

# **Section 2 - Access to information rules**

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## Summary

The Access to Information Rules which apply to Council meetings and Committees of Council in executive constitutions are set out in sections 100A to H and Schedule 12A to the Local Government Act 1972 as amended.

Further Access to Information Rules also apply to the Executive under section 22 of the Local Government Act 2000 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

In applying the Access to Information Rules, the Council will take account of the principle of open decision making as set out in Article 11 of the Constitution and the Freedom of Information Act 2000.

## **Part A - General**

### **4.2.1. Scope**

The rules under Part A apply to all meetings of the Council, Cabinet, Overview and Scrutiny Committees, Standards Committee, Health and Wellbeing Board, Regulatory and Non-Executive Committees.

### **4.2.2. Additional rights to information**

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

### **4.2.3. Rights to attend meetings**

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

### **4.2.4. Public question time**

Most meetings of the Council, Cabinet, Overview and Scrutiny Committees, Regulatory and Non-Executive Committees will feature a public question time which will allow members of the public to ask questions about the performance of the Council.

### **4.2.5. Notices of meeting**

The Council will give at least five clear working days' notice of any meeting by posting details of the meeting on the Council's website.

#### 4.2.6. Access to agenda and reports before the meeting

The Council will make copies of the agenda and reports open to the public available for public 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 Head of Paid Service 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. Agendas, reports and minutes will also be made available on the Council's website.

#### 4.2.7. 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 Head of Paid Service and/or the Monitoring 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.

#### 4.2.8. Reporting on the meeting

4.2.8.1. A person attending a local authority meeting for the purpose of reporting on the meeting must, so far as practicable, be afforded reasonable facilities for doing so.

4.2.8.2. In terms of reporting on the meeting, a person may use any communication method, including the internet, to publish, post or otherwise share the results of the person's reporting activities. Publication and dissemination may take place at the time of the meeting or take place after the meeting.

#### 4.2.9. Access to minutes etc. after the meeting

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

- (a) the Minutes of the meeting and records of decisions taken, together with reasons, for all meetings of the Leader and Cabinet Members 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) 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;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

## 4.2.10. Background papers

### *4.2.10.1 List of Background Papers*

The appropriate Director or Chief/Borough 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; 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 1)

### *4.2.10.2 Public Inspection of Background Papers*

The Council will make available for public inspection for six years after the date of the meeting one copy of each of the documents on the list of background papers, and will provide a link to such papers.

## 4.2.11. Summary of public's rights

The Access to Information Procedure Rules which summarise the public's rights to attend meetings and to inspect and copy documents will be available to the public at the Town Hall, Knowsley Street, Bury.

## 4.2.12. Exclusion of the public from meetings

### *4.2.12.1 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.

### *4.2.12.2 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.

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.

#### *4.2.12.3 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 Court Order.

#### *4.2.12.4 Meaning of Exempt Information*

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

<b>Categories of exemptions</b>		
<b>No.</b>	<b>Category</b>	<b>Condition</b>
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)	Information within paragraph 3 is not exempt if it must be registered under various statutes, such as the Companies Act or Charities Act. Contemplated, as well as past and current activities are included
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	"Labour relations matter" are as specified in paragraph (a) to (g) of section 218(1) of the Trade Unions and Labour Relations (Consolidation) Act 1992, i.e. matters which may be the subject of a trade dispute
5	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings	-

<b>Categories of exemptions</b>		
<b>No.</b>	<b>Category</b>	<b>Condition</b>
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. Additional categories applicable to meetings of the Standards Committee or a Standards Sub Committee: (a) Information which is subject to any obligation of confidentiality; (b) Information which related in any way to matters concerning national security; (c) 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.	-

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 permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

#### ***4.2.12.5 Exclusion of the press and public from meetings -Public interest test***

In all cases, before the press and public are excluded, the meeting must be satisfied that, in all the circumstances of the case, the public interest in

maintaining the exemption, outweighs the public interest in disclosing the information.

### 4.2.13. Exclusion of access by the public to reports

4.2.13.1 If the Head of Paid Service and/or the Monitoring 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 12, the meeting is likely not to be open to the public. Such reports will be marked "Not in the public domain" together with the category of information likely to be disclosed.

4.2.13.2 Where the whole or any part of a report is not available for public inspection by virtue of Rule 13.1 -

(a) every copy of the whole report or part of the report must be marked "Not for Publication" and

(b) there must be stated on every copy of the report -

(i) that it contains confidential information; or

(ii) by reference to Schedule 12A of the Local Government Act 1972, the description of the exempt information by virtue of which the public

#### Part B - Application of rules to the Cabinet

Rules 13-24 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 1-12 unless Rule 17 (general exception) or Rule 18 (special urgency) apply. A key decision is defined in Article 11 of the Constitution.

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 1-12 unless Rule 17 (general exception) or Rule 18 (special urgency) apply. This requirement does not include meetings whose sole purpose is for officers to brief Members.

### 4.2.14. 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) a notice has been published in connection with the matter in question at least 28 days in advance of the decision being taken;

(b) 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 5 (notice of meetings).

## 4.2.15. List of key decisions

4.2.15.1 Key Decision documents will be prepared by the Leader or appropriate Cabinet Member, at least 28 clear days before a key decision is made, and made available at Bury Town Hall and on the Council's website.

4.2.15.2 The Key Decision Document will contain matters which the Leader or Cabinet Member has reason to believe will be the subject of a key decision to be taken by the Cabinet, individual members of the Cabinet, officers, District Partnerships or under joint arrangements in the course of the discharge of an executive function during the period covered by the plan. It will describe the following particulars in so far as the information is available or might reasonably be obtained:

- (a) the matter in respect of which a decision is to be made;
- (b) where the decision taker is an individual, his/her name and title, if any and where the decision taker is a body, its name and details of membership;
- (c) the date on which, or the period within which, the decision will be taken;
- (d) a list of the documents submitted to the decision taker for consideration in relation to the matter;
- (e) the address from which copies of, or extracts from, any document listed is available

Exempt information need not be included in a Key Decision Document and confidential information cannot be included.

## 4.2.16. Record of individual decision

As soon as reasonably practicable after an executive 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 (Access to Minutes etc. after the meeting) and 8 (Background Papers) will also apply to the making of decisions by individual members of the Cabinet.

## 4.2.17. General exception

If a matter which is likely to be a key decision has not been included in the List of Key Decisions, then subject to Rule 18 (Special Urgency), 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 List of Key Decisions;

(b) the Chief Executive has informed the Chair of the relevant Scrutiny Committee, or if there is no such person, each Member of that Committee, and a nominated opposition or majority group member of the Committee as appropriate and the leader of the second largest opposition group in writing, by notice, of the matter to which the decision is to be made;

(c) the Chief Executive has made copies of that notice available to the public at the offices of the Council; and

(d) at least five days have elapsed since the Chief Executive complied with (b) and (c).

Where such a decision is taken collectively, it must be taken in public.

#### 4.2.18. Special urgency

If by virtue of the date by which a decision must be taken Rule 17 (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 Chair of the relevant Scrutiny Committee that the taking of the decision cannot be reasonably deferred and has consulted a nominated opposition or majority group member of the Committee as appropriate and the leader of the second largest opposition group. If there is no Chair of the relevant Scrutiny Committee or if the Chair is unable to act, then the agreement of the Chair of the Council (Mayor), or in his/her absence the Vice Chair (Deputy Mayor) will suffice.

#### 4.2.19. Report to Council where general exception or urgency provisions used

##### *4.2.19.1 When a Scrutiny Committee Can Require a Report*

If a Scrutiny Committee thinks that a key decision has been taken which was not:

(a) included in the List of Key Decisions; or

(b) the subject of the general exception procedure; or

(c) the subject of an agreement with the relevant Scrutiny Committee Chair, or the Chair/Vice Chair of the Council under Rule 16 (special urgency procedure); the Committee may require the Cabinet to submit a report to the Council within such reasonable time as the Committee specifies. The power to require a report rests with the Committee, but is also delegated to the Monitoring Officer, who shall require such a report on behalf of the Committee when so requested by the Chair or any five



Members of the Committee. Alternatively the requirement may be raised by resolution passed at a meeting of the relevant Scrutiny Committee.

#### *4.2.19.2 Executive Report to Council*

The Cabinet 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 clear working 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 particulars of 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.

#### *4.2.19.3 Quarterly Reports on Special Urgency Decisions*

In any event the Cabinet will submit quarterly reports to the Council on the executive 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.

#### **4.2.20. Record of decisions**

After any meeting of the Cabinet or any of its Committees, whether held in public or private, the Head of Paid Service or, where no officer was present, the person presiding at the meeting, 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.

#### **4.2.21. Cabinet meetings relating to matters which are not key decisions**

The Cabinet will decide whether meetings relating to matters which are not key decisions will be held in public or private.

#### **4.2.22. Notice of public and private meetings of the Executive**

4.2.22.1 The Cabinet will normally meet in public in accordance with the provisions of the Local Government (Access to Information Act 1985)

4.2.22.2 Members of the Cabinet or its Committees will be entitled to receive five clear working days' notice of a public or private meeting to which they are summoned unless the meeting is convened at shorter notice as a matter of urgency.

4.2.22.3 All Members of the Cabinet will be sent notice either by post or electronically of all public or private meetings of Committees of the Cabinet whether or not they are Members of that Committee.

4.2.22.4 Notice of all public meetings of the Cabinet and its Committees will be sent either by post or electronically to all Members of the Council and Education Representatives and Co-opted Members on Scrutiny Committees.

### 4.2.23. Attendance at public meetings of the Cabinet

4.2.23.1 All Members of the Cabinet will be entitled to attend and speak at any meeting of a Committee of the Cabinet but only Members of the Committee may vote.

4.2.23.2 Any Member of the Council may attend a public meeting of the Cabinet and may be invited to speak only at the discretion of the person presiding at the meeting.

4.2.23.3 Individual Members of the Council who are not members of the Cabinet may not attend a private meeting of the Cabinet or Committee of the Cabinet unless invited to do so by the person presiding at the meeting. An invited Member may be invited to speak at that meeting by the person presiding.

4.2.23.4 The Head of Paid Service, the Chief Finance Officer and the Monitoring Officer or their nominees are entitled to attend any meeting of the Cabinet and its Committees.

### 4.2.24. Decisions by individual members of the Executive and officers

#### *4.2.24.1 Reports Intended to be Taken into Account*

Where an individual Member of the Cabinet or officer 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 the report has been available for public inspection for at least five clear days after receipt of that report. The provisions of this Section will not apply to a decision taken under Rule 18 (Special Urgency).

#### *4.2.24.2 Provision of Copies of Reports to Overview and Scrutiny Committees*

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 every relevant Overview and Scrutiny Committee, or where there is no Chair to every Member of the Committee, as soon as reasonably practicable, and send it to the Head of Paid Service to ensure it is publicly available at the same time.

### *4.2.24.3 Record of Individual Decision*

As soon as reasonably practicable after an executive 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 request the Head of Paid Service 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 8 and 9 (inspection of documents after meetings) will also apply to the making of decisions by individual Members of the Cabinet or officers. This does not require the disclosure of exempt or confidential information or advice from a political assistant.

## 4.2.25. Overview and scrutiny committees access to reports and documents

### *4.2.25.1 Rights to Copies of Reports*

Members of Overview and Scrutiny Committees will be supplied with copies of any reports or papers which are to be submitted to public or private meetings of the Cabinet or its Committees for consideration, except that Voting Education Representatives and Co-opted Members of a Committee will not be supplied with exempt or confidential reports unless such reports are relevant to an action or decision being reviewed or scrutinised by the Committee.

### *4.2.25.2 Rights to Copies of Documents*

Subject to Rule 23.3 below, a Scrutiny Committee (including its Sub-Committees) will be entitled to copies of any document which is in the possession or control of the Cabinet and which contains material relating to:

- (a) any business transacted at a public or private meeting of the Cabinet or its Committees;
- (b) any executive decision taken by an individual Member of the Cabinet
- (c) any key decision taken by an officer

### *4.2.25.3 Limit of Rights*

Scrutiny Committees 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; or
- (c) the advice of a political adviser

## 4.2.26. Additional rights of access for members

### *4.2.26.1 Material Relating to Previous Business*

Any document which is in the possession or under the control of the Cabinet and contains material relating to any business to be transacted at a meeting of the Cabinet or relates to any key decision shall be open to inspection by any Member of the Council unless it appears to the Chief Executive Cabinet and Monitoring Office that it discloses exempt information.

Notwithstanding paragraph 24.1 the document will remain open to inspection if the information it contains falls within paragraphs 3 or 6 of Schedule 12A to the local Government Act 1972 (with the exception of information relating to any terms proposed or to be proposed by or to the Authority in the course of negotiations for a contract).

### *4.2.26.2 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 which relates to any key decision unless paragraph (a) or (b) above applies.

### *4.2.26.3 Nature of Rights*

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