

ACCESS TO INFORMATION PROCEDURE RULES

1. SCOPE AND INTERPRETATION

- 1.1. This Council's Access to Information Procedures work on the principles of openness and transparency to enable the public to access how decisions are (and have been) taken.
- 1.2. These Rules provide Councillors' access to Committee documents which exceed statutory requirements to ensure that all Councillors are kept informed of the business of the Cabinet (including delegated decisions), the Full Council and all Committees.
- 1.3. These Rules apply to all formal meetings of the Full Council, Overview and Scrutiny Committee(s), other Committees, Sub-Committees, meetings of the Cabinet and its Committees (including Joint Committees).
- 1.4. These Rules also detail the procedures for recording and publicising Executive delegated decisions.
- 1.5. Joint Committees will follow the relevant Access to Information Procedure Rules (i.e. Cabinet/Executive Rules where Councillor Membership solely consists of Cabinet Members from those Authorities or Non-Cabinet/Executive Rules in all other cases).
- 1.6. Rules 12 onwards specifically relate to Cabinet/Executive decision making.
- 1.7. The Monitoring Officer holds overall responsibility for these Rules, including their interpretation.
- 1.8. Where these Rules make reference to:
 - a) The publication of Notices, this refers to them being published on the Council's website. In addition, it also means that all Notices (including agendas and those under Urgency and Exception) can be made available on request for inspection by the public at the offices of the Council.
 - b) Clear working days, this refers to days the Council Offices are open to the public (i.e. not Saturdays, Sundays and Bank Holidays) and excludes both the day on which the Notice is published and the day of the meeting.

2. RIGHTS TO INFORMATION

- 2.1. These Rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.
- 2.2. These Rules are a written summary of the public's right to attend meetings and to inspect and copy documents. These Rules (through being part of the Constitution) are available to the public on its website on request at the Council offices.

3. RIGHTS TO ATTEND MEETINGS

Public

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

- 3.2. The public have the right to attend all formal Cabinet meetings. The Forthcoming Decision Notice/s will identify the items which the Cabinet intends to hold in Part B (Closed to the Public) session.
- 3.3. In advance of the Cabinet meeting, the public may request, via the Monitoring Officer, that the discussion on an exempt item be held in Part A (Open to the Public). At the Cabinet meeting, the Cabinet will consider any such request.

Councillors

- 3.4. Councillors may attend all formal meetings, including exempt sessions, with the exception of the Employment Panel and the closed session of the Licensing Sub-Committee.

4. NOTICE OF MEETING

- 4.1. The Council will give at least five clear working days' notice ("summons") of any meeting by posting details on its website and at the offices of the Council. Where exceptionally this period of notice cannot be given, the Council will ensure that legal requirements on specifying the special urgent circumstances that apply in particular cases will be met.

5. ACCESS TO AND SUPPLY OF AGENDAS, REPORTS AND OTHER COMMITTEE DOCUMENTS

- 5.1. Where a meeting was open to the public, the Council will make copies of the agenda and reports available for a minimum of six years after the meeting was held.

Public

- 5.2. The Council will make copies of the agenda and reports available to the public on its website at least five clear working days before the meeting. A paper copy for public inspection will also be available on request at the Town Hall. Where reports are prepared after the summons/agenda publication, the Monitoring Officer will make each report and supplementary agenda available to the public via the website as soon as practicable.
- 5.3. When requested, the Council will supply members of the public with paper copies of Committee documents (a charge may be made).
- 5.4. Documents which contain exempt and/or confidential information will not be made available to the public.

Councillors

- 5.5. All Councillors will be notified and receive access to Committee papers electronically on the date of publication, including those containing exempt and/or confidential information. Those Councillors attending a Meeting may request a paper copy of the paperwork.
- 5.6. However, the Monitoring Officer may deem it necessary to restrict access solely to those Councillors involved in taking that decision, where the information is considered highly sensitive, and the interest of restricting access outweighs the rights of all other Councillors (e.g. Employment Panel or contract negotiations). In such cases, the

Monitoring Officer may allow a Councillor to view such documents under their supervision. Where a Councillor requests access to restricted information, and this is denied by the Monitoring Officer, the reasons for that decision will be provided in writing to that Councillor.

6. BACKGROUND PAPERS

- 6.1. The Officer preparing a report will set out within the report, a list of documents (called background papers) which in their opinion:
 - a) Disclose any facts or matters on which the report or an important part of the report are based.
 - b) Have been relied upon, to a material extent, in preparing the report.
- 6.2. Background papers do not however include published works or those which contain exempt and/or confidential information.
- 6.3. The Council will make available for public inspection (either via its website or on request), for a minimum of six years after the date of the meeting, one copy of each of the documents on the list of background papers.

7. MINUTES AND RECORD OF DECISIONS

- 7.1. Following any formal meeting, or when a delegated decision is taken by a Cabinet Member (or a Key decision is taken by an officer), a formal record of the decision (usually in the form of a minute) will be produced and made publically available via the Council's website for a minimum of six years.
- 7.2. That record must include:
 - a) A record of the decision maker and, where appropriate, under which delegated power the decision was taken.
 - b) A record of the decision including the date it was made.
 - c) A record of the reasons for the decision/recommendation.
 - d) Details of any alternative options considered and rejected.
 - e) A record of any conflict of interest declared by a Councillor involved in the decision making process, and a note of any related dispensation granted by the Head of Legal, Democracy and HR.
 - f) A summary of the discussion (formal meetings only).
 - g) Reference to any Exempt Information – Category under which access by the public to a report/information was restricted.
 - h) 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 (formal meetings only).
- 7.3. To enable the Call-In process to commence in a timely manner, a Notice of Decision for the meetings of the Cabinet will be published as soon as reasonably practicable. This will contain:
 - a) The date of the meeting.
 - b) The decision.

c) Reasons for the recommendation/decision.

A full minute will be published in due course.

8. CONFIDENTIAL/EXEMPT INFORMATION

Confidential Information

8.1. 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.

Exempt Information

8.2. Exempt information is information held by the Council which can be withheld from the public. The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 states that "*Information... 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*".

8.3. This Council works on the principles of openness and transparency and when deciding whether information should be classed as exempt, the public interest test* is always a consideration. The Monitoring Officer may exclude access by the public to reports/information under one or more of the 7 Exempt Information - Categories as set out below. Exempt reports will be marked "not for publication" and will identify the relevant Exempt Information - Category. Where possible any exempt information should be contained in an appendix to enable discussion of the main item to be held in public.

Exempt Information - Categories

8.4. Exempt information means falling within the following categories (subject to any qualification):

1. Information relating to any individual	
Condition/s	<i>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 (as defined below this table)*.</i>
Practical Illustration	Reports which relate to: <ul style="list-style-type: none">• Employees, a former employee, job applicants.• Occupiers or former occupiers of Council accommodation.• Applicants or recipients or former recipients of any service provided by the Council.• Applicants or recipients or former recipients of any financial assistance provided by the Council.• Protected informants in relation to civil matters.

2. Information which is likely to reveal the identity of an individual	
Condition/s	<i>The Public Interest Test Qualification applies, as in 1 above*.</i>
Practical Illustration	Reports where personal data could be revealed indirectly. Names, addresses or telephone numbers can identify individuals.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)	
Condition/s	<ul style="list-style-type: none"> <i>The Public Interest Test Qualification applies, as in 1 above*.</i> <i>“Financial or business affairs” includes contemplated, as well as past or current, activities.</i>
Practical Illustration	<p>Financial or business affairs are defined to include contemplated as well as past or current business activities. This exemption covers:</p> <ul style="list-style-type: none"> The financial or business affairs of the Council itself. The financial or business affairs of individuals and companies, charities etc. registered in relation to information required to be registered under the Building Societies Act 1986, means recorded in the public file of any building society (within the meaning of that Act). Reports about contracts and negotiations for the acquisition/disposal of property or supply of goods or services, the identity of the Council or any other person offering any particular tender for a contract for the supply of goods or services and the making of grants to external organisations.
4. Information relating to any 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 officer-holders under, the authority	
Condition/s	<ul style="list-style-type: none"> <i>The Public Interest Test Qualification applies, as in 1 above*.</i> <i>“Labour relations matters” are:</i> <ul style="list-style-type: none"> <i>(a) as specified in Paragraphs (a) to (g) of Section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992, i.e. matters which may be the subject of a trade dispute, within the meaning of that Act; or</i> <i>(b) any dispute about a matter falling within Paragraph (a) above</i> <p><i>and for the purposes of this definition the enactments mentioned in Paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to employees of the authority.</i></p> <i>“employee” means a person employed under a contract of service.</i> <i>“office-holder”, in relation to the authority, means the holder of any paid office appointments to 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>

Practical Illustration	Labour relations means matters which may be the subject of a trade dispute under the Trade Union and Labour Relations Act 1992, such as pay and terms and conditions of employment. Employee means a person employed under a contract of service. Office holder, in relation to the Council, means the holder of any paid office appointments which are or may be made or confirmed by the Council or by any joint board on which the Council is represented or by any person who holds any such office or is an employee of the Council.
5. Information in respect of which a claim to legal privilege could be maintained in legal proceedings	
Condition/s	<i>The Public Interest Test Qualification applies, as in 1 above*.</i>
Practical Illustration	This covers legal advice given by a professional legal adviser, i.e. Legal Services or external solicitors and barristers. It applies where no litigation is contemplated or pending (e.g. general advice on non-contentious matters), as well as in connection with legal proceedings by or against the Council.
6. Information which reveals that the authority proposes – (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment	
Condition/s	<i>The Public Interest Test Qualification applies, as in 1 above*.</i>
Practical Illustration	The wording of this exemption covers reports about proposed action under regulatory legislation such as planning, licensing and environmental health.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	
Condition/s	<i>The Public Interest Test Qualification applies, as in 1 above*.</i>
Practical Illustration	The wording of this exemption covers reports about criminal investigations and prosecutions undertaken by the Council, and any actions which might be taken to prevent crime occurring. This would include information about a protected informant in relation to any criminal investigations.

Information which is not exempt (Qualifications)

- 8.5. Information falling within any of the above categories is not exempt information if:
- It relates to proposed development for which the local planning authority can grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992; or
 - If it must be registered under various statutes, such as:
 - a) The Companies Act 2006.
 - 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 2011.

* The Public Interest Test

- 8.6. The Freedom of Information (FOI) Act 2000 states that the Authority must release the information unless *“in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”*.
- 8.7. The starting point is that there is a general public interest in release, and the public authority has to decide whether in any particular case it would serve the interest of the public better to either disclose or withhold the information.
- 8.8. There is no legal definition of what the public interest is, but the following have been identified as some of the relevant considerations.
 - There is a distinction between the public interest and what merely interests the public.
 - Does it further the understanding of and participation in the public debate of issues of the day?
 - Does it promote accountability and transparency by public authorities for decisions taken by them or in the spending of public money?
 - Does it allow individuals and companies to understand decisions made by public authorities affecting their lives?
 - Does it bring to light information affecting public health and public safety?

9. EXCLUSION OF ACCESS OF THE PUBLIC TO MEETINGS

- 9.1. For clarification, the Council uses the term “Part B Business (Closed to the Public)” where exempt or confidential information will be considered and the meeting will not be open to the public. In these circumstances the relevant Committee is required to pass a resolution to move the meeting into Part B session.

Confidential: Requirement to Exclude Public

- 9.2. The public must be excluded from meetings or parts of meetings where it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information (as previously defined) would be disclosed.

Exempt information: Discretion To Exclude Public

- 9.3. The public may be excluded from meetings when a Committee is considering an exempt report (as defined above) or the nature of the business being debated is likely to disclose exempt information. In these circumstances the following resolution will be passed, that:

“Under Section 100A (4) of the Local Government Act 1972 the public be excluded from the meeting for the following item(s) of business on the grounds that it/they involve the likely disclosure of exempt information as defined in Part 1 of Schedule 12A of the Act by virtue of the paragraphs specified against the item(s).”

- 9.4. Where reports contain exempt or confidential information, the meeting may decide not to pass the above resolution and still discuss the matter in public, ensuring that it does not disclose any exempt or confidential information.

- 9.5. 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 of the Act.

10. RECORDINGS AT MEETINGS

- 10.1. In line with the Openness of Local Government Bodies Regulations 2014, audio/visual recording and photography is permitted at all formal meetings (i.e. the Full Council, the Cabinet, Committees and Sub-Committees). However, recording of oral commentary/reporting during the meeting is not permitted.
- 10.2. However, if a resolution is passed to exclude the media and public (Part B Business (Closed to the Public)) then, in conjunction with this, all recording rights (both of the public and Councillors) are removed.
- 10.3. Any recording must only focus on Councillors, officers and those member(s) of the public as they address the Committee, and not those sitting in the public gallery.
- 10.4. All mobile/recording devices must be set to silent mode during the meeting.
- 10.5. If the Chair of the meeting feels that any recording is disruptive or distracting to the good order and conduct of the meeting (i.e. through flash photography or intrusive camera equipment), they can withdraw the right to record. The Chair's decision is final.
- 10.6. The Council will, as far as is practicable, make reasonable facilities available for those wishing to record. Therefore, advanced written notice is requested to the Monitoring Officer (democratic.services@ Crawley.gov.uk).

11. EMERGENCY URGENCY

- 11.1. Between 1 April 2020 and 31 July 2020 additional Emergency Urgency Powers were in place which delegated decision making authority to the Chief Executive in consultation with the appropriate Councillor/s. These measures ensured that the Council could continue to work as efficiently as possible and take necessary and appropriate decisions in light of the significant and ongoing impact of the Coronavirus pandemic. The agreed Emergency Urgency Powers are set out in [Councillors' Information Bulletin IB/1019](#).
- 11.2. The power to reinstate Emergency Urgency Powers is delegated to the Chief Executive, with the agreement of the Leader, the Opposition Leader, and the Chair and Vice-Chair of the Governance Committee, should the situation change with regard to the Coronavirus pandemic and it become necessary to do so.

12. ACCESS TO INFORMATION (CABINET)

- 12.1. The following Rules specifically relate to Cabinet/Executive decision making, including access rights to documents relating to a delegated decision.
- 12.2. The types of Executive decisions are contained within the Introduction to the Decision Making Section of this Constitution.

- 12.3. Where the following paragraphs do not make reference to specific Access matters, then the main Access Rules above will apply.

13. INFORMAL: CABINET BRIEFING AND PORTFOLIO BRIEFINGS

- 13.1. The Cabinet, either collectively (via Cabinet Briefing) or individually (via Portfolio Briefings), may informally meet in private for the purpose of being briefed by officers. These briefings will relate to matters which are likely to either be considered at a formal future Cabinet meeting or relate specifically to their Portfolio.
- 13.2. As these meetings are informal and any reports are in draft format, they are not subject to these Access to Information Rules.

14. NOTICE OF KEY DECISION

- 14.1. Subject to the urgency procedures set out below, a Key Decision may not be taken unless:
- a) A Forthcoming Decision Notice (“Notice”) has been published electronically in connection with the matter for at least 28 clear days before the decision is to be taken. That Notice shall detail (where relevant):
 - (i) The decision to be taken.
 - (ii) A description of the issue requiring the decision.
 - (iii) The decision maker (e.g.):
 - Cabinet or Sub-Committee of the Cabinet.
 - Cabinet Member (and their portfolio title).
 - Officer (and their job title).
 - (iv) The date the decision was first published.
 - (v) The intended date that the decision will be taken.
 - (vi) The Wards affected.
 - (vii) Why the decision is defined as Key.
 - (viii) The nature of any consultation (if relevant).
 - (ix) Details of any documents that the decision maker will consider (which may include background documents) when taking their decision (if relevant).
 - b) Where it is intended that the decision will involve the consideration of exempt or confidential information and the discussion will be held in Part B Business (Closed to the Public), a Notice has been published electronically at least 28 clear days before the decision is to be taken. That Notice will state the Exempt Information – Category which justifies why the decision is to be taken in private.
 - c) A further Notice (normally an agenda) has been published at least five clear working days before the decision is taken. That Notice shall contain a report (which may contain exempt or confidential information) for consideration which details the decision to be made, alternative options considered and rejected and the reason for the recommendation.
- 14.2. **Report to the Full Council by the Leader Following a Challenge by the Overview and Scrutiny Commission Regarding a Decision Route**

Where the Commission is of the opinion that a Key Decision has been taken which was either not included on the list of Forthcoming Decisions or did not follow the relevant Urgency Procedure/s correctly (as set out below), it may pass a resolution

that the Leader be required to submit a report to the next ordinary meeting of the Full Council. However, if the next meeting of the Full Council is within five clear working days, then the report may be submitted to the meeting after that.

The report must detail who took the decision, the decision taken, the reasons for that decision, the procedure followed and why the decision was deemed to be Non-Key.

15. DELEGATED DECISIONS

15.1. Consideration Reports

When a Cabinet Member is due to take any delegated decision (either Key or Non Key) a Consideration report is required to be published.

A Consideration report equates to a Cabinet Committee report and as such is subject to the same Access Rules, i.e. the report:

- a) Must be published at least five clear working days before the decision is to be taken.
- b) Must include the following:
 - A description of the issue to be resolved (i.e. purpose).
 - Recommendation/s.
 - Details of any alternative options for consideration.
 - Reasons for the decision.
 - Any other implications and supporting information (as required).
- c) Can be classed as “exempt” and not for publication under the Exempt Information – Categories as defined in Paragraph 8.4.

In the unusual circumstance that an officer takes a Key Decision, that decision will be subject to the same Rules as a Decision being taken by a Cabinet Member.

15.2. Record of Significant Operational Decisions

As the Council has a duty to be open and transparent as soon as is reasonably practicable after an officer has taken a Significant Operational (Non Key) Decision, the decision will be published on the Council’s website. That record must include:

- a) A record of the decision maker and, when appropriate, under which delegated power the decision was taken.
- b) A record of the decision, including the date it was made.
- c) A record of the reasons for the decision/recommendation.
- d) Details of any alternative options considered and rejected.
- e) Any other information deemed necessary.

16. URGENCY AND EXCEPTION PROCEDURES

16.1. There are three urgency and exception procedures:

- General Exception.
- Exempt Exception.
- Special Urgency.

16.2. **General Exception**

If a Forthcoming Decision Notice has not been published electronically at least 28 clear days before the decision is to be taken, that decision may still be taken if:

- a) It would be impracticable to defer the decision by 28 days.
- b) The Chair of the Overview and Scrutiny Commission, or in their absence each Commission Member, has been informed of the decision to be made and why it would be impracticable for it to be deferred.
- c) A Notice has been published electronically.
- d) At least five clear working days are available to allow publication of the Notice (agenda/report) before the decision is due to be taken.
- e) The decision does not involve the consideration of exempt or confidential information in Part B Business (Closed to the Public).

16.3. **Exempt Exception**

Where a Forthcoming Decision Notice has not been published for 28 days identifying that a decision is intended to consider exempt or confidential information and the discussion will be held in Part B Business (Closed to the Public), that decision may still be taken in a Private Session if:

- a) It would be impracticable to defer the decision by 28 days.
- b) It would be unreasonable to take the decision in public.
- c) The Chair of the Overview and Scrutiny Commission, or in their absence the Vice Chair of the Commission and the Mayor, has agreed that the decision is urgent and cannot be reasonably deferred.
- d) A Notice has been published electronically stating which Exempt Information – Category, justifies the decision being taken in private.
- e) At least five clear working days are available to allow publication of the Notice (agenda/report) before the decision is due to be taken.

16.4. **Special Urgency**

If a decision is required to be taken urgently and it would be impracticable to publish a Forthcoming Decision Notice for the 28 clear days period and to publish the agenda/report for five clear working days then that decision may only still be taken if:

- a) The Chair of the Overview and Scrutiny Commission, or in their absence the Vice Chair of the Commission and the Mayor, has agreed that the decision is urgent and cannot be reasonably deferred.
- b) A Forthcoming Decision Notice has been published electronically as soon as practicable (including the reason for urgency along with the Chair of the Overview and Scrutiny Commission's agreement).
- c) The decision must be taken by such a date that it is impracticable to defer the decision to give five clear working days' notice and enact the General Exception Procedure.
- d) The Leader submits a report (detailing the decision made and reason for Special Urgency) to the next ordinary meeting of the Full Council following the use of the Special Urgency Procedure.

NB. By the nature of the decisions usually taken under Special Urgency, these decisions may require a Protection from Call-In as detailed in the Call-In Procedures.

17. RIGHTS OF OVERVIEW AND SCRUTINY COMMISSION MEMBERS

- 17.1. In addition to the rights and restrictions contained within Paragraph 5.5, Commission Members are entitled to any formal Cabinet/Executive document relating to:
 - a) Any business that has been transacted at its formal meeting.
 - b) Any decision taken by an individual Cabinet Member or a Key Decision taken by an officer.
- 17.2. Such documents will be provided within ten clear working days after the request has been received by the Monitoring Officer (democratic.services@ Crawley.gov.uk). However, where the Monitoring Officer deems it necessary to restrict access to that document (or part of it) based on the criteria set out in Paragraph 5.6, the Overview and Scrutiny Commission will be provided with a written statement setting out the reasons for that decision.
- 17.3. The Commission also has the ability to provisionally refer an item from the list of Forthcoming Decisions. This entitles Commission Members to view a draft version of that report to allow those Councillors to determine whether there is value in fully referring the item to the Commission for its scrutiny.
- 17.4. If the Commission refers a delegated Key Decision (Cabinet Member or officer) from the list of Forthcoming Decisions, that decision must not be taken until after the Commission has met to discuss the issue. If the matter is urgent, then the Chair of the Overview and Scrutiny Commission will be advised by the Head of Legal, Democracy and HR of the reason as to why it is impracticable to defer the decision until after the Overview and Scrutiny Commission has met.