

# **Part 4 – Access to Information Rules**

## **Part 4 - Access to Information Procedure Rules**

The Council will act in accordance with the Local Government Act 1972 as amended, the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the Openness of Local Government Bodies Regulations 2014 or any other relevant statute.

In addition to making documents available in hard copy as indicated in these Rules, the Council also maintains an electronic database of documents relating to meetings as defined below. The Committee Management System ([Modern.gov](http://Modern.gov)) is available for public use via the Council's website. It contains all committee documents (agendas, reports and minutes) for an eight year period in accordance with the Council's retention policy that are open to public inspection. Minutes are kept in perpetuity. Documents will be placed on Modern.gov as well as made available in hard copy, upon request, within the statutory timescales referred to in the sections below.

### **Non-Executive Meetings**

#### **1. Scope**

These rules apply to all meetings of the Council, Scrutiny Boards, Committees and Panels, the Ethical Standards and Member Development Committee, Regulatory Committees and meetings of other non-executive bodies of the Council.

#### **2. Additional Rights to Information**

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

#### **3. Rights to Attend Meetings**

Members of the public may attend all meetings under 1 above, subject only to the exceptions in these rules.

Attendance does not provide an automatic or guaranteed right to speak at meetings.

Public meetings may be filmed or recorded in accordance with the provisions of Article 3 of the Constitution (Citizens of the Council).

#### **4. Notices of Meeting**

The Council will normally give at least five clear days' notice of any non-executive meeting subject to the Constitution. This will be achieved by:

- a) posting details of the meeting at the Sandwell Council House, Freeth Street, Oldbury West Midlands (the designated office); and/or
- b) placing details of the meeting on the Committee Management System ([Modern.gov](https://www.modern.gov)) on the Council's website.

The Council reserves the right to give a shorter period of notice in accordance with the law, when circumstances require it.

#### **5. Access to Agenda and Reports Before the Meeting**

- (a) The Council will endeavour to make copies of the agenda and those reports which are open to the public, available for inspection at the designated office and via Modern.gov on the Council's website, at least five clear days before the meeting unless prevented from doing so due to the urgency of the matter and where any of the urgency provisions provided by the Constitution apply.
- (b) 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.
- (c) Nothing within this provision requires a copy of the agenda or any report to be made available to the public until a copy is available to the Chair and members of the committee/Board, Cabinet, Cabinet Committee or individual Cabinet Member.

- (d) The Council will provide copies of the agenda and reports in an electronic format unless specifically requested otherwise.

## **6. Access to Documents after a Meeting**

The Council will make available for public inspection paper copies and on payment of a charge for postage and other reasonable costs as determined appropriate, supply to any person, paper copies of the following, for up to four years after a meeting:

- any agenda and reports which are open to public inspection;
- any further statements or particulars necessary to indicate the nature of the items on the agenda;
- if the Proper Officer thinks fit, copies of any other documents supplied to councillors in connection with an item.

The Council will make available for public inspection paper copies and on payment of a charge for postage and other reasonable costs as determined appropriate, supply to any person, paper copies of the following, for up to six years after a meeting:

- the minutes of the meeting or where minutes have not been produced, the record of the decisions taken together with the reasons for the decision, excluding any part of the minutes of the proceedings where the meeting was not open to the public and which disclose exempt or confidential information;
- on request, a summary of any proceedings not open to the public where the minutes which are open to public inspection would not provide a reasonably fair and coherent record.

## **7. Background Papers:**

The Proper Officer will set out in every report, a list of those documents (background papers) relating to the subject matter of the report which in their opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based;

- (b) have been relied on to a material extent in preparing the report.

The above requirement does not apply to published works, or documents which disclose exempt or confidential information as defined in Rule 9.

For four years after the date of the meeting, the Council will retain for public inspection, documents on the list of background papers, except for the documents, which may disclose exempt or confidential information.

## **8. Summary of Public Rights**

This Constitution will be kept available to the public via the Council’s website as a written summary of the public’s rights to attend meetings and to inspect and copy documents.

It will also be available for inspection at the designated office during normal office hours.

If the Proper Officer thinks fit, the Council may exclude access by the public to reports which in their opinion relate to items during which, in accordance with Rule 9, 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.

## **9 Exclusion of the Public and Press from Meetings**

### **9.1 Confidential Information - Requirement to Exclude the Public and Press**

The public will be excluded from meetings whenever it is likely that in view of the nature of the business to be transacted or the nature of the proceedings, exempt or confidential information would be disclosed.

## **9.2 Exempt Information - Discretion to Exclude the Public**

Further to Rule 9.1 above, 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 held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

## **9.3 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 statute or by Court Order.

## **9.4 Meaning of Exempt Information**

In accordance with Schedule 12A of the Local Government Act 1972 (as amended), exempt information means information falling within the following 7 categories (subject to any condition)

- 1 Information relating to any individual.
2. Information that 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 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.

**NOTE - Qualifications on the application of the Exemptions**

Information falling within Paragraph 3 above is not exempt information if it is required to be registered under any of the following Acts:-

The Companies Act 1985  
The Friendly Societies Acts 1974 or 1992  
The Industrial and Provident Societies Acts 1965 to 1978  
The Building Societies Act 1986  
The Charities Act 1993.

Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.

Information which:-

- a. falls within any of Paragraphs 1 to 7 above; and
- b. is not prevented from being exempt by virtue of paragraphs 8 or 9 above,

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.

## **Executive Meetings**

### **10. Scope**

These rules apply to all meetings of the Cabinet and Cabinet Committees.

### **11. Additional Rights to Information**

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

### **12. Rights to Attend Meetings**

Members of the public may attend all meetings of the Cabinet, Cabinet Committees under 10 above, subject only to the exceptions in these rules.

In relation to Cabinet, the Leader; the Chair of a Cabinet Committee; or where appropriate a Cabinet Member will determine whether meetings relating to matters that are not key decisions, will be held in public or private.

Attendance does not provide an automatic or guaranteed right to speak at meetings.

Public meetings may be filmed or recorded in accordance with the provisions of Article 3 of the Constitution (Citizens of the Council).

### **13. Notices of Meeting**

- 13.1 The Council will normally give at least five clear days notice of any Cabinet meeting, or Cabinet Committee subject to the following provisions of this Constitution.



**Consideration in private:**

- 13.2 Where the Cabinet or a Cabinet Committee\* has need to consider a matter in private, 28 clear days before the matter is considered, the Council will publish a notice of its intention to meet in private detailing the reasons for meeting in private.
- 13.3 Further, five clear days before the private meeting, the Council will publish a second notice of its intention to meet in private reiterating the reasons for doing so and detailing any representations received to the notice under 13.2 and the Council's response to those representations.
- 13.4 Where the date by which a meeting must be held makes 13.2 and 13.3 impracticable, consent must be obtained from the Chair, or in their absence the Vice-Chair, of the relevant Scrutiny Board that the meeting is urgent and cannot reasonably be deferred. Notice of this consent, including the reasons for it, will be published as soon as is reasonably practicable.
- 13.5 The publication of notices under this section will be achieved by:
- a) posting details of the meeting at the Sandwell Council House, Freeth Street, Oldbury West Midlands (the designated office);
  - b) placing details of the meeting on the Committee Management System ([Modern.gov](https://www.modern.gov)) on the Council's website.
14. **Attendance at Private Meetings of the Cabinet or a Cabinet Committee**
- (a) All members of the Cabinet will be served notice of all private meetings of the Cabinet;
  - (b) Only members of a Cabinet Committee will receive notice of a private meeting of that committee but all members of the Cabinet are entitled to attend and speak with the prior approval of the person presiding at that meeting;

- (c) Where it is necessary to aid the debate on any matter before a private meeting of the Cabinet or a Cabinet Committee, any other member or person may be invited to attend with the prior agreement of the person presiding.

**15. Access to Agenda and Reports Before the Meeting**

The provisions under section 5 above apply to Cabinet Meetings, and Cabinet Committees.

**16. Access to Documents after a Meeting**

The provisions under section 6 above apply to Cabinet Meetings and Cabinet Committees.

**17. Access to Minutes etc after the Meeting**

The minutes of any meeting of the Cabinet or Cabinet Committee and the record of any decisions taken by an individual Cabinet Member, will be available in accordance with the provisions of section 6 above.

**18. Background Papers:**

The provisions of section 7 above apply to Cabinet Meetings, and Cabinet Committees except that in respect of reports to the executive or executive members, a document or that part of a document containing the advice of a political advisor or assistant is exempt from the provisions.

**19. Confidential Information - Requirement to Exclude the Public and Press**

The public will be excluded from meetings whenever it is likely that in view of the nature of the business to be transacted or the nature of the proceedings, exempt or confidential information would be disclosed, however, without prejudice to any power of exclusion or suppression of disorderly conduct, a member of the public cannot be excluded from the public session of a meeting.

## **20. Meaning of Confidential and Exempt Information**

The provisions of sections 9.3 and 9.4 above apply to Cabinet Meetings, and Cabinet Committees.

## **21. Additional rights of Members to information**

These provisions apply to documents which are in the possession or control of the executive and concern business to be transacted at a private meeting of the Cabinet, a Cabinet Committee, decisions made by an individual member under executive powers; or any decision by an officer under executive arrangements.

21.1 Even though a document may not be required to be available for inspection on the grounds that it contains exempt information under Schedule 12A, it nevertheless must be made available for inspection by a member or members if the information is information of a description for the time being falling within:-

- (a) paragraph 3 of Schedule 12A (Information relating to the financial or business affairs of any particular person including the authority holding that information) except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract; or
- (b) paragraph 6 of Schedule 12A (Information that reveals that the authority is to give notice of requirements on a person or make an order).

21.2 All documents covered by 21.1 must be available at the conclusion of the private meeting or immediately after the decision by a Cabinet Member or officer has been made or in any event, after 24 hours.

21.3 Nothing within these provisions requires a document or part of a document to be made available if it contains the advice of a political advisor or political assistant.

- 21.4 A member of a scrutiny board or other scrutiny body, who is not a member of the local authority has similar rights of access as a member of the local authority but only in relation to matters that they are directly scrutinising or are in the work programme of the scrutiny body they are appointed to and in that the documents only need to be made available as soon as is practicable or no later than 10 clear days after the request for access is received.
- 21.5 Where the executive determines that access cannot be granted to a document or part of it, the executive must submit a statement of its reasons to the scrutiny board/body.

## **22 Key Decisions**

If the Cabinet, a Cabinet Committee or an individual cabinet Member intends to consider a matter falling within the definition of a key decision then it must also comply with the Rules applying to the executive detailed above unless any of the following special provisions apply.

NB *(A key decision is as defined in Article 13.03 of this Constitution and set out in the Executive Procedure Rules)*

## **23. Procedure Before Taking Key Decision**

Subject to Rule 2.8 (General Exceptions) and Rule 2.9 (Special Urgency) under Executive Procedure Rules, a key decision may not be taken unless:

- (a) a notice (called here the 28 Day Notice) has been published in connection with the matter in question 28 days before the decision is made;
- (b) a notice under (a) is published in accordance with Rule 13.5