

Access to Information Procedure Rules



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Access to Information Procedure Rules

1. Scope

These Rules apply to all meetings of the Council, the Cabinet (and its committees), area committees (if any) the scrutiny committees, committees, the Standards Committee, the Audit Committee, regulatory committees and all sub-committees thereof (together called meetings).

2. Additional Rights to Information

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

3. Rights to Attend Meetings

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

4. Notices of Meetings

The Council will give at least five clear days' notice of any meeting by posting details of the meeting at the Civic- Offices, 1 Saxon Gate East, Central Milton Keynes, MK9 3EJ (the designated office).

5. Access to Agenda and Reports before the Meeting

- 5.1 The Council will make copies of the agenda and reports open to the public available for inspection at the designated office and on the Council's website at least five clear days before the meeting.
- 5.2 The Director Law and Governance will send a notice and agenda for any meeting to every member of the Council.
- 5.3 Where reports are prepared after the summons has been sent out, the Director Law and Governance shall make each such report available to the public as soon as the report is completed and sent to councillors.
- 5.4 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.

6. Supply of Copies

The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) if the Director Law and Governance thinks fit, copies of any other documents supplied to Councillors in connection with an item to any person on payment of a charge for postage, copying and any other necessary costs for transmission.

7. Access to Minutes etc. after the Meeting

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

- (a) the Minutes of the meeting or records of decisions taken, together with reasons, for all meetings of the Cabinet, excluding any part of the Minutes of proceedings when the meeting was not open to the public because it was considering exempt or confidential information;
- (b) a summary of any proceedings not open to the public where Minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

8. Background Papers

8.1 List of Background Papers

The Director Law and Governance 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).

8.2 Public Inspection of Background Papers

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

9. 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 at and available to the public at the Civic Offices.

10. 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, unless the meeting agrees that the public interest in disclosing the information outweighs the reasons for the information not being 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 furnished to the Council by a Government department upon terms which forbid the disclosure of the information to the public; and information the disclosure of which to the public is prohibited by law or by the order of a court.

10.4 Meaning of Exempt Information

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

Category	Condition
1. Information relating to any individual.	Reports which relate to: <ul style="list-style-type: none">• employees, a former employee, job applicants• occupiers or former occupiers of council accommodation,• applicants or recipients, or former recipients of any service provided by the Council• applicants or recipients or former recipients of any financial assistance provided by the Council• protected informants in relation to civil matters.
2. Information which is likely to reveal the identity of an individual.	Reports where personal data could be revealed indirectly. Names, addresses or telephone numbers can identify individuals.

Category	Condition
<p>3. Unless that information is required to be registered under:</p> <ul style="list-style-type: none"> (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 Industrial & Provident Societies Acts 1965 to 1978 (e) the Building Societies Act 1986; or (f) the Charities Act 2011 <p>Information relating to the financial or business affairs of any particular person (including the authority holding that information).</p>	<ul style="list-style-type: none"> • Financial or business affairs are defined to include contemplated as well as past or current business activities • This exemption covers the financial or business affairs of the Council itself • It covers the financial or business affairs of individuals and companies, charities etc. registered in relation to information required to be registered under the Building Societies Act 1986, means recorded in the public file of any building society (within the meaning of that Act) • This covers reports about contracts and negotiations for the acquisition/disposal of property or supply of goods or services, the identity of the Council or any other person offering any particular tender for a contract for the supply of goods or services and the making of grants to external organisations
<p>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.</p>	<ul style="list-style-type: none"> • Labour relations means matters which may be the subject of a trade dispute under the Trade Union and Labour Relations Act 1992, such as pay and terms and conditions of employment. • Employee means a person employed under a contract of service • Office holder in relation to the authority, means the holder of any paid office appointments which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority.

Category	Condition
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	This covers legal advice given by a professional legal adviser, i.e Legal Services or external solicitors and barristers. It applies where no litigation is contemplated or pending (e.g. general advice on non-contentious matters), as well as in connection with legal proceedings by or against the Council.
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.	The wording of this exemption covers reports about proposed action under regulatory legislation such as planning, licensing and environmental health
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	The wording of this exemption covers reports about criminal investigations and prosecutions undertaken by the Council, and any actions which might be taken to prevent crime occurring. This would include information about a protected informant in relation to any criminal investigations.

Information falling within any of paragraphs 1-7 is not exempt by virtue of that paragraph if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

11. Exclusion of Access by the Public to Reports

11.1 Nothing in these Rules authorises or requires the Council to disclose to the public or make available for public inspection any document or part of a document if, in the opinion of the Director Law and Governance, it contains or may contain confidential or exempt information or advice from a political assistant.

Any reports to a meeting containing such information or advice will be marked "Not for Publication's together with the category of information likely to be disclosed.

11.2 Recording etc. of meetings

The Council supports the principle of transparency at its meetings that are open to the public and recognises the right to report its meetings in accordance with the Openness of Local Government Bodies Regulations 2014.

12. Application of Rules to the Cabinet

12.1 Rules 13-24 apply only to the Cabinet, its committees and other executive decision making processes. If the Cabinet its committees, an individual member or an officer take a key decision then they 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 14.3 of this Constitution.

12.2 Generally meetings of executive decision making bodies must be held in public. However, members of the public must be excluded where:

- (a) It is likely in the view of the nature of business to be transacted or the nature of the proceedings if a member of the public was present during that item, confidential information (see above rule 10.3) would be disclosed to them.
- (b) The decision-making body concerned passes a resolution to exclude the public during that item where it is likely in the view of the nature of business if a member of the public were present during that item, exempt information (see above rule 10.2) would be disclosed to them.
- (c) A lawful power is used to exclude a member or members of the public in order to maintain orderly conduct or prevent misbehaviour at a meeting.

13. 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 (called here a forward plan) has been published in connection with the matter in question;
- (b) at least twenty eight clear days have elapsed since the publication of the forward plan; and
- (c) where the decision is to be taken at a meeting of the Cabinet or its committees, notice of the meeting has been given in accordance with Rule 4 (notices of meetings).

14.The Forward Plan

14.1 Contents of Forward Plan

The forward plan will contain matters which the Leader has reason to believe will be subject of a key decision to be taken by the Cabinet, a committee of the Cabinet, individual members of the Cabinet, officers, or under joint arrangements in the course of the discharge of an executive function. It will describe the following particulars:

- (a) that a key decision is to be made on behalf of the Council;
- (b) the matter in respect of which a decision is to be made;
- (c) where the decision maker is an individual, his/her name and title, if any, and where the decision taker is a body, its name and details of membership;
- (d) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any documents listed is available;
- (e) that other documents relevant to those matters may be submitted to the decision maker;
- (f) the procedure for requesting details of those documents (if any) as they become available;
- (g) the date on which, or the period within which, the decision will be taken;
- (h) a list of the documents submitted to the decision maker for consideration in relation to the matter and
- (i) whether the public and press are likely to be excluded from the meeting as the report contains exempt information.

15.General Exception

15.1 Where the publication of the intention to make a key decision in line with Rules 13 and 14, it is impracticable, decisions may only be made:

- (a) where the decision maker (through the Director Law and Governance) has informed the Chair and Vice Chairs of the Scrutiny Management Committee, or if there is no such person, each member of the Scrutiny Management Committee by notice in writing, of the matter which the decision is to be made;
- (b) where the Director Law and Governance has made available at the Civic Offices for inspection by the public and published on the Council's website a copy of the notice given pursuant to clause (a) above;

- (c) after five clear working days have elapsed following the day on which the Director Law and Governance made available the notice referred to in clause (b) above.
- 15.2 Where the above paragraph applies to any matter Rules 13 and 14 need not be complied with in relation to that matter.
- 15.3 As soon as reasonably practicable after the Director Law and Governance has complied with 15.1 above the Director Law and Governance must:
 - (a) make available at the Civic Offices a notice setting out the reasons why compliance with Rules 13 and 14 is impracticable; and
 - (b) publish notice on the Council's website.

16.Special Urgency

- 16.1 Where the date by which a key decision must be taken means that Rule 15 (General Exception) cannot be followed, then the decision may only be made if:
 - (a) the Director Law and Governance, on behalf of the decision maker (if an individual, or the Chair of the body making the decision) obtains the agreement of the Chair of the Scrutiny Management Committee that the taking of the decision is urgent and cannot reasonably be deferred.
 - (b) Before the Chair of the Scrutiny Management Committee gives his / her agreement he / she will, if possible, consult with the Vice-Chair(s).
 - (c) If there is no Chair of the Scrutiny Management Committee, or if he / she is unable to act agreement must be sought from the Vice-Chair of the Scrutiny Management Committee who does not represent the Group forming the Council's Executive, or if he / she is unable to act, the Mayor, or in the absence of the Mayor, the Deputy Mayor, that the taking of the decision is urgent and cannot reasonably be deferred.
- 16.2 As soon as reasonably practicable after the Director Law and Governance has obtained agreement from the relevant party that the decision is urgent and cannot reasonably be deferred the Director Law and Governance must:
 - (a) make available at the Civic Offices a notice setting out the reasons why the decision is urgent and cannot reasonably be deferred; and
 - (b) publish that notice on the Council's website.
- 16.3 In the case of decisions taken in accordance with 16.1 which affect individual Wards of the Borough, the Director Law and Governance will attempt to inform the Ward councillor(s) within the time available.

17. Report to Council

17.1 If an executive decision has been taken which was not treated as a being a key decision and the relevant scrutiny committee is of the opinion that it should have been treated as a key decision (i.e. subject to rules 13-16 above), the scrutiny committee may require the executive responsible for the decision to submit a report to the Council within such reasonable time as the scrutiny committee specifies.

17.2 The power to require a report rests with the scrutiny committee, but is also delegated to the Director Law and Governance, who shall require such a report on behalf of the scrutiny committee when so requested by the chair or any five councillors. Alternatively, the requirement may be raised by resolution passed at a meeting of the relevant scrutiny committee.

17.3 Executives' Report to Council

The Executive responsible for the decision will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within seven days of receipt of the written notice, or the resolution of the scrutiny committee, then the report may be submitted to the meeting after that. The report to Council will set out the decision and the reasons for the decision, the individual or body making the decision, and if the Leader is of the opinion that it was not a key decision, the reasons for that opinion.

17.4 Quarterly Reports on Special Urgency Decisions

In any event the Leader will submit quarterly reports to the Council on the Executive decisions taken in the circumstances set out in Rule 16 (special urgency) in the preceding three months. The report will include the number of decisions so taken, a summary of the matters in respect of which those decisions were taken and the reasons for the use of special urgency arrangements.

18. Record of Decisions

18.1 As soon as reasonably practicable after any meeting of a decision-making body at which an executive decision was made, or after an individual member had made an executive decision) the Director – Law and Governance, or if the Director – Law and Governance was not present at the meeting, the person presiding, or the individual member making the decision must ensure that a written statement is produced for every executive decision made which includes the information specified in paragraph 2 below.

18.2. The statement referred to in paragraph 1 above must include:

- (a) the name of the decision making body;
- (b) a record of the decision including the date it was made;
- (c) a record of the reasons for the decision;

- (d) details of any alternative options considered and rejected by the decision-making body/member at the meeting at which the decision was made;
- (e) a record of any conflict of interest relating to the matter decided which is declared by any member of the decision-making body/ declared by the member which made the decision; and
- (f) in respect of any declared conflict of interest, a note of dispensation granted.

18.3 The record must be produced as soon as reasonably practicable and in any event, within 3 working days of the decision.

18.4 Records produced under this section and reports considered at the meeting must be available for inspection by members of the public as soon as is practicable at the offices of the authority and also on the website.

18.5 Where a request is made by a newspaper for copies of the documents as set out in 18.4 above the documents must be supplied on payment of postage, copying or other necessary charge for transmission.

19. Decisions by Individual members of the Cabinet

19.1 Reports intended to be taken into account

Where an individual member of the Cabinet receives a report which he/she intends to take into account in making any key decision, then he/she will not make the decision until at least five clear days after receipt of that report.

19.2 Provision of copies of reports to the Scrutiny Management Committee

On giving of such a report to an individual decision maker, the person who prepared the report will give a copy of it to the Chair of the Scrutiny Management Committee as soon as reasonably practicable, and make it publicly available at the same time.

19.3 Record of individual decision

Individual member decisions are to be recorded as at Rule 18.2 above.

20. Scrutiny Committees - Access to Documents

20.1 Rights to copies

Subject to Rule 20.2 below, a member of an Scrutiny Committee will be entitled to a copy of any document which is in the possession or control of the Executive, including but not limited to; its committees, panels or individual members and which contains material relating to:

- (a) any business transacted at a meeting of the Cabinet or its committees, groups or panels; or
- (b) any decision taken by an individual member of the Cabinet.

The executive must provide that document as soon as reasonably practicable and, in any case, no later than 10 clear days after the executive receives the request

20.2 Limit on rights

No member of a scrutiny committee is entitled to a copy:

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

Where the Executive determines that a member of an scrutiny committee is not entitled to a copy of a document, or part of any such document for a reason set out in paragraph 20.1, it must provide the scrutiny committee with a written statement setting out its reasons for that decision.

21. Additional Rights of Access for Councillors

21.1 Additional rights to access documents by Councillors

All councillors will be entitled to inspect any document which is in the possession or under the control of the executive, including, but not limited to, its committees, panels or individual members and contains material relating to any business to be transacted at any public meeting unless it contains exempt information falling within paragraphs 1, 2, 4, 5 and 7 of the categories of exempt information.

Documents covered by this section must be made available at least 5 clear days before the meeting, where the meeting is convened at shorter notice, when the meeting is convened.

21.2 Nature of Rights

The rights conferred above are in addition to any other rights that a member of the Council may have, including their common law right to access information on a 'need to know' basis

No reference regarding access to reports, and background papers will confer a right to access those documents in draft form.

22. Regulatory Committees

The Procedure for Public Participation at Development Control Meetings and the Procedure for the Determination of Licensing Applications can be viewed in Chapter 7 (Associated Document), or by clicking the links.

COUNCILLORS' ACCESS TO INFORMATION – A HIERARCHY OF RIGHTS

1. This document supplements Access to Information Procedure Rule 21.
2. The rights of access to information by Councillors are a complex mix of relevant legislation, legislation specific to local government and common law rights given to Councillors by the Courts. Councillors may also seek advice in confidence from the Director - Law and Governance.

What is the Hierarchy of Rights?

3. The law relevant to access to information by Councillors includes the following:
 - (a) **The Freedom of Information Act 2000.** This makes non-personal information freely available to all, with limited exceptions.
 - (b) **The Data Protection Act 1998.** This relates to personal information, and generally makes this non-disclosable except in certain circumstances.
 - (c) Local Government Legislation:
 - (i) **Access to Information provisions of the Local Government Act 1972.** This gives the public access to Committee Minutes and Agenda, and to background material relevant to those documents.
 - (ii) Other legislation (Local Government (Cabinet Arrangements) (Meetings and Access to Information) Regulations 2012)) ensures that Councillors are entitled to material relevant to public / private meetings of the Leader and Cabinet (and decision making by individual portfolio holders).
 - (d) Common Law Rights give Councillors the right to inspect Council documents insofar as this is reasonably necessary to enable a Councillor to perform his/her duties as a Councillor – this is known as the 'need to know' basis.
4. However, these rights do not apply to draft documents, to the advice of a political advisor or to most exempt / confidential information (see 17 and 18)). Additionally, Councillors do not have any right to a roving commission through Council documents – mere curiosity is not sufficient.

Navigating the Hierarchy of Rights

Freedom of Information Act 2000

5. **In broad terms, if the information being sought by a Councilor is non-personal, then the Freedom of Information Act 2000 allows access to most Council documentation.**
6. The Freedom of Information Act would, for example, allow access to information about the construction of a new leisure facility (unless it were

subject to an exemption) but could not be used to gain access to information about a named individual's record of housing waiting list applications – this is covered by the Data Protection Act 1998 (see below).

7. In certain circumstances, access to documentation via the Freedom of Information Act can be subject to an exemption, although some exemptions are not absolute and subject to a further test about whether it is in the public interest to release the information.
8. Examples of exemptions under the Freedom of Information Act are:
 - (a) Work in progress (draft reports, for example) need not be disclosed.
 - (b) Information subject to a data-sharing protocol (e.g. between all Councillor organisations of the Crime and Disorder Partnership) should not be released until all organisations have each agreed to disclosure. This is to ensure that crime & disorder and fraud investigations are not prejudiced.
 - (c) Commercially sensitive information.
 - (d) Where the disclosure of information would likely inhibit the free and frank provision of advice, the free and frank exchange of views for the purposes of deliberation, or would otherwise prejudice or would be likely otherwise to prejudice the effective conduct of public affairs.

Data Protection Act 1998

10. If the information sought by a Councillor relates to an identified living individual, then the Data Protection Act applies
11. There are 2 classes of Data Protection – “normal” personal information and “sensitive personal information”. Sensitive personal information includes:-
 - (a) Racial or Ethnic Origin
 - (b) Religious beliefs
 - (c) Trade Union Councillorship
 - (d) Physical or Mental health
 - (e) Actual or alleged criminal offences and criminal records
 - (f) Sexual life
 - (g) Political opinions.
12. Councillors can access personal information about people held by the Council, where they have established a ‘need to know’. Where ‘normal’ personal information is involved, unless additional consent has been granted by the individual concerned, information about an individual can only be used for the purposes for which that information was obtained.

13. Putting the above together, a Councillor who can demonstrate they have a need to know information about a named individual's housing waiting list application or about a housing maintenance repair may be entitled to it, but only for the purposes it was intended.

Where a Councillor has been contacted by a resident in their Ward who requires them to advocate with the Council on their behalf, the resident should set out in writing that this is the case, or the Councillor should be able to demonstrate (for example by way of an email from the resident) that the resident has raised the matter with them.

14. The Council has a duty to ensure that personal information disclosed to Councillors using the above procedures is used strictly for the purposes for which it is disclosed and that Councillors will keep the information secure and confidential (and then disposed of in a similarly careful manner).
15. Councillors must observe the Code of Conduct and all the provisions of the Constitution. Officers will automatically assume that Councillors will treat personal information in accordance with the previous paragraph.
16. Where Councillors wish to access 'sensitive' personal information additional steps are required:
 - (i) Either explicit consent of the person concerned must be obtained; or
 - (ii) If this is not practicable, Councillors must make a specific request under the provisions of the Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002.

Access to Information Provisions of the Local Government Act 1972 / Local Authorities (Cabinet Arrangements) (Meetings and Access to Information) Regulations 2012

17. Where a Councillor cannot obtain information under the Freedom of Information Act (for example because it is commercially sensitive and an exemption applies) or the Data Protection Act (because a Councillor cannot establish a need to know the personal information) then the information may still become available to Councillors at a later date via Committee agenda, and the right to see background material associated with such an agenda.
18. Once a matter has reached the stage where it is before a Committee / Cabinet/ Delegated Decision, then Councillors of that Committee / Cabinet would have a 'need to know' all relevant information (including any which is exempt, or confidential).

The local practice at Milton Keynes City Council is to accept that all Ward Councillors have a need to know exempt or confidential information relating to executive decisions.

19. Councillors also have additional rights of access to material in the possession/control of the Leader and Cabinet (rather than Council Officers) relating to public/private meetings of the Cabinet or to any decision taken by an individual portfolio holder.
20. However, the above rights do not apply to draft documents, to the advice of a political advisor or to most categories exempt /confidential information (unless it relates to an executive decision (local practice) or a Scrutiny Committee require such exempt / confidential information as part of actions / decisions it is scrutinising).

General

21. Legal Advice (where Legal Services is providing legal advice to one of its in-house clients at the Council) may be non-disclosable due to legal professional privilege.
22. Information supplied under the Data Protection Act 1998 must not be used or disclosed for political purposes.
23. Requests for Information under the control of Officers should normally be made to the relevant Director.
24. Requests for information under the control of the Leader and Cabinet should normally be made to the Leader and/or the relevant Portfolio Holder.
25. Councillors must not put undue pressure on Officers to release information to which the Councillor is not entitled to have access.
26. Should a Director need advice as to whether information can be released to a Councillor s/he should contact the Director - Legal & Governance.
27. The additional access to information rights given to Councillors is to allow them to do their jobs as Councillors. Confidential or exempt information should only be used in appropriate circumstances, in accordance with the proper performance of their duties as Councillors. Information should only be passed between Councillors if both Councillors can demonstrate a "need to know".
28. Any complaints by a Councillor about the non-disclosure of information should be made in writing to the Director - Legal & Governance, whose decision shall be final as far as the Council is concerned.
29. However, if the Councillor remains dissatisfied, the Councillor may be able (under FOI) to refer the matter to the Information Commissioner.