Meetings**

5.3.5.1 This can be done by contacting the Democracy Officer who serviced the meeting as they will usually be able to provide brief details verbally of any decision taken, shortly after the meeting. See the relevant agenda for details of the relevant Democracy Officer.

5.3.5.2 Alternatively, look at the published minutes of the meeting - decisions taken at meetings are recorded in the minutes of the meeting. The minutes will also record the reasons for the decisions and any alternative options considered and rejected at the meeting. Minutes will be kept by the Council for a period of six years after the meeting has taken place.

- 5.3.5.3 Minutes are publicly available on the Council website or from Democratic Services (Tel No: 01904 551088) as soon as the agenda for the next meeting of the same group of councillors is published. Please remember until the minutes have been formally approved at the next meeting, they cannot technically be called a correct account of the previous meeting.

**Note:** A small charge may be made for copies of minutes requested by the public, to recover administration costs.

## 6 Section 2 – Decisions Made By Council Officers

### 6.1 What are they?

- 6.1.1 These are the executive decisions on issues which the Council has agreed its officers should be able to deal with. Because Council officers can take these decisions on their own without reporting to Councillors, they do not have to be minuted, but they do have to be recorded on a decision sheet, and listed on the officer decision log within the Committee Management System on the Council website if the decision makers consider them to be exceptionally noteworthy.

### 6.1.2 What's in the Decision Log?

- (a) Details of the issue decided upon
- (b) Date of decision
- (c) Type of decision i.e. 'key / non-key'
- (d) Background information, including reasons for the decision
- (e) Wards affected
- (f) Other options considered and rejected
- (g) Relevant implications associated with decision taken (eg. human resources, IT&T, finance) and the name of the officer who gave notice of the implication
- (h) Details of any consultation undertaken
- (i) Name and contact details of decision taker
- (j) Name of relevant Director for whom the decision was taken

- (k) Details of any conflict of interest declared by any Cabinet Member who was consulted and a record of any dispensation granted by the Chief Executive in respect of this conflict.

A detailed example of the information required within the Officer Decision Log can be viewed on the Council's website (<http://democracy.york.gov.uk/ecCatDisplay.asp?sch=doc&cat=12829&path=0>).

#### 6.1.3 **Getting more information on the decision made**

- 6.1.3.1 Should you require further information on how the decision was reached, the log lists the name of the decision maker and gives their contact details.
- 6.1.3.2 The log entries appear in date order but if the decision date is not known then the log entries can be searched in a variety of ways. For example, it may be helpful to reorganise the log entries to show all the 'key' decisions, or all the decisions with equalities implications, or all the decisions made by a particular officer.
- 6.1.3.3 To help narrow down the search further it is possible to sort the log more than once i.e. all the decisions taken which affect the Guildhall Ward and relate specifically to the Leisure, Culture & Tourism Cabinet Member portfolio area.
- 6.1.3.4 In an effort to track the implementation of any work arising from the decision made, the log also lists the officer / department who is responsible for the work together with their contact details.
- 6.1.3.5 Finally, to show that the work arising from the decision has been completed the officer who originally made the decision will revisit the log to sign it off.

### 7 **Section 3 – Public Participation**

Any York citizen or business person can register to speak at the Council's public meetings provided it is about:

- (a) A specific agenda item being considered at the meeting concerned
- (b) An issue which the meeting concerned is authorised to deal with as set out in the Council's Delegation Scheme (see Part 3 of the Constitution).

#### 7.1 What are the Rules?

- 7.1.1 Anyone wishing to speak at a public meeting should register no later than 5pm on the working day preceding the meeting (see relevant agenda for registration deadlines and contact details). Only the Councillor chairing the meeting has the authority to accept a late registration to speak at a meeting.
- 7.1.2 There is a maximum period of 30 minutes to listen to public speakers and so each person registering to speak is allowed just 3 minutes.
- 7.1.3 Only 1 speaker can speak in favour of and only 1 speaker against a single issue, unless the Councillor chairing the meeting is prepared to make any exceptions.
- 7.1.4 Councillors will listen to each speaker but will not usually make any comments at this stage other than occasionally to ask questions of clarification.
- 7.1.5 If a speaker is attending the meeting to speak about a particular matter which Councillors are considering on that day, the Chair of the meeting will arrange for the relevant item and associated report to be considered early in the meeting, so that the speaker can leave as soon as the debate on that matter has finished. Speakers can, of course, stay for the whole of the remaining public meeting if they wish.

The Public Participation Scheme is intended for York citizens and business people and not specifically employees in relation to issues directly affecting their employment by the Council. There are some instances when it would be appropriate for an employee to speak but **as a resident of the area** e.g. a planning application which affects an employee as a resident because a particular development will impact on the locality in which they live etc. For further advice on this contact the relevant Democracy Officer responsible for the meeting you are interested in.

**Note:** Further information and advice about registering to speak at public meetings of the Council is given in a special leaflet called '[Have Your Say](#)', available on the website or directly from Democratic Services. Contact telephone 01904-551088.

#### 7.2 What to do if you are interested in speaking

- 7.2.1 As soon as the matter in which you are interested appears on a published agenda or comes to your attention, contact the relevant Democracy Officer (see agenda for contact details) and explain that you wish to speak, saying what you wish to speak about. The Democracy Officer will advise from there.

#### 7.3 **Petitions from Members to Council**

7.3.1 There are specific rules which explain how this can be arranged and when it must be arranged by, as set out in Council Standing Orders (see Part 4A of the Constitution). For further advice on this contact Democratic Services.

### 8 **Section 4 – Equality of Access to Information**

#### 8.1 **Accessible Venue**

8.1.1 Meetings will usually be held in a wheelchair accessible venue with an induction hearing loop.

#### 8.2 **Visual and Audio Requirements**

8.2.1 On request, agenda and reports can be made available in a variety of alternative formats:

- (a) large print;
- (b) computer disc or email;
- (c) Braille or audio tape;
- (d) In another language.

8.2.2 Some formats take longer than others. As much notice as possible (at least 48 hours for Braille or audio tape) must be given to the relevant Democracy Officer for the meeting.

#### 8.3 **Translators and Interpreters**

8.3.1 Every effort will be made to find a suitable interpreter (either sign language or foreign language) for citizens who need one and wish to attend a meeting to listen to a particular debate or even to speak at the meeting. At least 48 hours notice must be given to the relevant Democracy Officer if this service is to be provided.

### 9 **Section 5 – Exceptions To The Usual Access Arrangements**

#### 9.1 **Decisions Made under Urgency Procedures**

9.1.1 There are different types of these decisions as follows but because they have arisen urgently, **none of them are subject to the usual five clear days requirement for publication:**

9.1.2 **Key Decisions** (for definition see Part 2, Article 14 of Constitution).

9.1.3 If councillors are required to make a key decision of this nature, there are legal procedures which need to be followed before a meeting can either be convened or the matter can be added onto an already published agenda. Details of these procedures are contained in the Forward Plan Information Sheet (see appendix 2).

9.2 **Being Publicly Accountable for Urgent ‘Key Decisions’**

9.2.1 **Role of Scrutiny Committees**

9.2.1.1 Because one of the requirements under the legal procedures referred to immediately above for an urgent key decision to be considered by councillors is the consent of the appropriate Scrutiny Committee Chairperson, a Scrutiny Committee of the Council can require the Cabinet to submit a report to Council on the matter if it feels a key decision has been taken which:

- (a) Was not included in the Forward Plan; or
- (b) Did not undergo the correct legal procedures for urgent consideration by councillors; or
- (c) Did not receive the appropriate consent of the relevant Scrutiny Committee Chair where required.

9.2.1.2 If it prefers, the Scrutiny Committee can also authorise the Proper Officer (see Part 2, Article 13 of the Constitution) to require a report to Council on the matter, provided the Scrutiny Committee Chair and any 5 of its Members request it. Equally, the relevant Scrutiny Committee can request the report on a resolution to do so at its meeting. Refer to the procedures mentioned above, in Forward Plan Information Sheet, for what should be included in any such report and when it should be produced.

9.2.2 **Quarterly Reports**

9.2.2.1 In the event of any ‘urgent’ key decisions being taken by the Cabinet, the Leader must submit a report on these to the next Council meeting, stating:

- (a) The number of decisions taken; and
- (b) Summarising the key issues and reasons for the decisions.

#### 9.3 Other Urgent Decisions

- 9.3.1 When an urgent decision is required from councillors which is **not** a key decision, before it can be added to the agenda or a Staffing Matters & Urgency Committee can be called, the following steps must be taken:
- (a) If it's business for the Cabinet or a Cabinet Member, it still needs to be added to the Forward Plan. Officers need to contact the relevant Democracy Officer to find out how to do so.
  - (b) A satisfactory reason for the urgency of the matter must be stated in any published report.
  - (c) The relevant Democracy Officer will contact the councillor chairing the relevant meeting who must give approval to add the urgent item onto the published agenda or to convene the meeting.
  - (d) The report on the issue must be published as soon as possible after approval has been given and any agenda required to convene a Staffing Matters & Urgency Committee must be published likewise – report author to liaise with relevant Democracy Officer.

**Note:** City of York Council tries to adhere to the usual 5 'clear days' notice even in urgency cases but rarely there will be naturally exceptional circumstances when this is not possible due to the genuine urgency of the business concerned.

#### 9.4 Decisions Involving Confidential or Exempt Information

Legally, there are 2 different categories of 'restricted' information, which the wider public and press are not necessarily entitled to obtain. These are:

##### 9.4.1 Confidential Information or Documents

9.4.1.1 This relates to information which is either

- (a) given to the Council by a Government Department on terms which forbid its public disclosure; or
- (b) cannot be disclosed by Court Order.

9.4.1.2 This category of information is very rare and will be clearly marked confidential and not for publication. It must remain so.

#### 9.4.2 Exempt Information or Documents

9.4.2.1 This is more common and is information which Council officers consider to be potentially publicly sensitive by virtue of one or more of the reasons listed in the schedule of 'exempt information' (see appendix 3). New exempt categories were introduced on 1 March 2006 as a variation order to Schedule 12A of the 1972 Local Government Act, which concerns access to meetings.

9.4.2.2 It is the stated intention of the Council through this protocol to keep any such 'exempt information' to a minimum. If any such 'exempt information' is necessary, it should be presented in an annex to the main report so that only the annex needs to be withheld from the public and press.

9.4.2.3 Where a Council officer judges, in their professional opinion, that there appears to be some potentially 'exempt information' in a particular report, the following steps will be taken:

- (a) For Cabinet meetings at least 28 clear days notice must be given of the potential for the meeting to be held in private (unless urgency provisions apply). Democratic Services will arrange this. Any representations received will be considered and the Council will publish the response to such representations at least five clear days before the meeting.
- (b) An item will be placed on the agenda identifying the potentially 'exempt information' and inviting councillors to confirm the exclusion of such information or agree instead to its public disclosure;
- (c) Councillors will take a vote at the relevant meeting on whether to exclude the identified information from publication or whether to publicly disclose it.

#### 9.4.3 Exclusion of Information or Documents from Councillors

9.4.3.1 Councillors are not automatically entitled to see potentially exempt information unless they are serving on the meeting which is considering it. Other councillors can see it if they can claim a 'need to know' basis in law. Examples of this would be:

- (a) The issues involved affect their local constituents in their ward;
- (b) The matter is so significant that ultimately all councillors will be called upon to make a decision when they meet at Full Council;

- (c) The information is relevant to an action or decision they are reviewing or scrutinising, or intend to scrutinise.

9.4.3.2 Further advice on this is given in the Member/Officer Relations Protocol in Part 5 of the Constitution.

#### Appendix 1 – Forward Plan Information Sheet

##### What is the Forward Plan?

The Forward Plan is a list of decisions that the Cabinet and individual Cabinet Members are expected to take over the coming 4 month period. The Forward Plan is published on the Council's website on or around the 14<sup>th</sup> of each month.

##### What information is available on the Forward Plan?

- information on the type of decision to be taken e.g. Key Decision (see Part 2 of the constitution – 4.1)
- who will be taking the decision e.g. The Cabinet, Cabinet Member
- details of any consultation taking place and who to contact should you wish to comment
- the name of the lead officer responsible for the item and the report author
- associated documents relating to individual items on the plan e.g. reports, annexes and background papers where applicable

##### Who produces the Forward Plan?

Forward Plan contacts based in each of the Council's directorates input the information and Democratic Services review the information (to ensure legal requirements/corporate standards are met) before publishing the plan each month.

##### Forward Plan Contacts

A list of Forward Plan contacts is available on the Council's website (<http://democracy.york.gov.uk/ecCatDisplay.asp?sch=doc&cat=12829&path=0>).

##### Including information on the Forward Plan

As a general rule Democratic Services will not accept submission of items for inclusion on Cabinet or Cabinet Member agendas if they are not on the Forward Plan.

Specifically, details of any key decisions, which the Cabinet or Cabinet Members intend to take, must appear on the Forward Plan at least 28 clear days before any such decision is taken. Where this is impracticable, a notice of the item must be made available to the public at the offices of the Council 5 clear days before any such decision is taken. Otherwise the decision cannot be taken unless there are exceptional circumstances under which special urgency procedures allow an item to be added and considered at short notice (please see separate heading 'Applying Special Urgency Procedures').

Items for consideration by the Cabinet or the relevant Cabinet Member should be submitted to the relevant Forward Plan Contact (see list above) taking care to include the following information:

- the item title (the use of abbreviations or acronyms in the title or description are discouraged - see report writing protocol)
- a brief description of the item for consideration
- which meeting will consider the item and the date of that meeting
- the lead officer responsible and the report author
- details of background papers used in the formation of any future report when available
- details of any consultation process including who is to be consulted, how consultation will take place, who to contact, deadlines etc. If no consultation is taking place please state 'not applicable'

#### **Legal Obligations**

The Forward Plan must be published at least 28 clear days before a decision is taken (unless urgency procedures apply).

Exempt information need not be included in a Forward Plan and confidential information cannot be included.

#### **Amending the Published Forward Plan**

Items on the plan, which need to be deferred, should be brought to the attention of the relevant Forward Plan contact giving details of why the deferral is necessary and the reviewed date for the decision.

Items to be removed from the plan should be brought to the attention of the relevant Forward Plan contact with an explanation as to why the item is to be removed.

#### **Applying Special Urgency Procedures**

If an item, which is likely to be a key decision, has not been included on the Forward Plan then the decision may still be taken if:

- the decision is sufficiently urgent that it must take place before publication of the next Forward Plan
- the Chair of a relevant scrutiny committee or if there is no such person, each member of that committee is informed in writing with details of the urgent item
- notice of the urgent item is made available to the public at the offices of the Council as soon as is practicable

#### Failure to Apply Forward Plan Procedures

In the event that a report is accepted onto an agenda without first appearing on the Forward Plan either by the usual procedure or the special urgency procedure, a Scrutiny Committee can request that the Cabinet submit a report to the next meeting of Council. The report should give details of:

- the individual or body making the decision,
- details of the decision, and
- if the Leader is of the opinion that it was not a key decision, the reasons for that opinion.

#### Appendix 2

<b>By virtue of paragraph(s) 1 - 7 of Part 1 of Schedule 12A of the Local Government Act 1972.</b>	
<p><b>Paragraph 1</b> Information relating to any individual.</p>	<p><b>Condition:</b> Information is exempt to the extent that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Information is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town &amp; Country Planning General Regulations 1992(a).</p>
<p><b>Paragraph 2</b> Information which is likely to reveal the identity of an individual.</p>	<p><b>Condition:</b> Information is exempt to the extent that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Information is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town &amp; Country Planning General Regulations 1992(a).</p>
<p><b>Paragraph 3</b> Information relating to the financial or business affairs of any particular person (including the authority holding that information)</p>	<p><b>Condition:</b> Information is not exempt if it is required to be registered under-</p> <ul style="list-style-type: none"> <li>• The Companies Act 1985</li> <li>• The Friendly Societies Act 1974</li> <li>• The Friendly Societies Act 1992</li> <li>• The Industrial and Provident Societies Acts 1965 to 1978</li> <li>• The Building Societies Act 1986 (recorded in the public file of any building society, within the meaning of the Act)</li> <li>• The Charities Act 1993</li> </ul> <p>Information is exempt to the extent that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Information is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town &amp; Country Planning General Regulations 1992(a).</p>
<p><b>Paragraph 4</b> 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><b>Condition:</b> Information is exempt to the extent that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Information is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town &amp; Country Planning General Regulations 1992(a).</p>
<p><b>Paragraph 5</b> Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>	<p><b>Condition:</b> Information is exempt to the extent that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Information is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town &amp; Country Planning General Regulations 1992(a).</p>

## The Constitution – Pt 5D

### Access to Information Protocol

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<p><b>Paragraph 6</b> 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><b>Condition:</b> Information is exempt to the extent that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Information is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town &amp; Country Planning General Regulations 1992(a).</p>
<p><b>Paragraph 7</b> Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>	<p><b>Condition:</b> Information is exempt to the extent that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Information is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town &amp; Country Planning General Regulations 1992(a).</p>