

APPENDIX N

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

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.

1. **SCOPE**

These rules apply to all statutory meetings of the Council, the Executive and their 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 Procedure 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 days notice of any statutory meeting by posting details of the meeting at Hendon Town Hall, The Boroughs, Hendon, NW4 4BG (the designated office) or other designated place and on its website at www.barnet.moderngov.co.uk

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, for all meetings of the Executive), 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.

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 discloses exempt or confidential information, the categories which are set out in paragraph 10.4 and, in respect of Executive reports, the advice of a Political Assistant.

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.

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:

1	Information relating to any individual.
2	Information which is likely to reveal the identity of an individual.
3	Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4	Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6	Information which reveals that the authority proposes – (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; 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.

8	Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.
9	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 or 9 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

11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

- 11.1 If the Head of Governance thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked “Not for publication” together with the category of information likely to be disclosed.
- 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. APPLICATION OF RULES TO THE EXECUTIVE

Rules 13 – 24 apply to the Executive and its committees.

If the Executive or its committees meet to take a key decision then it must also comply with Rules 1 – 11 unless Rule 15 (General Exception) or Rule 16 (Special Urgency) apply. A key decision is as defined in Article 13.03 of this Constitution.

13. PROCEDURE BEFORE TAKING KEY DECISIONS

Subject to Rule 15 (General Exception) and Rule 16 (Special Urgency), a key decision may not be taken unless a notice has been published a minimum of 28 days in advance of the decision being taken detailing the title, description and responsible Cabinet Member and officer.

14. ADVANCED NOTICE OF EXECUTIVE DECISIONS

Period of Advanced Notice of Executive Decisions

The Advanced Notice of Executive Decisions will provide details of proposed decisions due to be taken under Executive functions, together with information as to whether any

proposed decisions are subject to an exempt report. All prospective decisions listed are to be regarded as potentially key or potentially subject to a separate exempt report (not held in public session). The Advanced Notice of Executive Decisions will be published on the website a minimum of 28 days in advance of a key decision or a decision subject to exempt being taken.

15. **GENERAL EXCEPTION**

If a matter which is likely to be a key decision or an Executive decision which is subject to exempt information which has not been included on the Advanced Notice of Executive Decisions, then subject to Rule 16 (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 subject to the 28 day notice requirements;
- (b) the Head of Governance has informed the Chairman of a relevant Overview and Scrutiny Committee (or if there is no such person, each member of that committee) of the matter to which the decision is to be made;
- (c) the Head of Governance has made copies of that notice available to the public at the offices of the Council and on the Council's website; and

16. **SPECIAL URGENCY**

If by virtue of the date by which a decision must be taken Rule 15 (General Exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the Chairman of the body making the decision, obtains the agreement of the Chairman the Business Management Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If the Chairman is not available or is unable to act, then the agreement of the Mayor, or in his/her absence the Deputy Mayor will suffice.

17. **REPORT TO COUNCIL**

17.1 **When an Overview and Scrutiny Committee can require a report**

If an overview and scrutiny committee thinks that a key decision has been taken which was not compliant with the provisions outlined at section 14, 15 and 16 above the committee may require the Executive 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 Head of Governance, who shall require such a report on behalf of the committee when so requested by the Chairman or three members any overview and scrutiny committee or sub-committee. Alternatively, the requirement may be raised by resolution passed at a meeting of the relevant overview and scrutiny committee.

17.2 **Executive's Report to Council**

The Executive will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the written notice, or the resolution of the 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. If the Leader is of the opinion that it was not a key decision, she/he will outline the reasons for that opinion.

17.3 Quarterly Reports on Special Urgent Decisions

In any event the Leader will submit quarterly reports to the Council on the Executive decisions taken in the circumstances set out in Rule 16 (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.

18. RECORD OF DECISIONS

After any meeting of the Executive or any of its committees, whether held in public or private, the Head of Governance 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.

19. PROCEDURES PRIOR TO PRIVATE MEETINGS

- 19.1 Meetings of the Executive, or a committee of the executive, are to be open to the public or held in private. Whilst there is a presumption that meetings will be held in public, the Executive can decide which of its meetings (including a committee of the executive) are to be open to the public and which of those meetings are to be held in private.
- 19.2 If the Executive decides to hold a meeting in private, the Head of Governance must publish a notice at least 28 clear days before the meeting a notice of the intention to hold the meeting in private and make this available at the offices of the local authority and on the website. The notice must include a statement of the reasons for the meeting to be held in private.
- 19.3 At last five clear days before the meeting, the Head of Governance must publish a further notice of the intention of the decision-making body to hold the meeting in private and make this available at the offices of the local authority and on the website. The further notice must include a statement of the reasons for the meeting to be held in private, details of any representations received by the decision-making body about why the meeting should be open to the public and a statement of its response to such representations.
- 19.4 Where the date by which a meeting must be held makes compliance with 19.2 and 19.3 impracticable, the meeting may only be held in private where the decision-making body has obtained agreement from the Chairman of the Business Management Overview and Scrutiny Committee (or if there is no such person to act, the Mayor, or in the Mayors absence, the Deputy Mayor) setting out the reasons why the meeting is urgent and cannot reasonably be deferred. As soon as reasonably practicable after the decision-making body has obtained the agreement to hold a private meeting, the Head of Governance must publish a notice of the intention to hold a meeting in private setting

out the reasons why the meeting is urgent and cannot reasonably be deferred and make this available at the offices of the local authority and on the website.

20. DECISIONS BY INDIVIDUAL MEMBERS OF THE EXECUTIVE

20.1 Reports intended to be taken into account

Where an individual member of the Executive receives a report which s/he intends to take into account in making any decision, then s/he will not make the decision until at least 5 clear working days after receipt of that report.

20.2 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 Chairman of every relevant Overview and Scrutiny Committee as soon as reasonably practicable, and make it publicly available at the same time.

20.3 Record of individual decision

As soon as reasonably practicable after an executive decision has been taken by an individual member of the Executive or a key decision has been taken by an officer, he/she will prepare, or instruct the Head of Governance to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The provisions of Rules 7 and 8 (inspection of documents after meetings) will also apply to the making of decisions by individual members of the Executive. This does not require the disclosure of exempt or confidential information or advice from a political assistant.

21. Joint Committees

These Rules apply to the Council's Joint Committees as follows:

(a) If all the members of a joint committee are members of the Executive in each of the participating authorities, then its access to information regime is the same as that applied to the Executive.

(b) 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.

22. OVERVIEW AND SCRUTINY COMMITTEES ACCESS TO DOCUMENTS

22.1 Rights to copies

Subject to Rule 22.2 below, an overview and scrutiny Committee (including its sub-committees) will be entitled to copies of any document that is relevant to its terms of reference and which is in the possession or control of the Executive or its committees and which contains material relating to

(a) any business transacted at a public or private meeting of the Executive or its committees

(b) any decision taken by an individual member of the Executive or an officer exercising executive functions.

In relation executive decisions at meetings, such documents must be made available for inspection at least five clear working days before the meeting. Where the meeting is convened at shorter notice, such a document must be available for inspection when the meeting is convened. Where an item is added to the agenda at shorter notice, the document must be available for inspection when the item is added to the agenda.

In relation to business conducted at a private meeting or individual executive decisions, documents must be available for inspection when the meeting concludes or where an executive decision is made by an individual member or an officer immediately after the decision has been made.

Where the executive determines that a member of an overview and scrutiny committee is not entitled to a copy of a document or part of any such document, it must provide the overview and scrutiny committee with a written statement setting out its reasons for that decision.

22.2 **Limit on rights**

An overview and scrutiny committee will not be entitled to:

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

23. **ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS TO EXECUTIVE INFORMATION**

23.1 **Material relating to previous business**

All Members will be entitled to inspect any document which is in the possession or under the control of the Executive or its committees and contains material relating to any business previously transacted at a private meeting unless either (a) or (b) below applies.

- (a) it contains exempt information as set out in paragraph 10.4 above, save that if the information falls within paragraph 3 (information relating to the financial or business affairs of any particular person) they shall be entitled to inspect the document except to the extent that it relates to terms proposed by or the Council in the course of negotiations for a contract or would reveal the Council's proposals to give notice or make an order or direction under any enactment; or
- (b) it contains the advice of a political assistant.

23.2 **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 Executive or its committee which relates to any key decision unless paragraph 22.1 (a) or (b) above applies.

23.3 **Nature of rights**

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

24. **MEMBERS' OTHER RIGHTS TO INFORMATION**

24.1 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.

24.2 A Member shall not knowingly inspect or request a copy of any document relating to a matter in which s/he:
25.2.1 is professionally interested; or
25.2.2 has a pecuniary interest within the meaning of the Local Code of Conduct for Members as set out in this Constitution.

24.3 This shall not preclude the Director of Assurance 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.

24.4 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.

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

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 committee who may decide.



