



# CONSTITUTION OF THE COUNCIL

## Part 4 Section 2

### ACCESS TO INFORMATION PROCEDURE RULES

#### 1. SCOPE

These rules apply to all meetings of the Council, to regulatory committees and to any other formal committees and sub-committees established by the Council (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; for example, the Freedom of Information Act and the Data Protection Act.

Previously exempt information may subsequently be made available if the reason for exemption no longer applies.

#### 3. RIGHTS TO ATTEND MEETINGS

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

#### 4. NOTICES OF MEETINGS

The Council will give at least five clear days' notice of any meeting by publishing details on its website and making copies of such a notice available at its offices at Birkenhead Town Hall, Mortimer Street, Birkenhead.

#### 5. 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 five clear days before the meeting.

Where a report was not open to inspection by members of the public for five clear days before the meeting, it can only be considered at the meeting if the Chair of the meeting is of the opinion that it should be considered as a matter of urgency by reason of special circumstances, which shall be specified in the minutes.

#### 6. SUPPLY OF COPIES

The Council will supply copies of the following:

- (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 Proper Officer 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 and any other costs.

## 7. **ACCESS TO RECORDS OF DECISIONS AND MINUTES, ETC.**

The Council will make available

- (a) as soon as reasonably practicable after the record is made:
  - (i) the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of formal committees;
  - (ii) written records of decisions taken by officers (in accordance with paragraph 8 below);
  - (iii) 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;
  - (iv) the agenda for the meeting; and
  - (v) reports relating to items,excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information (as defined in paragraph 11),
- (b) for inspection by members of the public:
  - (i) at all reasonable hours, at the offices of Birkenhead Town Hall, Mortimer Street, Birkenhead; and
  - (ii) on the Council's website; and
- (c) the written record will be retained by the Council and made available for inspection by the public for a period of six years beginning with the date on which the decision, to which the record relates, was made.

## 8. **RECORD OF DECISIONS TAKEN BY OFFICERS**

- (a) **Decision** - A decision-making officer must produce a written record of any decision which is:
  - (i) a Key Decision or
  - (ii) a decision that would otherwise have been taken by the full Council, a committee or sub-committee of the Council but has been delegated to an officer either—
    - (1) under a specific express authorisation; or

- (2) under a general authorisation to officers to take such decisions and, the effect of the decision is to:
  - (aa) grant a permission or licence;
  - (bb) affect the rights of an individual; or
  - (cc) award a contract or incur expenditure which, in either case, materially affects that relevant local government body's financial position, which is taken to mean expenditure in excess of **£100,000** (excluding social care packages or placements).
- (iii) For clarity, these rules shall not apply to:-
  - (1) routine administrative and operational decisions, including a contract or expenditure concerning individual social care packages or placements;
  - (2) decisions on operational matters such as day to day variations in services;
  - (3) decisions if the whole or part of the record contains confidential or exempt information; and
  - (4) decisions that are already required to be published by other legislation, provided the record published includes the date the decision was taken and the reasons for the decision.
- (b) **Record** - The written record (referred to as an Officer Decision Notice) must be produced as soon as reasonably practicable after the decision-making officer has made the decision and must contain the following information—
  - (i) the date the decision was taken;
  - (ii) a record of the decision taken along with reasons for the decision;
  - (iii) details of alternative options, if any, considered and rejected; and
  - (iv) where the decision falls under paragraph 8.1(a), the names of any Member who has declared a conflict of interest in relation to the decision.
- (c) **Publication** - The decision-making officer shall provide the proper officer as soon as reasonably practicable with:
  - (i) the written record produced in accordance with paragraph (b) above
  - (ii) in the case of a Key Decision, a copy of the report provided to the decision-making officer containing:
    - (1) the recommended decision;
    - (2) an explanation of the reasons for the recommendation being put forward;
    - (3) details of any alternative options, if any, considered and rejected for recommendation;

- (4) details of any consultation undertaken or proposed including, in respect of consultation undertaken, the nature and extent of the consultation undertaken with stakeholders and the overview and scrutiny committees and the outcome of that consultation;
  - (5) a consideration of the financial and legal issues pertaining to the matter, and such other matters as governance chief officers (the head of paid service, s.151 officer or monitoring officer) may require, which may include risk, staffing, equalities, crime and disorder and climate change implications; and
- (iii) any background papers considered by the officer and relevant to the decision,

for publication in accordance with paragraph 7 above.

## 9. **BACKGROUND PAPERS**

- (a) **List of Background Papers** - The proper officer 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:
- (i) disclose any facts or matters on which the report or an important part of the report is based; and
  - (ii) 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 paragraph 11).
- (b) **Public Inspection of Background Papers** – Any background papers will be retained by the Council and made available for inspection by the public for a period of four years beginning with the date of the meeting or the date on which the decision, to which the background papers relate, was made.

## 10. **SUMMARY OF PUBLIC'S RIGHTS**

A written summary of the public's rights to attend meetings, including the right to record meetings, and to inspect and copy documents shall be kept at and available to the public at the Birkenhead Town Hall, Mortimer Street, Birkenhead.

## 11. **EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS**

- (a) **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.
- (b) **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. Information is only 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.

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.

**(c) Meaning of confidential information**

Confidential information means information given to the Council by a Government Department on terms which forbid its disclosure or information which cannot be publicly disclosed by Court Order.

**(d) Meaning of exempt information**

Exempt information means information falling within the following categories (subject to any condition):-

<b>CATEGORY</b>	<b>CONDITION</b>
1. Information relating to an individual	<p>Information is not exempt information unless it relates to an individual of that description in the capacity indicated by the description i.e. it must relate to and be recognisable as referring to a particular living individual in the roles indicated.</p> <p>Information is only exempt:</p> <ul style="list-style-type: none"> <li>(a) where disclosure is prohibited by statute; or</li> <li>(b) where disclosure might involve providing personal information about individuals; or</li> <li>(c) where disclosure might breach a duty of confidentiality; and</li> <li>(d) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</li> </ul>
2. Information which is likely to reveal the identity of an individual	<p>Information is not exempt information unless it relates to an individual of that description in the capacity indicated by the description i.e. it must relate to and be recognisable as referring to a</p>

	<p>particular living individual in the roles indicated.</p> <p>Information is only exempt:</p> <ul style="list-style-type: none"> <li>(a) where disclosure is prohibited by statute; or</li> <li>(b) where disclosure might involve providing personal information about individuals; or</li> <li>(c) where disclosure might breach a duty of confidentiality; and</li> <li>(d) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</li> </ul>
<p>3. Information relating to the financial or business affairs of any particular person (including the authority holding the information)</p> <p><i>‘financial or business affairs’ includes contemplated, as well as past or current, activities</i></p> <p><i>This category will include commercial and contractual interests</i></p>	<p>Information is not exempt information if it is required to be registered by law e.g. Companies Act 1985, the Charities Act 1993 etc</p> <p>Information is only exempt if and for so long as:</p> <ul style="list-style-type: none"> <li>(a) disclosure of the amount involved would be likely to give advantage to a person entering into or seeking to enter into a contract with the Council in respect of property, goods or services whether the advantage would arise as against the Council or as against other persons; or</li> <li>(b) disclosure would prejudice the efficiency and effectiveness of the use of Council resources; or</li> <li>(c) disclosure of trade secrets and other information would, or would likely, prejudice the commercial interests of any person, including the Council; and</li> <li>(d) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</li> </ul>
<p>4. Information relating to any</p>	<p>Information is only exempt if and for</p>

<p>consultations or negotiations or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a minister of the crown and employees of, or office-holders under, the authority</p> <p><i>‘Labour relations matters’ are as specified in paragraphs (a) to (g) of Section 29(1) of the Trade Unions and Labour Relations Act 1974</i></p> <p><i>i.e. matters which may be the subject of a trade dispute</i></p> <p><i>‘employee’ means a person employed under a contract of service</i></p> <p><i>‘office-holder’ 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</i></p>	<p>so long as its disclosure to the public:</p> <p>(a) would prejudice the Council in those or any other consultations or negotiations in connection with a labour relations matter; and</p> <p>(b) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</p>
<p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings</p>	<p>Information is only exempt:</p> <p>(a) where a claim of legal professional privilege could be maintained in legal proceedings e.g. correspondence such as legal advice and assistance between the Council’s Legal Services and its client;</p> <p>(b) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</p>
<p>6. Information which reveals that the authority proposes –</p> <p>(a) to give under any enactment a notice under or by virtue of</p>	<p>Information is exempt only if and so long as:</p> <p>(a) disclosure to the public might afford an opportunity to a person affected by the notice,</p>

<p>which requirements are imposed on a person, or (b) to make an order or direction under any enactment</p>	<p>order or direction to defeat the purpose or one of the purposes for which the notice order or direction is to be given or made; and (b) in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</p>
<p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime</p>	<p>Information is only exempt if its disclosure would, or would be likely to, prejudice-</p> <ul style="list-style-type: none"> <li>(a) criminal investigations and proceedings; or</li> <li>(b) the apprehension or prosecution of offenders; or</li> <li>(c) the administration of justice; or</li> <li>(d) the assessment or collection of any tax or duty or of any imposition of a similar nature; or</li> <li>(e) regulatory enforcement; or</li> <li>(f) any civil proceedings; or</li> <li>(g) Health and safety; or</li> <li>(h) information obtained from confidential sources; and</li> <li>(i) in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.</li> </ul>

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.

## 12. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

If the proper officer thinks fit, the Council may exclude access by the public to reports which in his or her 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. The report will explain why it is being treated as exempt.

## 13. PROCEDURE BEFORE TAKING A KEY DECISION





- (a) **The Forward Plan** - Every month the Council will publish a document that sets out, in respect of each Key Decision that will be taken on behalf of the Council:
- (i) that a Key Decision is to be made on behalf of the Council.
  - (ii) the matter in respect of which a decision is to be made.
  - (iii) where the decision maker is an individual, his/her name and title, if any, and where the decision maker is a body, its name and details of membership.
  - (iv) the date on which, or the period within which, the decision is to be made.
  - (v) where the decision relates to confidential or exempt information, as defined above, a statement that the decision will be made in private
  - (vi) a list of the documents submitted to the decision maker for consideration in relation to the matter.
  - (vii) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available.
  - (viii) that other documents relevant to those matters may be submitted to the decision taker.
  - (ix) the procedure for requesting details of those documents (if any) as they become available.
- (b) **Publication** - This document will be known as the 'Forward Plan' and it will be published on the Council's website and will be updated from time to time as required. The Forward Plan will also be available for inspection by the public at Birkenhead Town Hall, Brighton Street, Birkenhead.
- (c) **Notice of a Key Decision** - A key decision will not normally be taken unless:-
- (i) notice has been published in connection with the matter in question on the Forward Plan; and
  - (ii) at least 28 clear days have elapsed since the publication of the Forward Plan;
- (d) **General exception** - If 28 days' notice of a matter which is likely to be a Key Decision has not been provided (via the Forward Plan) because the decision must be taken by such a date that it would be impracticable to defer it, then, subject to paragraph (e) below (special urgency), and to the requirements of Article 6.5 of this Constitution (Urgent Business), the decision may still be taken if:
- (i) the Monitoring Officer has been informed of the reasons for urgency, and is satisfied that the reasons satisfy the criteria for urgent decisions, and that the decision must be taken with less than 28 days' notice;

- (ii) the Monitoring Officer has placed notification of the date and nature of the forthcoming decision and the reasons for urgency on the Council’s website; and
- (iii) at least five clear days have elapsed since the Monitoring Officer complied with conditions (i) and (ii).

If the Monitoring Officer, or if absent the Deputy Monitoring Officer, is not available to act, then the Chief Executive or S.151 officer shall act in his/her place.

- (e) **Special urgency** - If by virtue of the date by which a decision must be taken paragraph (d) above (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 Mayor of the Council, or in their absence the Deputy Mayor will suffice.

## 14. MEMBERS’ ACCESS TO INFORMATION AND TO COUNCIL DOCUMENTS

14.1 Members are free to approach any Council Directorate to provide them with such information, explanation and advice (about the Directorate’s functions) as they may reasonably need in order to assist them in discharging their role as Members of the Council. This can range from a request for general information about some aspect of a Directorate’s activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Director or Deputy Chief Officer concerned.

14.2 As regards the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law.

14.3 Members have a statutory right to inspect any Council document *which contains material relating to any business which is to be transacted at a Council, Committee or Sub-Committee meeting*. This right applies irrespective of whether the Member is a member of the Committee or Sub-Committee concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers. This right does not, however, apply to documents relating to certain items which may appear in Part II (exempt) of the Agenda for meetings. Further details are contained in the Access to Information Procedure Rules of the at Part 4(2) of the Council’s Constitution. Examples are documents that contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, contract and industrial relations negotiations, advice from Counsel and criminal investigations.

14.4 The common law right of Members is much broader and is based on the principle that any member has a prima facie right to inspect Council documents *so far as his or her access to the documents is reasonably necessary to enable the member properly to perform his/her duties as a member of the Council*. This principle is commonly referred to as the “need to know” principle.

14.5 The exercise of this common law right depends therefore upon the Member’s ability to demonstrate that he/she has the necessary “need to know”. In this respect a

member has no right to “a roving commission” to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the “need to know”. This question must be determined by the particular Director or Deputy Chief Officer who holds the document in question (with advice from the Monitoring Officer).

- 14.6 In some circumstances (e.g. a Committee Member wishing to inspect documents relating to the functions of that Committee) a Member’s “need to know” will normally be presumed. In other circumstances (e.g. a Member wishing to inspect documents which contain personal information about third parties) a Member will normally be expected to justify the request in specific terms.
- 14.7 Whilst the term “Council document” is very broad and includes, for example, any document produced with Council resources, it is accepted by convention that a Member of one party group will not have a “need to know”, and therefore a right to inspect, a document which forms part of the internal workings of another party group.
- 14.8 Further and more detailed advice regarding Members’ rights to inspect Council documents may be obtained from the Monitoring Officer.
- 14.9 Finally, any Council information provided to a Member must only be used by the Member for the purpose for which it was provided i.e. in connection with the proper performance of the Member’s duties as a Member of the Council.
- 14.10 For completeness, Members do, of course, have the same right as any other member of the public to make requests for information under the Freedom of Information Act 2000.