

APPENDIX M

Access to Information Procedure Rules

References:

Sections 100A-H and Schedule 12A Local Government Act 1972

Local Government (Access to Information) Act 1985

Data Protection Act 1998

Section 22 of the Local Government Act 2000

Chapter 7, DETR Guidance

Freedom of Information Act 2000

Environmental Information Regulations 2004

Local Government (Access to Information) (Variation) Order 2006

There is a general right to access recorded information (such as e-mails, meeting minutes, research or reports) held by the Council. In all cases, the Council will endeavour to supply the requested information promptly, although some information could be exempt from disclosure. These rules relate specifically to information concerning meetings of the Council.

Deleted: The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

1. SCOPE

These rules apply to all statutory meetings of the Council, and its Committees and Sub-Committees (together called meetings).

2. ADDITIONAL RIGHTS TO INFORMATION

These rules do not limit or diminish any more specific rights to information conferred on the public or on Members elsewhere in this Constitution or the law; nor do these rules limit or diminish or limit the Council's duties to protect certain information, including personal information. This includes the rights and duties from the provisions of the Freedom of Information Act 2000 and the Data Protection Act 1998.

3. RIGHTS TO ATTEND MEETINGS

- 3.1 Members of the public may attend all meetings subject only to the exceptions in these rules.
- 3.2 If a member of the public or press interrupts the proceedings at any meeting the rules relating to disruption as set out in the Meetings Procedures or Council Procedure Rules section of this Constitution will apply.
- 3.3 The public shall be excluded from any meeting during an item of business whenever confidential or exempt information is likely to be disclosed.

4. NOTICES OF MEETING

The Council are required to give at least five clear working day's notice of any statutory meeting by posting details of the meeting at Hendon Town Hall, The Burroughs, Hendon, NW4 4BG (the designated office) or other designated place and on its website at www.barnet.moderngov.co.uk

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5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

The Council will make copies of the agenda and reports for meetings open to the public available for inspection on the website and 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 will be open to inspection from the time the item was added to the agenda.

6. SUPPLY OF COPIES

The Council will supply a limited number of publicly available agendas at meetings. Agendas and reports are also available on the website at www.barnet.moderngov.co.uk

7. ACCESS TO MINUTES 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 taken, together with reasons, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information. Where a vote is taken, the Minutes will record the number of votes for and against and abstentions will also be recorded;
- (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.

8. BACKGROUND PAPERS

8.1 List of background papers

The Head of Governance 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 he considers disclose exempt or confidential information, the categories which are set out in paragraph 10.4. These documents will be made available on request.

8.2 Public inspection of background papers

The Council will facilitate access to each of the documents on the list of background papers for four years after the date of the meeting.

9. SUMMARY OF PUBLIC'S RIGHTS

Rules 3 – 8 constitute the written summary of the public's rights to attend meetings and to inspect and copy documents.

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 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. Such decision to exclude the public is to be made by resolution of the relevant decision making body.

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.

10.3 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 any enactment or Court Order.

10.4 Meaning of exempt information

Exempt information means information falling within the following categories:

	Category	Qualification	Interpretation
1	Information relating to any individual	The exemption applies only 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 (see note on	

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	Category	Qualification	Interpretation
		public interest at the end of the table).	
2	Information which is likely to reveal the identity of an individual.	The Public Interest Test Qualification applies, as in 1 above.	
3	Information relating to the financial or business affairs of any particular person (including the authority holding that information).	The Public Interest Test Qualification applies, as in 1 above. "Financial or business affairs" includes contemplated, as well as past or current, activities. Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under – The Companies Act 2006; The Friendly Societies Act 1974; The Friendly Societies Act 1992; The Industrial and Provident Societies Acts 1965 to 1978; The Building Societies Act 1986 ["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).]; or The Charities Act 1993.	Any reference to "the authority" is a reference to the Council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined. "Person" includes any public authority, company, or other legally constituted organisations and the partners in a partnership or firm.
4	Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter	The Public Interest Test Qualification applies, as in 1 above.	Any reference to "the authority" is a reference to the Council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined. "labour

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	Category	Qualification	Interpretation
	arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.		<p>relations matter" means—</p> <p>any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act);</p> <p>or</p> <p>any dispute about a matter falling within paragraph (a) above; and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to officeholders under the authority as they apply in relation to employees of the authority;</p> <p>"Employee" means a person employed under a contract of service;</p> <p>"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</p>
5	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	The Public Interest Test Qualification applies, as in 1 above.	
6	Information which reveals that the	The Public Interest Test Qualification applies, as in	Any reference to "the authority" is a reference to the Council or,

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	Category	Qualification	Interpretation
	authority proposes to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or to make an order or direction under any enactment.	1 above.	as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined. "Person" includes any public authority, company, or other legally constituted organisations and the partners in a partnership or firm.
7	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	The Public Interest Test Qualification applies, as in 1 above.	
8	Information is not exempt if it relates to the proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and County Planning General Regulations 1992		
Information which – a) falls within any of paragraphs 1 to 7 above; and b) is not prevented from being exempt by virtue of paragraph 8 above 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			

NOTE – The Public Interest Test

The Public Interest Test in the Freedom of Information (FOI) Act 2000 is specifically defined – 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*".

The starting point is that there is a general public interest in release and the public authority

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has to decide whether in any particular case it would serve the interest of the public better to either disclose or withhold the information.

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?

11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

- 11.1 The Council may exclude access by the public to reports which in its 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.
- 11.2 The relevant body is requested in the agenda to confirm the action set out in 11.1 by passing a resolution to exclude the press and public from the meeting. Arrangements will be made to recall the press and public immediately should the motion not be passed.
- 11.3 If the matter is considered in public, any related report will also become available to the public.

12. JOINT COMMITTEES

If the Joint Committee contains members who are not on the Executive of any participating authorities then the access to information rules in Part VA of the Local Government Act 1972, as applicable to meetings of the Full Council and its committees will apply.

13. MEMBERS' RIGHTS TO INFORMATION

- 13.1 A member of the Council may, for the purposes of his or her duty as a Member and no other, inspect any document that has been considered by a committee or the Council including background papers. Applications should be made to the Head of Governance and, if available, copies will be supplied upon request. Members have a common law

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right of access to council documents based on a 'need to know'. When making a request Members should clearly state the reason why they need the information they have requested.

- 13.2 A Member shall not knowingly inspect or request a copy of any document relating to a matter in which s/he:
is professionally interested; or
has a pecuniary interest within the meaning of the Code of Conduct for Members as set out in this Constitution.
- 13.3 This shall not preclude the Monitoring Officer from declining to allow inspection of any document which is or would be protected by privilege in the event of legal proceedings arising from the relationship of solicitor and client and should be exempt under either the Freedom of Information Act or the Data Protection Act.
- 13.4 All reports, background papers to reports and minutes kept by any committee shall be open for the inspection of any member of the Council, as soon as the committee has concluded action on the matter to which such reports or minutes relate.

- 13.5 Sections 14-16 of the Audit Commission Act 1998 and Regulations 21,22 and 25 Accounts and Audit (England) Regulations 2011 provide that there is a right to inspect and question the council's auditor. Section 14 gives the right to inspect and take copies of statements of accounts and auditors' report. Section 15 gives the right to inspect, copy documents and question the council's auditor.

Requests for information should be directed to the Director or Chief Officer concerned. If a member is unhappy with a particular Director or Chief Officer's decision, the Chief Executive will review the Director's decision. If the member is still unhappy, the request for the information will be put before the General Functions Committee.

Deleted: Members also have a legal right under the Local Government Finance Act 1982 to inspect "books, deeds, contracts, bills, vouchers and receipts".

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- 13.6 Where it is not appropriate to send a Member a physical or email copy of a document on the grounds it is confidential or exempt the following procedures will be adopted for inspection, keeping in mind paragraph 13.3:

- Members should have access to the information for supervised reading.
- This means that the Member should attend mutually agreed council premises to read the documents with a view of minimizing the potential for the document to be compromised
- A paper or electronic copy will not be supplied in these cases nor will photocopying be permitted. Phones should be switched off for the duration of the inspection.
- An officer with sufficient understanding and experience to answer any questions should be present
- In exceptional circumstances Members may be asked to sign confidentiality agreements, highlighting the Members Code of Conduct provisions on confidentiality.

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