

ACCESS TO INFORMATION PROCEDURE RULES

Rules applying to all meetings of the council

1. APPLICATION OF RULES TO MEETINGS

Rules 1–11 apply to all meetings of the council assembly, overview and scrutiny committees and sub-committees, the standards committee, regulatory committees, community councils and meetings of the cabinet, and its committees (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 only to the exceptions in these rules.

4. NOTICES OF MEETING

Subject to the rules relating to urgent decisions, the council will give at least five clear working days’ notice of any meeting by posting details of the meeting at ~~Southwark Town Hall~~ the council’s main offices and on the council website.

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 working days before the meeting.

If an item is added to the agenda later, the revised agenda (where reports are prepared after the summons has been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to councillors) 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

- c) copies of any other documents supplied to councillors in connection with an item if the proper officer thinks fit

to any person on payment of a charge for postage and any other costs.

7. ACCESS TO MINUTES AND PAPERS 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 made, 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 or which disclose exempt or confidential information
- b) the agenda for the meeting
- c) reports relating to items when the meeting was open to the public.

8. BACKGROUND PAPERS

8.1 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:

- a) disclose any facts or matters on which the report or an important part of the report is based
- b) which have been relied on to a material extent in preparing the report but does not include published works or those which disclose exempt or confidential information (as defined in rule 10) and in respect of cabinet reports, the advice of a political assistant.

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. Background documents listed in reports to cabinet meetings will be available on the council's website at the same time the report is published.

9. SUMMARY OF PUBLIC'S RIGHTS

A written summary of the public's rights to attend meetings and to inspect and copy documents is kept at and available to the public at the council's main 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 Meaning of confidential information

Confidential information means information given to the council by a government department on terms which forbid its public disclosure or information which cannot be publicly disclosed by court order.

10.3 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.

10.4 Meaning of exempt information

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

1. information relating to any individual
2. information which is likely to reveal the identity of an individual
3. information relating to the financial or business affairs of any particular person (including the authority holding that information)
4. information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority
5. information in respect of which a claim to legal professional privilege could be maintained in legal proceedings
6. information which 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
 - 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
- 7A. information which is subject to any obligation of confidentiality
- 7B. information which relates in any way to matters concerning national security
- 7C. the deliberations of a standards committee or of a sub-committee of a standards committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred

under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.

Qualifications

8. Information falling within category 3 above is not exempt information by virtue of that paragraph if it is required to be registered under:
 - a) the Companies Act 1985
 - b) the Friendly Societies Act 1974
 - c) the Friendly Societies Act 1992
 - d) the Industrial and Provident Societies Acts 1965 to 1978
 - e) the Building Societies Act 1986
 - f) the Charities Act 1993.

9. 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.

10. Information which:
 - a) falls within any of categories 1 to 7 above
 - b) is not prevented from being exempt by virtue of categories 8 or 9 above

is exempt as long as the public interest in maintaining the exemption outweighs the public interest in disclosing it.

11. 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 10, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed.

Rules applying to the cabinet

12. APPLICATION OF RULES TO THE CABINET

Rules 13 – 19 apply to the cabinet and its committees. If the cabinet or its committees meet to take a key decision then it must also comply with rules 1 – 11 unless rule 17 (general exception), rule 18 (special urgency) or rule 19 (urgent implementation) apply.

~~If the cabinet or its committees meet to discuss a key decision to be taken collectively, with an officer other than a political assistant present, within 28 days of the date according to the forward plan by which it is to be decided, then it must also comply with rules 1 – 11 unless rule 17 (general exception) or rule 18 (special urgency) or rule 19 (urgent implementation) apply. This requirement does not include meetings for which the sole purpose is to allow officers to brief members.~~

Cabinet or its committees may meet in public or private. Meetings of cabinet or its sub-committees must comply with rules 1-11 unless rule 17 (general exception) or rule 18 (special urgency) or rule 19 (urgent implementation) apply. If the public and press are excluded from all or part of a cabinet or its committee meetings under rule 10 this is classified as a private meeting and rule 13 applies.

A key decision is as defined in the protocol on key decisions set out in the appendix to these rules.

13. PROCEDURES PRIOR TO CLOSED MEETINGS

13.1 Notice of a closed meeting

Whilst the majority of the cabinet's business at the meetings listed in the forward plan will be open to the public to attend, there will inevitably be some business to be considered that contains, for example, confidential, commercially sensitive or personal information.

At least 28 clear days notice must be given if cabinet or its sub-committees intend to meet in closed session, for all or part of the meeting.¹ This notice must be given through the forward plan, including the reasons why the information is likely to be considered in closed session.

Representations

Any person may make a representation requesting, with reasons, that a particular report likely to be considered in closed session should be open to the public. A representation should be addressed to the council's proper constitutional officer.

Five day notice of a closed meeting

At least five clear working days before the closed meeting a further notice must be published again giving the reasons the meeting will be closed and details of any representations received. If the cabinet or its sub-committees still intend to hold all or part of the meeting in closed session this notice must contain the cabinet's response to any representations received.

13.2 Urgent closed meetings

Where it is impracticable to comply with procedure rule 13.1 and the meeting/decision is urgent and cannot be reasonably deferred the meeting or part of the meeting may be held closed if cabinet or its sub-committees have obtained agreement from the chair of the overview and scrutiny committee. If the chair of the overview and scrutiny is unable to act then the Mayor and in his/her absence the Deputy Mayor may act.

When agreement for the urgent closed meeting has been obtained cabinet or its sub-committees must publish a notice on the council's website setting out the reasons why the meeting is urgent and cannot be reasonably deferred.

¹ This is formal notice under The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

13. DECISIONS BY INDIVIDUAL MEMBERS OF THE CABINET OR AN OFFICER

13.1 Reports intended to be taken into account

Where an individual decision maker ~~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 working days after receipt of that report.

13.2 Provision of copies of reports to overview and scrutiny committees

On giving of such a report to an individual decision maker, the proper constitutional officer ~~person who prepared the report~~ will give a copy of it to the chair of overview and scrutiny committee as soon as reasonably practicable, and make it publicly available at the same time.

13.3 Record of individual decision

As soon as reasonably practicable after an cabinet decision has been taken by an individual member of the cabinet or a key decision has been taken by an officer, he/she will prepare, or instruct the proper officer to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected.

The provisions of rules 7 and 8 (inspection of documents after meetings) will also apply to the making of decisions by individual members of the cabinet. This does not require the disclosure of exempt or confidential information or advice from a political assistant.

In the event that an officer takes an executive decision in accordance with regulation 13(4) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, he/she will prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The record of decision and any report considered by the officer and relevant to the decision recorded must be available for inspection by members of the public as soon as it is reasonably practicable at the offices of the authority and published on the council's website.

14. PROCEDURE BEFORE TAKING KEY DECISIONS

Subject to rule 17 (general exception) and rule 18 (special urgency), a key decision may not be taken unless:

- a) the matter is on the forward plan and 28 clear days notice of the decision has been given
- b) notice of the meeting has been given in accordance with rule 4 (notice of meetings) if the decision is to be taken at a meeting of the cabinet or its committees.

15. THE FORWARD PLAN

15.1 Period of forward plan

Forward plans will be prepared on behalf of the leader to cover a period of four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.

15.2 Contents of forward plan

1. The forward plan will contain matters which the leader has reason to believe which will be the subject of a key decision to be taken by the cabinet, a committee of the cabinet, officers, community councils or under joint arrangements in the course of the discharge of an executive function during the period covered by the plan.
2. It will describe the following particulars insofar as the information is available or might reasonably be obtained:
 - a) the matter in respect of which a decision is to be made
 - b) where the decision 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
 - c) the date on which, or the period within which, the decision will be taken
 - d) the identity of the principal groups whom the decision maker proposes to consult before taking the decision
 - e) indicate if the business is open or closed and where the decision is exempt under rule 10 the reasons why it is exempt
 - ~~f) the means by which any such consultation is proposed to be undertaken~~
 - ~~g) the steps any person might take who wishes to make representations to the cabinet or decision maker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken~~
 - h) a list of the documents submitted to the decision maker for consideration in relation to the matter and the procedure for requesting details of those documents as they become available
3. Key decisions must be included in the forward plan, giving at least 28 clear working days' notice of the decision. The forward plan will be published at least 28 clear working days before the commencement of the next calendar month. ~~The forward plan must be published at least 14 days before the start of the period covered. The proper officer will publish once a year a notice in at least one newspaper circulating in the area, stating:~~
 - ~~a) that key decisions are to be taken on behalf of the council~~

- ~~b) that a forward plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis~~
- ~~c) that the plan will contain details of the key decisions to be made for the four month period following its publication~~
- ~~d) that each plan will be available for inspection at reasonable hours free of charge at the council's offices~~
- ~~e) that each plan will contain a list of the documents submitted to the decision makers for consideration in relation to the key decisions on the plan~~
- ~~f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the forward plan is available~~
- ~~g) that other documents may be submitted to decision makers~~
- ~~h) the procedure for requesting details of documents (if any) as they become available~~
- ~~i) the dates on each month in the following year on which each forward plan will be published and available to the public at the council's offices.~~

4. Exempt information need not be included in a forward plan and confidential information cannot be included.

16. URGENT DECISIONS – DEFINITIONS OF URGENCY AND STEPS THAT MUST BE FOLLOWED

There are four categories of urgent decisions:

- Rule 17 (General exception)
- Rule 18 (Special urgency)
- Rule 19 (Urgent implementation)
- Rule 20 (Urgent decisions outside the budget or policy framework).

The definitions and procedures to be followed are set out below.

17. GENERAL EXCEPTION

Definition

These are decisions which are likely to be key decisions and have not been included in the forward plan for the month that the decision will be taken.

This decision will be subject to call-in.

Procedure

If a matter which is likely to be a key decision has not been included in the forward plan, then subject to rules 18 and 19 (special urgency and urgent implementation respectively), the decision may still be taken if:

- a) the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next forward plan and until the start of the first month to which the next forward plan relates
- b) the proper officer has informed the chair of the overview and scrutiny committee, or if there is no such person, each member of that committee in writing, by notice, of the matter to which the decision is to be made
- c) the proper officer has made copies of that notice available to the public at the offices of the council and on the council's website
- d) at least five clear working days have elapsed since the proper officer complied with a) and b).

Where such a decision is taken collectively it must be taken in public, subject to rule 10.4.

18. SPECIAL URGENCY

Definition

These are decisions that need to be taken within five clear working days; i.e. the requirements of rule 17 (general exception) on notice cannot be complied with. In these circumstances, the special urgency procedure should be used whether the decision had previously appeared on the forward plan or not.

This decision will be subject to call-in.

Procedure

If the date by which a decision must be taken means that rule 17 (general exception) cannot be followed, then the decision can only be taken if the decision maker (if an individual) or the chair of the body making the decision, obtains the agreement of the chair of the overview and scrutiny committee that the taking of the decision cannot be reasonably deferred.

If there is no chair of the overview and scrutiny committee, or if the chair of each relevant overview and scrutiny committee is unable to act, then the agreement of the Mayor of the council, or in his/her absence the Deputy Mayor will suffice.

In the event that special urgency provisions are used the proper officer must compile a notice setting out the reasons for special urgency and make that notice available for inspection at the council offices and on the council's website.

19. URGENT IMPLEMENTATION

Definition

These are decisions which, whether they have been included on the forward plan or not, need to be implemented immediately by virtue of the urgency of the actions that need to be taken.

This decision will not be subject to call-in.

Procedure

If a decision needs to be implemented immediately by virtue of the urgency of the actions that need to be taken, then the decision can only be taken if the decision maker (if an individual) or the chair of the body making the decision obtains the agreement of the chair of the overview and scrutiny committee both that the decision proposed is:

- a) reasonable in all circumstances
- b) to be treated as a matter of urgency.

If there is no chair or if the chair is unable to act, then the agreement of the vice-chair or in his/her absence any two members of the overview and scrutiny committee will suffice. In the situation where both chair and vice-chair are unable to act the whips of the two largest political groups on the overview and scrutiny committee shall nominate one member each.

In the event that urgent implementation provisions are used the proper officer must compile a notice setting out the reasons for special urgency and make that notice available for inspection at the council offices and on the council's website.

Note: Any requests for a key decision not to be called-in and communicated to the chair of overview and scrutiny committee should be copied to all overview and scrutiny committee members.

20. URGENT DECISIONS OUTSIDE THE BUDGET OR POLICY FRAMEWORK

(See Rule 4, budget and policy framework procedure rules)

Definition

The cabinet, a committee of the cabinet, an individual member of the cabinet or officers, or joint arrangements discharging executive functions may take a decision which is contrary to the council's policy framework or contrary to or not wholly in accordance with the budget approved by council assembly if the decision is a matter of urgency.

This decision will not be subject to call-in.

Procedure

This type of decision may only be taken if the procedure set out in Rule 4, budget and policy framework procedure rules is followed.

21. REPORT TO COUNCIL

21.1 When an overview and scrutiny committee/sub-committee can require a report

If an overview and scrutiny committee/sub-committee thinks that a key decision has been made which was not:

- a) included in the forward plan
- b) the subject of the general exception procedure
- c) the subject of an agreement with the overview and scrutiny committee chair, or the Mayor or Deputy Mayor of the council under rules 18 and 19

the committee/sub-committee may require the cabinet to submit a report to the council assembly within such reasonable time as the committee/sub-committee specifies. The power to require a report rests with the committee/sub-committee, but is also delegated to the proper officer, who shall require such a report on behalf of the committee/sub-committee when so requested by the chair or any five members. Alternatively the requirement may be raised by resolution passed at a meeting of the relevant overview and scrutiny committee/sub-committee.

21.2 Cabinet's report to council

The cabinet will prepare a report for submission to the next available meeting of the council assembly. However, if the next meeting of the council assembly is within seven days of receipt of the written notice or the resolution of the committee/sub-committee then the report may be submitted to the meeting after that. The report to council assembly will set out particulars of the decision, the body making the decision, and if the leader is of the opinion that it was not a key decision the reasons for that opinion.

21.3 Quarterly Annual report on special urgency decisions

In any event the leader will submit ~~quarterly~~ an annual report to the council assembly on the executive ~~cabinet~~ decisions taken in the circumstances set out in rule 18 (special urgency) ~~in the preceding three months~~. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

22. RECORD OF DECISIONS

After any meeting of the cabinet or any of its committees, the proper officer will produce a record of every decision taken at that meeting as soon as practicable. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

Rules applying to the overview and scrutiny committee

23. OVERVIEW AND SCRUTINY COMMITTEE/SUB-COMMITTEES' ACCESS TO DOCUMENTS

23.1 Rights to copies

Subject to rule 23.2 below, an overview and scrutiny committee (including its sub-committees) will be entitled to copies of any document which is in the possession or control of the cabinet or its committees and which contains material relating to any business transacted at a meeting of the cabinet or its committees. This information will be provided as soon as reasonably practicable and in any case no later than 10 clear working days after the cabinet received the request.

23.2 Limit on rights

An overview and scrutiny committee/sub-committee will not be entitled to:

- a) any document that is in draft form
- b) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise
- c) the advice of a political assistant.

Where the cabinet determines that a member of an overview and scrutiny committee/sub-committee is not be entitled to a document requested under this rule, it must provide the overview and scrutiny committee/sub-committee with a written statement setting out its reasons for that decision.

Rules applying to members

24 ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS

24.1 Material relating to the business of the cabinet

All members are entitled to inspect and documents in the possession or under the control of the cabinet and contains material relating to any business to be transacted at a public meeting. Any document requested under this rule must be available for inspection at least five clear working days before the meeting.

This rule does not require the document to be available for inspection if in the view of the proper officer it appears to disclose exempt information as set out in rule 10.4 or contains the advice of a political assistant.

24.2 Material relating to decisions

All members are entitled to inspect and documents in the possession or under the control of the cabinet and contains material relating to any business transacted at a private meeting , any decisions made by an individual member or any chief officer. Any document under this rule must be available for inspection when the meeting concludes or in the case of individual decisions immediately after the decisions has been made, and in any event within 24 hours of the conclusion of the meeting or the decision.

This rule does not required the document to be available for inspection if in the view of the proper officer it appears to disclose exempt information as set out in rule 10.4 or contains the advice of a political assistant.

24.1 Material relating to previous business of the cabinet

All members, provided that they can demonstrate a 'need to know', will be entitled to inspect any document which contains any material relating to any business transacted at a meeting of the cabinet or its committees and is in the control of the cabinet unless:

- a) it contains confidential or exempt information falling within paragraphs 1, 2, 3 (except where information is not exempt information by virtue of the qualification in paragraph 8), 4, 5 and 7 of the categories of exempt information
- b) it contains the advice of a political assistant.

24.2 Material relating to key decisions

All members of the council will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the cabinet or its committees which relates to any key decision unless paragraph a) or b) above applies.

24.3 Nature of rights

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

24.4 Freedom of information

Members can make a request under freedom of information and should state as such in their request.

24.5 General right to inspect documents containing exempt information

All councillors have an automatic right to inspect documents containing information made exempt under categories 3 and 6 of the access to information procedure rules, except in the case of paragraph 3 if the document contains information relating to any terms proposed or to be proposed by the council in the course of negotiations for a contract, it will remain exempt and councillors will have no automatic right to inspect the document.

Information made exempt under paragraphs 1, 2, 3 (where this relates to information on any terms proposed or to be proposed to or by the council in the course of negotiations), 4, 5 and 7 are only automatically available to councillors on the committee to which the document relates. Requests for copies of these reports from other councillors can only be complied with if a 'need to know' is demonstrated and the proper officer is of the opinion that the public interest in disclosing the information outweighs the public interest in withholding it.

PROTOCOL ON KEY DECISIONS

Definitions of key decisions

There are two types of key decision:

1. Those which are above a general financial threshold

Key decisions are those which result in the authority incurring expenditure or savings of £500,000 or more.

Examples include:

- disposal of any council property with a value of £500,000 or more
- taking by the council of any interest in land with a value of £500,000 or more
- the granting of any interest in land worth £500,000 or more
- applications for funding from any external body which if successful would require match funding of £500,000 or more, or require revenue commitment of £500,000 or more
- the award of a contract worth £500,000 or more in any one year.

2. Those which have a significant impact on communities

Key decisions are those which are likely to be significant in terms of their impact on communities and specifically in one ward or more.

Examples include:

- closure or significant changes to the provision of any council service, school or education facility
- where there is evidence of significant local opposition to any proposals.

In considering whether a decision is likely to be significant, the decision maker is to consider the strategic nature of the decision and whether the outcome will have an impact, for better or worse, on the local amenity of the community or the quality of service provided to a significant number of people living or working in the locality affected.

In deciding whether a decision will have a significant impact on communities in one or more wards the following factors should be taken into account:

- the extent of the impact (i.e. how many people and wards will be affected)
- the likely views of those affected (i.e. is the decision likely to result in substantial public interest)
- whether the decision is likely to be a matter of political sensitivity
- where the decision may incur a significant social, economic or environmental risk
- where there is evidence of significant local opposition to any proposals

Where a decision is only likely to have a significant impact on a very small number of people in one ward, the decision maker should ensure those people are informed of the forthcoming decision in sufficient time to make an input into the decision making process. Ward councillors should also be

informed of the decision to be made. Officers should always be aware of the issues arising which might mean that a decision becomes a key one (for example, if input, even from a small number of those likely to be affected points to the decision being one which will have a much greater impact than was first apparent).

3. Decisions which should always be treated as key decisions

In addition there are other decisions which are deemed to be key decisions because of their significance and will be included in the forward plan. These are specifically:

- the setting of fees and charges
- the granting or withdrawing financial support to any external community or voluntary organisation in excess of £10,000 (this would not apply to those organisations from which the council commissions services)
- the writing off any bad debt in excess of £50,000 per case
- the disposal of any council property for less than best consideration
- the exercise of the council's compulsory purchase order powers
- the consideration of an inspection or reports by the Social Services Inspectorate, District Auditor, Office for Standards in Education, Children's Services and Skills (Ofsted) and the council's response to any such report
- the strategic procurement strategy approval decisions (Gateway 1 reports)
- reports on corporate budget monitoring and performance.

4. Guidance on determining if a decision is key or not

Where there is any doubt as to the financial value or the significance of the decision, it should be deemed to be a key decision and included in the forward plan.