

C4. Access to Information Procedure Rules

1. SCOPE

- 1.1. These rules apply to all meetings of the Council, Committees, Panels and Sub-Committees including meetings of the Executive Cabinet and its sub-committees (together called meetings).
- 1.2. Whilst these rules set out the rights of members of the Council and members of the public to (1) attend member meetings and (2) to see Council documents, the statutory schemes are complex and take precedence in the event of any conflict with the rules.

2. ADDITIONAL RIGHTS TO INFORMATION

- 2.1. These Rules do not affect any more specific rights to information given elsewhere in this Constitution or by the law.

3. RIGHTS OF MEMBERS OF THE PUBLIC TO ATTEND AND RECORD MEETINGS

- 3.1. Members of the public may attend all meetings subject only to the exceptions in these Rules and subject to the lawful power to exclude members of the public in order to maintain orderly conduct or to prevent misbehaviour at a meeting, or in the interests of health and safety.
- 3.2. Members of the public attending meetings of the Council and Committees in open session may record the meeting using whatever non-disruptive methods that they consider appropriate, including filming, photographing, audio recording and use of social media.
- 3.3. Anyone filming a meeting is asked to only focus on those actively participating.
- 3.4. Recording of any part of a meeting held in closed session is not permitted.
- 3.5. All attendees should be made aware that they may be filmed or recorded whilst attending a meeting and that attendance at the meeting amounts to consent to this.
- 3.6. The Chairman of the meeting has the discretion to halt any recording for a number of reasons including disruption caused by the filming, recording or its transmission or the nature of the business being conducted.
- 3.7. Questions should be addressed to the Democratic Services Team at committeeservices@maidstone.gov.uk (members of the press should contact the Press Office).

4. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

4.1. 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, or information subject to any other duty of confidentiality which should not be disclosed to the public, would be disclosed.

4.2. Exempt information – discretion to exclude public.

4.2.1. 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 (see below) would be disclosed.

4.2.2. Where a 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, or the person who is the subject of the hearing requests that the matter is determined in private and no other consideration outweighs that request.

4.3. 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 disclosed to the public by Court Order.

4.4. Meaning of Exempt Information.

Exempt Information means information falling within the following categories and not subject to any of the conditions:

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

4.5. **Conditions**

- 4.5.1. C (1) 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 Acts (as defined in section 2 of the Companies Act 2006);
 - (b) the Friendly Societies Act 1974;
 - (c) the Friendly Societies Act 1992;
 - (d) the Co-operative and Community Benefit Societies Act 2014;
 - (e) the Building Societies Act 1986; or
 - (f) the Charities Act 2011.
- 4.5.2. C (2) 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 and Country Planning (General) Regulations 1992.

4.5.3. C (3) Information which—

- (a) (a) falls within any of paragraphs 1 to 7; and
- (b) (b) is not prevented from being exempt by virtue of conditions (1) or (2)
- (c) is exempt information 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.

5. NOTICES OF MEETINGS

- 5.1. The Council will give at least five (5) Clear Days' notice of any meeting by posting details of the meeting at the offices of the Council unless the meeting is called at shorter notice, when details of the meeting will be posted as soon as it is called. This is subject to additional rules in the case of Key Decisions by the ~~Executive Cabinet~~ Cabinet which are referred to at 11 below.

6. RIGHTS OF THE PUBLIC TO ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

- 6.1. The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least five (5) Clear Days before the meeting. 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 Proper Officer shall make each such report available to the public as soon as the report is completed and sent to Members. Agendas and papers may be viewed on the Council's website.

7. RIGHTS OF THE PUBLIC TO SUPPLY OF COPIES

The Council will supply copies of:

- 7.1. Any agenda and reports which are open to public inspection;
- 7.2. Any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- 7.3. If the Proper Officer thinks fit, copies of any other documents supplied to Members in connection with an item
- 7.4. To any person on payment of a charge for postage and any other costs, or electronically without charge.

8. RIGHTS OF THE PUBLIC TO ACCESS TO MINUTES ETC. AFTER THE MEETING

- 8.1. The Council will make available for public inspection copies of the following for six (6) years after a meeting:
 - 8.1.1. the minutes of the meeting or records of decisions taken, together with reasons, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose Exempt Information or Confidential Information or information subject to any other duty of confidentiality;
 - 8.1.2. 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;
- 8.2. the agenda for the meeting; and
- 8.3. reports relating to items when the meeting was open to the public.

9. BACKGROUND PAPERS

- 9.1. The author of a report will set out in every report which is not Confidential Information or Exempt Information or subject to any other duty of confidentiality a list of those documents ("Background Papers") relating to the subject matter of the report and where they can be inspected which in his or her opinion:
 - 9.1.1. Disclose any facts or matters on which the report or an important part of the report is based; and
 - 9.1.2. Which have been relied on to a material extent in preparing the report;
 - 9.1.3. But this does not include published works or those which disclose Exempt or Confidential information or information subject to any other duty of confidentiality.
- 9.2. **Public inspection of Background Papers.**

The Council will make available for public inspection for four years after the date of the meeting a copy of each of the documents on the list of background papers.

10. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

- 10.1. Where reports are likely to contain Exempt or Confidential Information or information subject to any other duty of confidentiality requiring it not to be disclosed, those Officers preparing them shall attempt to structure them in such a manner as to separate such information in sections, appendices or annexes away from key information concerning the matter and any decision to be made.

- 10.2. If the Proper Officer thinks fit, the Council may exclude access by the public to reports, or to parts of reports, which in his or her opinion contain information which, in accordance with Rule 4, the meeting would be likely to enter a closed session in order to discuss. Such reports or appendices will be marked "Not for publication" together with the category of information likely to be disclosed.

11. DECISIONS BY THE EXECUTIVE CABINET

- 11.1. Rules 1–10 apply to the Executive Cabinet and its committees.
- 11.2. Subject to Rule 11.5 (general exception) and Rule 11.6 (special urgency), a Key Decision may not be taken unless: -
- 11.2.1. A Notice of Forthcoming Key Decisions has been published in connection with the matter in question at least 28 clear days before the key decision is made;
- 11.2.2. Where the decision is to be taken at a meeting of the executive Cabinet or its committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).
- 11.3. Contents of Notice of Forthcoming Key Decisions
- 11.3.1. The Notice of Forthcoming Key Decisions will contain matters which will be subject of a key decision to be taken by the Executive Cabinet, a committee or area committee of the executive Cabinet, individual members of the executive Cabinet, officers, or under joint arrangements in the course of the discharge of an executive Cabinet function.
- 11.3.2. It will describe the following particulars in so far as the information is available or might reasonably be obtained:
- (a) The matter in respect of which a key decision is to be made;
 - (b) Where the decision maker is an individual, their name and title, if any and where the decision maker is a body, its name and details of membership;
 - (c) The date on which, or the period within which, the decision will be taken;
 - (d) A list of the documents submitted to the decision maker for consideration in relation to the matter;
 - (e) The address from which, subject to any prohibition or restriction on their disclosure, copies of or extracts from any document listed is available;

- (f) That other documents relevant to those matters may be submitted to the decision maker; and
- (g) The procedure for requesting details of those documents (if any) as they become available. It will also state that a Key Decision is about to be made on behalf of the Council.

11.4. **Publication of Notice of Forthcoming Key Decisions**

At least 28 clear days before a key decision is made, the Notice of Forthcoming Key Decisions referring to that decision must be made available for inspection by the public at the offices of the Council and on the website, this will take the form of a Forward Plan and will include other material decisions in the exercise of [ExecutiveCabinet](#) functions.

11.5. **Urgency**

Where the publication of the intention to make a Key Decision is impracticable, the decision may only be made if:

- 11.5.1. The Proper Officer has given notice to the Chairman of the Overview and Scrutiny Committee, or if there is no such person, each Member on that committee in writing, by notice, of the matter about which the decision is to be made and why compliance with Rule 11.4 is impracticable;
- 11.5.2. The Proper Officer has made a copy of that notice available to the public at the offices of the Council and published it on the website; and
- 11.5.3. At least five (5) clear days have elapsed since the Proper Officer complied with Rules 11.5.1.
- 11.5.4. As soon as reasonably practicable after the Proper Officer has carried out the steps in 11.5.1 and 11.5.2 ~~they~~~~he or she~~ must:
 - (a) Make Available at the Council offices a notice setting out the reasons why compliance with 11.2.1 and 11.3.1 is impracticable
 - (b) Publish that notice on the Council's website.

11.6. **Special Urgency**

- 11.6.1. If by virtue of the date by which a key decision must be taken, Rule 11.5 cannot be followed then the decision can only be taken if the decision maker obtains the agreement of the Chairman of the Overview and Scrutiny Committee or, if they are unable to act, of the Mayor or Deputy Mayor that the making of the decision is urgent and cannot reasonably be deferred.

- 11.6.2. As soon as reasonably practicable after obtaining the above agreement, a notice setting out the reasons that the decision is urgent and cannot reasonably be deferred shall be made available to the public at the offices of the Council and published on the website.

12. JOINT ARRANGEMENTS

- 12.1. If all the members of a joint committee are Members on the ExecutiveCabinet in each of the participating authorities then its access to information regime is the same as that applied to the ExecutiveCabinet of the lead authority.
- 12.2. If the joint committee contains members who are not on the ExecutiveCabinet of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

13. OVERVIEW AND SCRUTINY COMMITTEES ACCESS TO DOCUMENTS

- 13.1. Subject to Rule 13.2 below, Overview and Scrutiny Committee (and its sub-committees) will be entitled to copies of any document which is in the possession or control of the ExecutiveCabinet (or its committees) and which contains material relating to:
- 13.1.1. Any business transacted at a public or private meeting of the ExecutiveCabinet or its committees; or
- 13.1.2. Any decision taken by an individual Cabinet Member~~Member on the Executive~~; or
- 13.1.3. Any decision taken by an officer of the authority exercising an ExecutiveCabinet function.
- 13.2. Limit on rights
- An overview and scrutiny committee will not be entitled to:
- 13.2.1. Any document that is in draft form;
- 13.2.2. Any part of a document that contains Exempt Information or Confidential Information, unless that information is relevant to an action or decision they are reviewing or scrutinising or to any review contained in any programme of work of the committee; or
- 13.2.3. The advice of a political adviser.
- 13.3. Copies of documents requested under this rule must be supplied within 10 clear days of receipt of the request. Where the ExecutiveCabinet 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 it must provide the overview and scrutiny committee with a written statement setting out its reasons for that decision.

14. MEMBERS' RIGHTS TO INSPECT DOCUMENTS AND TAKE COPIES

- 14.1. An elected Member is entitled by virtue of his or her office to have access to all documents in the Council's possession where it contains information which ~~they~~ he/she ~~have~~ has a need to know, and where the need to know is not outweighed by any other legal duties which would normally require the document not to be provided to the Member, such as Data Protection law and confidentiality duties. All members will have any additional rights to access information provided by section 100F of the Local Government Act 1972 and the Local Authorities (~~Executive Cabinet~~ Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- 14.2. All information obtained from an inspection and any copy document received shall be treated as confidential to the Member and shall be for his or her use as a Member of the Council only.

15. Determination

15.1. Any question on the right of a member to access documents shall in the first instance be determined by the Proper Officer. The member shall complete a written declaration setting out why they believe that they have a need to know the information. Where the information is to be provided to a Member meeting, this declaration shall be provided to the Proper Officer at least three clear working days before the meeting at which the material is to be considered.

~~15.1.~~ 15.2. Where the information being provided to a Member meeting is issued urgently (without 5 clear working days notice), and the Member cannot submit the request in accordance with the timeline required in 15.1, the Proper Officer is able to determine the request once received.

~~15.2.~~ 15.3. If the Proper Officer is satisfied that the member has the need to know the information the member will be provided with that information unless the need to know is outweighed by any other legal duties which would normally require the document not to be provided to the Member. If the Proper Officer determines that the member does not have the need to know and is not otherwise entitled to the information, and the information is to be provided to a Member meeting, then the member may raise a request with the member body which is considering the information to which the request relates. That member body will consider the member's request and declaration and the Proper Officer's reasons for declining the request and shall determine whether the Member has a need to know in accessing any part of that meeting held

in closed session or any papers for that meeting. In reaching its decision the member body shall take legal advice from the Monitoring Officer or his/her representative at the meeting. The member body decision will be made at the meeting in private session at the meeting where the information is being considered by it or at the first available meeting after the member's request has been determined by the Proper Officer.

16. Considerations

~~16.1. Provision 3.4 of Chapter A2 provides the circumstances in which Members would be likely to have the need to know information.~~

16.1. Any officer or body with delegated authority to make a decision under this Constitution determining whether a Member has a need to know certain information shall consider that there is likely to be a need to know where: -

(a) The Member sits on the relevant Member body considering a matter to which the information relates, or the proper officer has been notified that the member will be sitting on that body as a substitute when it is to consider the information in questions;

(b) The information relates directly and materially to a matter which affects the Member's role in representing their Ward; or

(c) If a Member has a reasonable based concern for a problem, and it is reasonably necessary for the member to access the information in order that they can properly carry out their duties as a Member, such that they can apply their minds and efforts to shaping decision-making.

16.2. Where the need to know is not outweighed by any other legal duties which would normally require the document not to be provided to the Member, such as data protection and confidentiality issues.

16.3. Members are not entitled to all information held by the Council and there is no right to roving commission or to seek to obtain information for purposes other than those directly related to the Council's functions and their role as a Member. As stated above the need to know is also subject to other legal considerations such as any duties of confidentiality owed by the Council and the law on data protection.

~~16.2, 16.4.~~ Other considerations which must be taken into account in reaching a decision on whether to provide the information to the Member making the request include:

~~16.2.1~~16.4.1. Where the Council has been given information by a Government Department on terms which preclude disclosure to individual Members or information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court;

~~16.2.2~~16.4.2. Where the information or document sought is about an individual or contains personal data and the proposed disclosure would not accord with the principles relating to lawful processing of personal data in Article 5. UK GDPR;

~~16.2.3~~16.4.3. Where the information concerns a matter in which the Member has a Disclosable Pecuniary or other Interest;

~~16.2.4~~16.4.4. Where disclosure is sought for a purpose other than a material purpose connected with the Council's exercise of its functions;

~~16.2.5~~16.4.5. Where disclosure could give rise to a breach of a duty of confidence owed by the Council to a third party; or

~~16.2.6~~16.4.6. Where disclosure could prejudice any tender being carried out by the Council or negotiations between the Council and another party on the terms of a proposed contract.

~~16.3~~16.5. Consideration should be given to other methods of safeguarding information before elected Members are refused access to information and documents. These other methods include: -

~~16.3.1~~16.5.1. Redacting personal and/or commercial data from any document;

~~16.3.2~~16.5.2. Allowing Members to inspect documents at the Council's offices, with or without the ability to make notes, but without taking copies; and

~~16.3.3~~16.5.3. Requiring personal undertakings from Members as to confidentiality before providing information or documents on an individual basis.

17. Monitoring

The Proper Officer shall report annually to the Democracy & General Purposes Committee on the functioning of these Rules in respect of Members' Access to Information, including the number of instances where requests were declined and the rationale for such decisions.