

## **ACCESS TO INFORMATION: EXEMPT INFORMATION PROCEDURE RULES**

### **1.0 Scope**

These rules apply to all meetings of the Council, Overview and Scrutiny Committees, Neighbourhood Forums, and Committees of the Council and public meetings of the Executive (together called meetings).

### **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.

### **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 Meetings**

The Council will give at least 5 clear working days notice of any meeting by posting details of meetings at the Town Hall, Watford (the designated office) and publishing notice on the Council's web site [www.watford.gov.uk](http://www.watford.gov.uk).

### **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 5 clear working days before the meeting and available on the Council's website. 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 Monitoring Officer shall make such report available to the public as soon as the report is completed and sent to Councillors).

### **6.0 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;

- c) if the Monitoring Officer thinks fit, copies of any other documents supplied to Councillors and the Mayor in connection with an item to any person on payment of a charge for postage and any other costs

## **7.0 Access to Minutes etc. After the Meeting**

The Council will make available copies of the following for six years after meeting:

- a) the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of the Executive, 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
- d) reports relating to items when the meeting was open to the public.

## **8.0 Background Papers**

### **8.1 List of Background Papers**

The Officer preparing a report will set out in every report 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 10, and in respect of Executive reports, the advice of a political advisor.

### **8.2 Public Inspection of Background Papers**

With regard to Background Papers associated with reports for meeting of the Executive, a copy of every background paper referred to in a report for a meeting of the Executive must be made available for

inspection at the Town Hall and published on the Council's website at the same time the report for the meeting is published.

Background papers that contain Confidential or Exempt Information do not have to be made available for public inspection or published.

With regard to all meetings of the Council. The Council will make available for public inspection for 4 years after the date of the meeting, 1 copy of each of the documents on the list of background papers.

## 9.0 **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 and available to the public at the Town Hall, Watford.

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

### 10.1 **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.

### 10.2 **Exempt Information – Discretion to Exclude Public**

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.

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.

### 10.3 **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.

### 10.4 **Meaning of Exempt Information**

Exempt information means information falling within the following 7 categories

1. Information relating to any individual
2. Information which is likely to reveal the identity of an individual
3. Information relating to the financial or business affairs of any particular person (including the Authority holding that information)
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
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings
6. Information which revealed 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) make an order or direction under any enactment
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime

For the purposes of this Schedule:

Employee means a person employed under a contract of service.

Financial or business affairs includes contemplated, as well as past or current, activities

Labour relations matters means:

- a) any of the matters specified in paragraph (a) – (g) of section 281 (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
- b) any dispute about a matter falling within paragraph (a) above

Qualifications – information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under:

- a) the Companies Act 1985
- b) the Friendly Societies Act 1974
- c) the Friendly Societies Act 1992
- d) the Industrial & Provident Society Acts 1965 – 1978
- e) the Building Societies Act 1986; or
- f) the Charities Act 1993

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 & Country Planning General Regulation 1992

Information which:

- a) falls within any of paragraphs 1-7 and
- b) is not prevented from being exempt by virtue of the qualifications stated above

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

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

If the Monitoring Officer thinks fit, the Council may exclude access by the public to reports which in his/her opinion relate to items during which, in accordance with rule 10, 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.

#### **12.0 Application of Rules to the Executive**

Rules 13-24 apply to the Executive and its Committees. If the Executive or its committees meet to take a key decision, then it must also comply with Rules 1-11 unless Rule 15 (General Exception), or Rule 16 (Special Urgency) apply. A key decision is as defined in Article 13.03 of this Constitution.

### **13.0 Procedure Before Taking Key Decisions**

Subject to Rule 15 (General Exception) and Rule 16 (Special Urgency), a key decision may not be taken unless:

- a) a Document has been published in connection with the matter in question at least 28 clear days before the Key Decision is made.
- b) where the decision is to be taken at a meeting of the Executive or its committees notice has been given in accordance with Rule 4 (Notice of Meetings).

### **14.0 Contents of the Key Decision Document**

The Document will contain matters which the Mayor has reason to believe will be the subject of a key decision to be taken by the Executive, a committee of the Executive, individual members of the Executive, Officers, Neighbourhood Forums or under joint arrangements in the course of the discharge of an Executive function. It will describe the following particulars insofar 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 made
- d) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available
- e) that other documents relevant to those matters may be submitted to the decision maker: and
- f) the procedure for requesting details of those documents (if any) as they become available
- g) a list of the documents submitted to the decision taker for consideration in relation to the matter

The Document must be published at least 28 clear days before the date the Key Decision is made on the Councils website and be available for public inspection at the Town Hall.

### **15.0 General Exception**

If a matter which is likely to be a key decision has not been publicised in accordance with Rule 13, then subject to Rule 16 (Special Urgency) the decision may still be taken if:

- a) the Monitoring Officer has informed the Chair of the Overview and Scrutiny Committee, or if there is no such person, each member of that Committee, in writing by notice of the matter to which the decision is to be made
- b) the Monitoring Officer has made copies of that notice available to the public at the Offices of the Council
- c) at least 5 clear days have elapsed since the Monitoring Officer complied with a) and b)

As soon as reasonably practicable after the Monitoring Officer has complied with a) and b) he/she must publish a notice on the Council's website a notice stating why compliance with Rule 13 is impracticable.

### **16.0 Special Urgency**

If, by virtue of the date by which a decision must be taken, Rule 15 (General Exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the Chair of the body making the decision, obtains the agreement of the Chair of the Overview and Scrutiny Committee, that the taking of the decision cannot be reasonably deferred. If there is no Chair of the Overview and Scrutiny Committee, or if the Chair of the Overview and Scrutiny Committee is unable to act, then the agreement of the Chairman of the Council or, in his/her absence, the Vice Chairman will suffice.

As soon as reasonably practicable after the decision taker has obtained agreement a notice must be published on the Council's website setting out the reasons for the urgency and that it cannot be deferred

### **17.0 Report to Council**

#### **17.1 When Overview and Scrutiny Committee can Require a Report**

If the Overview and Scrutiny Committee thinks that a key decision has been taken which was not treated as a Key Decision the Committee may require the Executive to submit a report to the Council in such reasonable time as the Committee specifies. The power to require a report rests with the Committee, but it is also delegated to the Monitoring Officer who shall require such a report on behalf of the Committee when so requested by the Chair or any 5 members. Alternatively, the requirement may be raised by resolution passed at a meeting of the Overview and Scrutiny Committee.

## **17.2 Executive's Report to Council**

The Executive will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 working days of receipt of the written notice of 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 Mayor is of the opinion that it was not a key decision, the reason for that opinion.

## **17.3 Reports on Special Urgency Decisions**

In any event, the Mayor will submit reports to the Overview and Scrutiny Committee on Executive decisions taken in the circumstances set out in Rule 16 (Special Urgency) taken since the time of any previous report. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

Council will receive an annual report of all decisions taken pursuant to Rules 15 and 16.

## **18.0 Record of Decisions**

- 18.1 After any meeting of the Executive or any of its committees, whether held in public or private, the Monitoring Officer 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, but in any event within 3 working days. The record will include a statement of the reasons for each decision, any alternative options considered and rejected at that meeting, a record of any conflict of interest declared, and any note of dispensation granted.

- 18.2 After any Executive decision made by any individual member or officer under the scheme of delegation, the decision maker will as soon as reasonably practicable, but in any event within 3 working days produce a written record of the decision. The record will include the date of the decision, a statement of reasons for the decision, details of any alternative options considered and rejected by the decision maker, a record of any declared conflict of interest and any dispensation granted.
- 18.3 Where in relation to 18.1 or 18.2 above either the public have been excluded from the meeting, or the decision relates to information that is either Confidential or Exempt Information the record must not include details of such information.

#### **19.0 Notice of Private Meetings of the Executive**

- 19.1 At least 28 clear days before a private meeting of the Executive the Monitoring Officer will publish on the Council's website and make available at the Town Hall a notice of the Executive's intention to hold a private meeting. The notice must contain the reasons why the meeting is to be held in private.
- 19.2 At least 5 clear days before a private meeting the Monitoring Officer will publish on the Council's website and make available at the Town Hall a further notice detailing the reasons for the meeting being held in private and details of any representations received about why the meeting should be open to the public and any response made to those representations.
- 19.3 Where the date by which a meeting must be held makes compliance with 19.1 and/or 19.2 impracticable the meeting may only be held in private where agreement has been sought and obtained from the Chair of Overview and Scrutiny Committee, or if there is no Chair or they are unable to act the Chair of the Council, or where they are unable to act the Vice –chair of the Council.
- 19.4 Where agreement has been obtained under 19.3 a notice must be published on the Council's website and made available at the Town Hall setting out the reasons for the urgency of the meeting.

#### **20.0 Attendance at Private Meetings of the Executive**

- 20.1 a) Notice of private meetings of the Executive and its committees will be served on all members of the Council at the same time as notice is served on members of the Executive.
- b) Where a matter under consideration at a private meeting of the Executive or a committee of it is within the remit of an Overview and Scrutiny Committee/Sub-Committee, the Chair of that Committee or in his/her absence the Vice-Chair may attend that private meeting with the consent of the person presiding and speak (though not speak unless those present agree).
- c) Other Members of the Council may attend a private meeting of the Executive. Members who are not members of the Executive may, with the agreement of a majority of those Executive members present at the meeting, speak at the meeting.
- d) Any Member who attends the meeting who is not a member of the Executive may be required to leave the meeting by the Chair of the meeting, or following a decision taken by all members of the Executive present.
- 20.2 a) The Head of the Paid Service, the Chief Financial Officer and the Monitoring Officer and their nominees are entitled to attend any meeting of the Executive and its Committees. The Executive may not meet unless the Monitoring Officer has complied with these Rules and the law.
- b) A private Executive meeting may only take place in the presence of the Monitoring Officer or his/her nominee with responsibility for recording and publicising the decisions.

The provisions of Rule 18 (Recording and Publicising Decisions) will apply.

## **22.0 Decisions by Individual Members of the Executive and by Officers given Delegated Authority by the Executive or by the Council or any Committee or Sub-Committee or Joint Committee**

### **22.1 Record of Individual Decision**

Within 3 working days of an Executive decision having been taken by an individual member of the Executive or as soon as reasonably practicable

as soon as a decision of an Officer which relates to the grant of a permission or licence, affects the rights of an individual or awards a contract or incurs expenditure that is over the Council's key decision limit, he/she will prepare or instruct the Monitoring Officer to prepare a record of the decision, the statement of the reasons for it and any alternative options considered and rejected. 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 Executive and Officers. This does not require the disclosure of exempt or confidential information, or advice from a Political or Mayor's Assistant.

## **23.0 Overview and Scrutiny Committees' Access to Documents**

### **23.1 Rights to Copies**

Subject to Rule 23.2 below, any member of any Scrutiny Committee (including any Sub-Committees or Task Groups) will be entitled to copies of any document which is in the possession or control of the Executive or its committees, and which contains material relating to:

- a) any business transacted at a public or private meeting of the Executive or its committees
- b) any decision taken by an individual member of the Executive or an Officer exercising delegated authority.

### **23.2 Limit on Rights**

Any member of a Scrutiny Committee (including any Sub-Committees and Task Groups) 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 that they are reviewing or scrutinising or intend to scrutinise
- c) the advice of a Political Advisor or Mayoral Assistant

Where the b) and c) applies a written statement of the reasons for not disclosing that document or part of that document will be given to the relevant Scrutiny Committee

## 24.0 **Additional Rights of Access for Members**

### 24.1 **Material Relating to Previous Business**

All Members will be entitled to inspect any document which is in the possession or under the control of the Executive or its committees and contains material relating to any business previously transacted at a private meeting, or relates to any decision taken by an individual member or officer under delegated powers within 24 hours of the conclusion of the meeting or date the decision was taken unless a) or b) below apply:

- a) it contains confidential information or exempt information falling within Paragraphs 1,2, 4,5,7-9, 11, 12 and 14 of the categories of exempt information
- b) it contains the advice of a Political Advisor or Mayoral Assistant

### 24.2 **Material Relating to Key Decisions**

All Members of the Council will be entitled to inspect any document (except those available in draft form) in the possession or under the control of the Executive or its Committees which relates to any key decision unless Paragraph a) or b) of 24.1 above applies.

### 24.3 **Nature of Rights**

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