

Section 2 - Access to information rules

4.2.1 Meetings covered by these rules

4.2.2 Rules 4.2.4 – 4.2.35 apply to all meetings of:

- (a) Council, or joint committees formed by Council
- (b) the cabinet, or joint committees formed by the cabinet
- (c) the audit and governance committee
- (d) a scrutiny committee
- (e) the planning and regulatory committee
- (f) the licensing sub committee
- (g) the employment panel
- (h) the health and wellbeing board
- (i) all sub-committees except as provided for by law or elsewhere in this constitution.

4.2.3 Rules 4.2.36-4.2.65 contain additional rules for meetings of the executive prescribed by The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

4.2.4 Rights to attend meetings

4.2.5 Members of the public and elected members may attend all meetings unless they have been excluded in accordance with the provisions of these rules (paragraphs 4.2.27-30).

4.2.6 Notice of meetings

4.2.7 The council will give at least five clear working days' notice of any meeting by posting details of the meeting on the website and at the designated office (Shire Hall, St Peter's Square, Hereford), unless the meeting is convened at shorter notice in which case such notice will be given from the time that the meeting is convened.

4.2.8 Access to agenda and reports before the meeting

4.2.9 Copies of:

- (a) the agenda, and
- (b) those reports which are open to the public

shall be made available for inspection at the designated office and on the council's website at least five clear working days before the meeting, unless paragraphs 4.2.10 or 4.2.11 apply.

4.2.10 If a meeting is convened with less notice, copies of the agenda and reports must be open to inspection from the time the meeting is convened.

4.2.11 If an item is added to an agenda which is open to inspection, copies of the additional item and the revised agenda must also be open to inspection from the time the item is added to the agenda.

4.2.12 Consideration of items of business

4.2.13 An item of business may not be considered at a meeting unless either:

- (a) a copy of the agenda including the item (or a copy of it) is open to inspection by a member of the public for at least five clear working days before the meeting, or if the meeting was convened with less notice, from the time the meeting is convened, or
- (b) the chairperson of the meeting considers that for reasons which should be specified in the minutes, the item should be considered at the meeting as a matter of urgency.

4.2.14 Rules in paragraphs 4.2.39-48 apply if the item of business relates to a key decision.

4.2.15 Supply of copies

4.2.16 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 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.

4.2.17 The council may first direct a member of the public seeking copies of documents referred to in 4.2.16 to the council's website if copies of those documents are available there.

4.2.18 Except during any part of the meeting during which the public are excluded, the council will make available for the use of members of the public present at the meeting a reasonable number of copies of the agenda and reports which are accessible to the public.

4.2.19 Access to minutes and meeting documentation after the meeting

4.2.20 The council will retain for six years and make available copies of the following:

- (a) the minutes of the meeting, for all meetings covered by these rules as set out by 4.2.2 above, 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;
- (d) reports relating to items when the meeting was open to the public; and
- (e) records of decisions made by the executive in the form prescribed by regulations.

4.2.21 Background papers

4.2.22 List of background papers

4.2.23 When a copy of the whole or part of a report for a meeting is made available for inspection by the public, the proper officer (the director responsible for the report) will set out in the 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 this does not include published documents, or documents which disclose exempt or confidential information (as defined by law and set out in paragraphs 4.2.27-30 below).

4.2.24 Public inspection of background papers

4.2.25 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.

4.2.26 In respect of meetings of an executive decision-making body only, at least one copy of each of the background papers included in that list must be available for public inspection at the designated office and on the council's website from the time when copies of the report are made available to the public.

4.2.27 Exclusion of access by the public to meetings

4.2.28 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. Confidential information is either information given to the council by a government department upon terms which forbid the disclosure of the information to the public, or information whose disclosure to the public is prohibited by or under any enactment or by an order of a court.

4.2.29 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 and the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Exempt information is categorised as:

- 1 Information related 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 relating 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 of 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.

- 4.2.30 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 Acts (as defined in section 2 of the Companies Act 2006)
 - b) the Friendly Societies Act 1974
 - c) the Friendly Societies Act 1992
 - d) the Co-operative and Community Benefit Societies and Credit Unions Act 1965 to 1978
 - e) the Building Societies Act 1986
 - f) the Charities Act 2011

“Financial or business affairs” includes contemplated, as well as past or current, activities

4.2.31 Exclusion of access to reports

- 4.2.32 If in the opinion of the monitoring officer any report contains confidential information (as defined at paragraph 4.2.28) or exempt Information (as defined at paragraph 4.2.29), and will or is likely to be considered during that part of the meeting from which the public are excluded, those reports will not be published with the agenda for the meeting. Such reports will be marked “Not for publication” and will include a statement of the category of information contained within the report which will or is likely to give rise to the exclusion of the public from the meeting.

- 4.2.33 When a report is to be considered at a meeting which in the opinion of the monitoring officer contains confidential information as defined at paragraph 4.2.28, the chairperson will ask the public to leave the meeting during consideration of that item.

- 4.2.34 When a report is to be considered at a meeting which in the opinion of the monitoring officer contains exempt information as defined at paragraph 4.2.29, the chairperson will invite the members present at the meeting to consider whether in the circumstances the public press and members who are not members of the decision-making body should be excluded and, if the meeting agrees, the chairperson will ask those in attendance to leave the meeting during consideration of that item.

4.2.35 No recording devices of any description may be left in the chamber or room when members of the public and press are excluded in accordance with these access to information procedure rules relating to exempt and confidential information.

4.2.36 Application of rules to executive decisions

4.2.37 Rules 4.2.36-65 apply to the public meetings of cabinet and its committees or other executive decision maker in addition to rules 4.2.4-35 above. These are drawn from the The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (the Regulations).

4.2.38 The requirements in these rules do not apply to meetings whose sole purpose is for officers to brief councillors.

4.2.39 Private meetings of an executive decision-making body

4.2.40 Where an executive decision-making body intends to hold a private meeting (meaning a meeting or part of a meeting of that body from which the public are excluded in accordance with paragraphs 4.2.27-30), then subject to paragraphs 4.2.49-51 (general exception) and paragraphs 4.2.52-54 (special urgency):

- (a) at least 28 clear calendar days before the private meeting a notice of that intention must be made available at the designated office and on the council's website, including a statement of reasons for the meeting to be held in private;
- (b) at least five clear working days before such a meeting a further notice of that intention must be made similarly available, including a statement of reasons for it to be held in private, details of any representations received about why the meeting should be open to the public and a statement of its response to any such representations.

4.2.41 Where the date by which such a meeting must be held makes compliance with this regulation impracticable, the meeting may only be held in private where agreement has been obtained that the meeting is urgent and cannot reasonably be deferred from:

- (a) the chairperson of the relevant scrutiny committee, or
- (b) if there is no such person or that chairperson is unable to act, the chairperson of the council, or
- (c) in the absence of both, the vice-chairperson of the council.

4.2.42 As soon as reasonably practicable after agreement has been obtained under 4.2.41, a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred must be made available at the designated office and on the council's website.

4.2.43 The head of paid service, section 151 officer, and the monitoring officer, and their nominees are entitled to attend any meeting of the cabinet and its committees.

The cabinet may not meet formally unless the proper officer has been given reasonable notice that a meeting is to take place in accordance with these rules.

- 4.2.44 A private cabinet meeting may only take place in the presence of the monitoring officer or their nominee.
- 4.2.45 Notice of private meetings of the cabinet, or a joint executive committee, shall be served on the chairperson of the relevant scrutiny committee at the same time as notice is served on members of the cabinet. Where a scrutiny committee does not have a chairperson, the notice shall be served on all the members of that committee.
- 4.2.46 Where a matter under consideration at a private meeting of the cabinet, or a joint cabinet committee, is within the remit of a scrutiny committee, the chairperson of the relevant scrutiny committee or in their absence the vice-chairperson may attend and speak at that private meeting with the consent of the person presiding.

4.2.47 Publicity in connection with executive key decisions

- 4.2.48 Where a decision maker intends to make a key decision, that decision must not be made until a document has been published 28 clear calendar days before the decision and made available for public inspection at the council's designated office and on its website stating:

- (a) that a key decision is to be made
- (b) the matter in respect of which a decision is to be made
- (c) where the decision taker is an individual, their name and title, if any, and where the decision taker is a decision making body, its name and a list of its members;
- (d) the date on which, or the period within which, the decision is to be made;
- (e) a list of the documents submitted to the decision taker for consideration in relation to the matter in respect of which the key decision is to be made;
- (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
- (g) that other documents relevant to those matters may be submitted to the decision maker; and
- (h) the procedure for requesting details of those documents (if any) as they become available.

4.2.49 General exception

- 4.2.50 Subject to 4.2.52-54, where the publication of the intention to make a key decision under 4.2.48 is impractical, the decision may still be taken if:
- (a) the monitoring officer has informed the chairperson of the relevant scrutiny committee, or, if there is no such person, each member of that committee by notice in writing, of the matter about which the decision is to be made;
 - (b) the monitoring officer has made copies of that notice available for public inspection at the designated office and published it on the council's website; and
 - (c) at least five clear working days have elapsed since the monitoring officer complied with (a) and (b).
- 4.2.51 As soon as reasonably practicable after paragraph 4.2.50 has been complied with, a notice setting out the reasons why compliance with paragraph 4.2.48 is impracticable must be published on the council's website.

4.2.52 Special urgency

- 4.2.53 If because of the date by which a decision must be taken, paragraph 4.2.49-51 (general exception) cannot be followed, then the decision can only be taken if the decision maker (if an individual) or the chairperson of the body making the decision, has obtained the agreement of:
- (a) the chairperson of the relevant scrutiny committee; or
 - (b) if there is no chairperson of the relevant scrutiny committee or in his /her absence, the chairperson of the council, or
 - (c) in the absence of the chairperson of the relevant scrutiny committee or the chairperson of the council, the vice-chairperson of the council
- that the making of the decision is urgent and cannot reasonably be deferred.
- 4.2.54 As soon as reasonably practicable after agreement has been obtained in accordance with paragraph 4.2.53 a notice setting out the reasons why the decision is urgent and cannot reasonably be deferred must be made available at the designated office and published on the council's website. Decisions taken by way of special urgency will not be subject to call-in.

4.2.55 Reports to Council on executive decisions

- 4.2.56 The leader will report to ordinary meetings of Council on executive decisions taken since the preceding meeting of Council. The report will include the number of decisions taken under the provisions of paragraphs 4.2.27-30, 4.2.49-51 and 4.2.52-56 and provide a summary of the matters in respect of which those decisions were taken.

4.2.57 Report to Council where it is considered the key decision procedure has not been followed

4.2.58 If an scrutiny committee thinks that an executive decision has been made which was a key decision but not treated as such the committee may require the cabinet to submit a report to the council meeting within such reasonable time as the committee specifies.

4.2.59 The report to the council meeting will set out the decision and the reasons for the decision, the decision maker, and if the cabinet is of the opinion that it was not a key decision, the reasons for that opinion.

4.2.60 Record of executive decisions

4.2.61 As soon as reasonably practicable after an executive decision is made the monitoring officer, or if the monitoring officer was not present at the meeting, the person presiding, will produce a written statement of every such decision.

That statement will include:

- (a) a record of the decision and date it was made and by whom;
- (b) the reasons for the decision
- (c) any alternative options considered and rejected; and
- (d) a record of any conflict of interest declared by any executive member who is consulted by the officer which relates to the decision; and
- (e) in respect of any declared conflict of interest, a note of any dispensation granted.

4.2.62 Inspection of documents following executive decisions

4.2.63 Subject to 4.2.57-59, as soon as is reasonably practicable after an executive decision has been made, the monitoring officer will make available for inspection by the public at the designated office and on the council's website the above written statement (and any report or part of a report relevant to the decision and considered by the executive decision-maker). A copy of these documents must be supplied on request to a newspaper on payment of postage, copying and other necessary charge.

4.2.64 No written statement, report or document will be made available for public inspection which contains confidential information or where disclosure would give rise to the disclosure of exempt information, both as defined above.

4.2.65 Additional rights of access to documents for members of scrutiny committees

Subject to paragraphs 4.2.70-71 below, a member of a scrutiny committee (and a member of a scrutiny task and finish group) will be entitled to a copy of any document which is in the possession or control of the cabinet and contains material relating to

- (a) any business which has been transacted at a public or private meeting of the cabinet or executive decision-making body; or
- (b) any executive decision made by an individual member of the cabinet,
- (c) any executive decision made by an officer on behalf of the cabinet.

That copy document must be provided as soon as reasonably practicable and in any event no later than ten clear days after the request is received on behalf of the cabinet.

There is no entitlement under paragraphs 4.2.73-76 to disclose:

- (a) any document that is in draft form;
- (b) any document or part of a document that contains exempt or confidential information unless that information is relevant to:
 - (i) an action or decision the scrutiny member is reviewing or scrutinising or
 - (ii) any review contained in any programme of work of a scrutiny committee; or
- (c) the advice of a political adviser or assistant (if any).

Where it is determined that a member of a scrutiny committee is not entitled to a copy of a document (or part of one), that committee must be provided with a written statement setting out the reasons for that decision.

4.2.66 Additional rights of access for councillors

4.2.67 Subject to paragraphs 4.2.70 and 4.2.71 below, any document which is in the possession of the cabinet and which contains material relating to any business to be transacted at a public meeting must be available for inspection by any member of the council.

4.2.68 Any document which is required by the preceding paragraph to be available for inspection by any member of the council must be available for inspection for at least five clear working days before the meeting except that:

- (i) where the meeting is convened at shorter notice such a document must be available for inspection when the meeting is convened; and
- (ii) where an item is added to the agenda at shorter notice a document that would be required to be available under paragraph 4.2.67 in relation to that item must be available for inspection when the item is added to the agenda;

4.2.69 Subject to 4.2.70 and 4.2.71 below, any document which is in the possession of the cabinet and which contains material relating to:

- (i) any business to be transacted at a private meeting; or
- (ii) any decision made by an individual cabinet member or officer in accordance with the council's executive arrangements;

must be made available for inspection by any member of the council within 24 hours of the conclusion of the meeting or an executive decision having been made by an individual cabinet member or officer;

- 4.2.70 Paragraphs 4.2.67, 4.2.68, and 4.2.69 do not require a document to be available for inspection if it appears to the monitoring officer that it discloses exempt information unless the exempt information contained in the document is information of a description falling within:
- (i) paragraph 3 of Schedule 12A to the Local Government Act 1972 (financial or business affairs)(except to the extent that the information relates to any terms proposed or to be proposed by or to the council in the course of negotiations for a contract); or
 - (ii) paragraph 6 of Schedule 12A to the Local Government Act 1972 (notices being given or directions to be made);
- 4.2.71 Paragraphs 4.2.67 and 4.2.69 shall not apply to a document or part of a document where it appears to the monitoring officer that compliance with those rules in relation to that document or part of a document would involve the disclosure of advice provided by a political adviser or assistant;
- 4.2.72 The rights of a member to access information as set out in paragraphs 4.2.67 and 4.2.69 are additional to any common law rights they may have.
- 4.2.73 Inspection and supply of documents**
- 4.2.74 Any document required by the regulations to be open to inspection by members of the public must be available for inspection at all reasonable hours at the designated office, and on the council's website.
- 4.2.75 Any person entitled to inspect a document may make a copy of it, or require the council to supply a copy on payment of postage, copying or other necessary charge for transmission.
- 4.2.76 Any member of the public may, in any publicly available medium, reproduce or provide commentary in relation to a document supplied or made available to that person unless doing so infringes copyright (other than that of the council).
- 4.2.77 Additional requirements relating to the recording and availability of council decisions made by officers**
- 4.2.78 This procedure rule is in addition to and without prejudice to any other requirement for officers to record and make available decisions they make and applies to decisions made by officers of the Council which are made under either:
- (a) a specific delegated authorisation; or
 - (b) a general delegation to officers to take such decisions and the effect of the decision is to:
 - (i) grant a permission or licence;
 - (ii) affect the rights of an individual; or
 - (iii) award a contract or incur expenditure which has a material effect on the budget.
- 4.2.79 For the purposes of these rules:
- (a) specific express authorisations are those decisions which contain a delegation from council, their committees or sub-committees;

- (b) general authorisations to officers are those set out in the council's scheme of delegation; and
 - (c) 'material effect' is deemed to be in excess of £50k.

- 4.2.80 Officers will reasonably determine whether the decisions they make affect the rights of an individual having regard to all relevant factors including the guidance provided by the government which suggests that this would involve a change to an individual's legal rights and that these decisions do not include decisions taken pursuant to an existing framework of rights.

- 4.2.81 A record of decision to which this rule applies will, as a minimum, contain the following information:
 - (a) the date the decision was taken;
 - (b) a record of the decision taken along with reasons for the decision;
 - (c) details of alternative options, if any, considered and rejected; and
 - (d) where the decision is made pursuant to a specific express authorisation, the name of any member who has declared a conflict of interest in relation to the decision.

- 4.2.82 As soon as reasonably practicable following the record of decision being made it will be available for inspection, along with any background papers, by members of the public:
 - (a) at all reasonable hours at the council's principal offices;
 - (b) on the council's website; and
 - (c) by such other means as the council considers appropriate, if anyand this extends to any record of decision that falls within the paragraph below.

- 4.2.83 The requirements of this section do not apply to any decision made by an officer where, other than under the Openness of Local Government Bodies Regulations 2014, there is a statutory obligation to produce a written record of the decision that includes the date of the decision, a record of the decision and the reasons for the decision.

- 4.2.84 Nothing in this rule requires or authorises the making available of confidential or exempt information.