



CHILTERN
District Council



CDC Governance and Electoral Arrangements Committee

Wednesday, 22nd February, 2017

At

6.30 pm

**Large & Small Committee Room, King George V House, King George V
Road, Amersham**

**Item 6 - Review of the Council's Constitution:
Appendix 4: Access to Information Procedure Rules**

APPENDIX 4**SECTION D - ACCESS TO INFORMATION RULES****1 SCOPE**

These rules apply to all meetings of the Council, Overview and Scrutiny Committees, area committees (if any), Joint Committees and meetings of the Cabinet (together called meetings). These rules do not apply to Policy Advisory Groups (PAGs) or any other Advisory Groups.

Any documentation which is being referred to as being posted or made available means " made available at the Council's Offices, King George V House, King George V Road, Amersham, and on the Council's website".

~~1) to all meetings of the Council and any Committees or Sub-Committee of the Council;~~

~~2) to all meetings of the Cabinet and any Committee or Sub-Committee of the Cabinet;~~

~~3) where the Cabinet Leader or an individual Cabinet Portfolio Holder acting under delegated powers from the Cabinet makes a Key Decision; and~~

~~4)1) where an Officer acting under delegated powers makes a Key Decision.~~

2 ADDITIONAL RIGHTS TO INFORMATION

These Rules do not ~~affect prejudice or abridge~~ any more specific rights to information contained elsewhere in this Constitution or granted by law.

3 RIGHTS TO ATTEND MEETINGS

Members of the public may attend all meetings to which these Rules apply subject only to the exceptions set out in Rule 10 below. In accordance with the Openness of Local Government Bodies Regulations 2014 the public may report on meetings and use any communications method, including the internet to publish, post or otherwise share the results of the reporting activities.

4 NOTICE OF PUBLIC MEETINGS

The Council will give at least five clear working days notice of any meeting by posting details of the meeting ~~on the public notice board at the Council Offices, King George V Road, Amersham, Bucks ("the designated office").~~

5 NOTICE OF PRIVATE MEETINGS

5.1 The Council will give at least 28 clear calendar days notice of its intention to hold a

meeting of the Cabinet in private by posting a notice, The notice must include a statement of the reasons for the meeting to be held in private.

5.2 At least five clear working days before a private meeting of the Cabinet, the Council will post a further notice of its intention to hold a meeting in private. The notice must include a statement of the reasons for the meeting to be held in private and details of any representations received about why the meeting should be open to the public and a statement of its responses to any such representations.

6. ACCESS TO AGENDAS AND REPORTS BEFORE THE MEETING

The Council will make copies of the agenda and ~~the~~ reports that are open to inspection by the public (called "an open report"), available for inspection ~~at the designated office~~ at least five clear working days before the meeting by publication on the Council's website. 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. Moreover, that item will only be considered at the meeting if the Chairman agrees ~~ed~~ that it is urgent and the reasons for the urgency ~~why the item is considered to be urgent~~ must be recorded in the minutes. Where an open report is prepared after the agenda has been published, the Council will make a copy of each such report available for inspection by the public as soon as the report has been completed and sent to ~~councillors~~ councilors by publication on the Council's website. ~~Agendas and open reports will also be published in electronic form on the Council's web-site.~~

6 SUPPLY OF COPIES

The Council will supply to any person on payment of a charge for postage and any other costs, copies of:-

- 1) the agenda and open reports for any meeting ;~~and~~
- 2) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- 2)3) If the proper officer thinks fit copies of any other documents supplied to councilors in connection with an item.

7 ACCESS TO AGENDAS AND MINUTES ETC. AFTER THE MEETING

7.1 The Council will make available copies of the following for a period of six years after a meeting ~~For the period of six years computed from the date of any meeting, the Council will also make available for public inspection the following documents:-~~

- 1) the minutes of all the meetings or where appropriate records of decisions taken, with reasons, excluding any part of the minutes of proceedings when the meeting was not open to the public and which would disclose confidential or exempt information;

- 2) a summary of any proceedings ~~when the meeting was~~ not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- 3) the agenda for the meeting; and
- 4) ~~open~~ reports relating to items considered ~~when at~~ the meeting was open to the public.

~~7.2 The minutes of any meeting (excluding any part which would disclose confidential or exempt information) will also be published in electronic form on the Councils website for the period of six years computed from the date of any meeting.~~

8 BACKGROUND PAPERS

8.1 List of background papers

Every report considered at a meeting will contains a list of documents (called "background papers") which relate to the subject matter of the report and which :-

- 1) disclose any facts or matters on which the report or an important part of the report is based; and
- 2) have been relied on to a material extent in the preparation of the report;
- 3) excluding any published works or those which would disclose confidential or exempt information as defined in Rule 10 hereof, or in respect of any report to the Cabinet, would disclose the advice of a political advisor.

8.2 Public inspection of background papers

The Council will make available for public inspection for the period of four years ~~after computed from~~ the date of the meeting at which a report was considered, a copy of each of the documents on the list of background papers relating to that report (excluding any published works or those which would disclose confidential or exempt information).

9 SUMMARY OF THE RIGHTS OF THE PUBLIC

According to law, a written summary of the rights of the public to attend meetings and to inspect and copy documents must be kept and be available to the public ~~at the Council Offices, King George V Road, Amersham, Bucks.~~ and these Rules together with Part 8 of this Constitution constitute such written summary and are available on the Council's website.

10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

10.1 Confidential information – requirement to exclude public

The public must be excluded from a meeting 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

Subject to Rule 10.3 below, the public may be excluded from a meeting 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 it is in the public interest that the public are excluded

10.3 Human Rights Act 1998

Notwithstanding the provisions of Rule 10.2 above, where a meeting will determine any person's civil rights or obligations, the public will not be excluded unless a private hearing is necessary for one of the reasons specified in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms; that is to say that the exclusion of the press and public is necessary:-

- 1) in the interests of morals, public order, or national security; or
- 2) to protect the interests of minors; or
- 3) to protect the private life of the person whose civil rights or obligations are being determined; or
- 4) to the extent strictly necessary, in special circumstances where publicity would prejudice the interests of justice.

10.4 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 the Order of an English Court.

10.5 Meaning of exempt information

Exempt information means information falling within any of the ~~710~~ categories set out in ~~the left hand column of~~ the Table below, subject to the corresponding conditions and qualifications (if any) set out Parts 2 and 3 of Schedule 12A to the Local Government Act 1972 (as amended) in ~~the right hand column thereof~~ Provided that information falling within any of the categories 7A to 7C (inclusive) below shall only constitute exempt information at a meeting of the Standards Committee or Standards Sub-Committee convened to consider a matter referred to it under the provisions of Sections 64(2) or 71(2) of the Local Government Act 2000 (as

~~amended).(The Local Determination Framework).~~

CATEGORY
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.
7A Information which is subject to any obligation of confidentiality
7B. Information which relates in any way to matters concerning national security.
7C. The deliberations of a standards committee or of a sub-committee of a standards committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.

QualificationsNotes

- In addition, financial or business information falling within paragraph 3 is not exempt information if it is required to be registered under the following Acts:-
 - the Companies Act 1985;
 - the Friendly Societies Act 1974;
 - the Friendly Societies Act 1992;
 - the Industrial and Provident Societies Acts 1965 to 1978;
 - the Building Societies Act 1986; or
 - the Charities Act 1993.
- Information falling within any of paragraphs 1-7 is not exempt by virtue of that

paragraph if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

3. Information which:

a) Falls within any of the categories 1 to 7 above; and

b) Is not prevented from being exempt by virtue of qualifications 1 or 2 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

- ~~2. Information falling within paragraphs 7A, 7B and 7C is only exempt if it relates to the contents of a report prepared by an ethical standard officer or the monitoring officer or relates to the proceedings or deliberations of a Standards Committee or one of its Sub-Committees pursuant to the Local Determination Framework~~

10.6 Public Interest Test

There is an inherent interest in access to information held by public bodies and the factors favouring disclosure include

a) promoting accountability for public expenditure

b) allowing individuals to understand decisions and being able to question those decisions

c) promoting public order, health and safety

d) enabling people to become informed and able to participate in public debate; and

e) where the information assists the applicant to enforce their rights under human rights legislation

11 EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

- 11.1 The Council may, if the proper officer thinks fit, but only if it is in the public interest to do so, exclude access by the public to reports which in his opinion relate to items during which, in accordance with Rule 10 hereof, the meeting is likely not to be open to the public. Such reports will be marked "Not for Publication" together with the category of exempt information likely to be disclosed and will indicate that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the report.

12 SPECIAL RULES APPLYING ONLY TO THE CABINET

12.1 Making Key Decisions

If the Cabinet or a Committee of the Cabinet or a Joint Committee, meet to make a Key Decision (as defined in Article 12.3(2) of this Constitution), or the Cabinet Leader, a Cabinet Portfolio Holder or an Officer acting under delegated powers intends to make a Key Decision, the decision making body or person must also comply with this Rule, unless Rules 14 and 15 below apply.

12.2 Procedure before Making Key Decisions

Subject to Rules 14 and 15 below, a Key Decision shall not be made in relation to any matter unless :-

- 1) ~~a document notice~~ (called "the 28 Day Notice Forward Plan") has been published at least 28 clear days (which includes weekends and public holidays) before a decision is made. The following information will be included in the 28 Day Notice:~~in connection with the matter;~~
 - a) the matter in respect of which the decision is to be made;
 - b) whether the decision maker is the Cabinet, a Portfolio Holder or an Officer, their name and title and where the decision-maker is a decision-making body, its name and a list of its members;
 - c) a date on which or period within which the decision is to be made;
 - d) a list of the documents to be submitted to the decision-maker or decision-making body;
 - e) the procedure for requesting details of those documents;
 - f) a statement of the reasons why the item will be held in private (if appropriate and the category being used to exempt the information)
 - g) the identity of the principal groups whom the decision-maker proposed to consult before taking the decision;
 - h) the means by which any such consultations is proposed to be undertaken
 - aj) the steps any person might take who wishes to make representations to the decision maker about the matter in respect of which the decision is to be made and the date by which those steps must be taken; and
- 1)2) at least five clear days have elapsed since the publication of the 28 Day Notice Forward Plan;
- 2)3) if the decision is to be taken by the Cabinet or a Committee of the Cabinet or by a Joint Committee, notice of the meeting has been given in accordance with Rule 4 hereof; and
- 3)4) ~~if the decision is to be taken by an individual (be it the Cabinet Leader, a Cabinet Portfolio Holder or an Officer acting under delegated powers), the proper officer has made available for public inspection any report (including a list of background papers) which the decision maker intends to take into consideration, for at least five clear days beforehand.~~

13 THE 28 DAY NOTICE FORWARD PLAN

The Leader will prepare a 28 Day Notice which in addition to listing all Key Decision the Cabinet is expected to make during the next 28 days, will also list the non-Key Decisions that the Cabinet are expected to make during the same period. It will also list any key decisions that officer are expected to make.

13.1—Period of Forward Plan

~~—A Forward Plan will be prepared by the Cabinet Leader relating to the period of four months beginning with the first day of any month. It will be reviewed and updated before the expiry of each subsequent month so that it relates the period of four months beginning on the first day of the month following the date of the review.~~

13.2—Content of the Forward Plan

~~1) The Forward Plan will refer to any matter which the Cabinet Leader considers will be the subject of a Key Decision made by the Cabinet or a Committee of the Cabinet, or by a joint Committee, or by an Officer acting under delegated powers, in the course of discharging a Cabinet Function (as defined in Article 4.1 of this Constitution) during the period to which the Plan relates. It will describe the following particulars (but only in so far as the information is available or might reasonably be obtained):-~~

- ~~(i) the matter in respect of which a Key Decision is to be made;~~
- ~~(ii) where the decision maker will be the Cabinet or a Committee of the Cabinet or a Joint Committee, its name and details of its membership;~~
- ~~(iii) where the decision maker is an Officer acting under delegated powers, his name and title;~~
- ~~(iv) the date on which, or the period within which, the decision will be taken;~~
- ~~(v) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;~~
- ~~(vi) the means by which any such consultation is proposed to be undertaken;~~
- ~~(vii) the steps to be taken by any person who wishes to make representations to the decision maker concerning the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and~~
- ~~(viii) a list of the documents submitted to the decision maker for
—consideration in relation to the matter.~~

~~2) The Forward Plan shall be published at least 14 days before the start of the period to which it relates and the proper officer will cause to be published at the beginning of each municipal year a notice in at least one newspaper circulating in the District, stating :-~~

- ~~(i) that Key Decisions are to be taken on behalf of the Council;~~

- ~~(ii) — that a Forward Plan containing particulars of the matters on which Key decisions are to be taken will be prepared on a monthly basis;~~
 - ~~(iii) — that the Forward Plan will contain details of the Key Decisions to be made for the four month period following its publication;~~
 - ~~(iv) — that the Forward Plan will be available for inspection free of charge at the designated office during normal office hours;~~
 - ~~(v) — that, subject to Rule 13.2 (3) below, the Forward Plan will contain a list of the documents submitted to the decision making body or person for consideration in relation to the Key Decisions identified in the Plan;~~
 - ~~(vi) — the address from which copies of, or extracts from, any document listed in the Forward Plan is available;~~
 - ~~(vii) — that other documents may be submitted to the decision making body or person;~~
 - ~~(viii) the procedure (if any) for requesting details of the documents referred to in Rule 13.2.2) (vii) above, as they become available; and~~
 - ~~(viii) — the dates on each month in the following year on which the Forward Plan will be published and be available for inspection by the public at the designated office.~~
- ~~3) — Notwithstanding the provisions of Rule 13.2.2) above, confidential or exempt information will not be included in the Forward Plan.~~
- ~~4) — The Cabinet may determine to include matters in the Forward Plan that would not result in the making of a Key Decision. If so, the Forward Plan will be divided into two parts in order to clearly distinguish those matters in respect of which a Key Decisions will result from those in respect of which a Key Decision will not result~~
- ~~5) — For the avoidance of doubt Rule 13.2.2) of the Rules will not apply to the part of the Forward Plan which contains matters in respect of which a Key Decision will not result although the Cabinet may in its absolute discretion determine to apply Rule 13.2.2) to this part of the Forward Plan.~~

14 GENERAL EXCEPTION

14.1 If a matter which is likely to result in or require a Key Decision has not been included in the 28 Day Notice~~Forward Plan~~, then subject to Rule 15 hereof, the decision may still be taken if:-

- 1) publication of the intention to make a Key Decision in the 28 Day Notice is impracticable; and et must be taken by such a date that it is impracticable to

~~defer the decision until it has been included in the next update of the Forward Plan;~~

- 2) the proper officer has notified the Chairman of the relevant Overview Committee in writing of the matter in respect of which a Key Decision is to be made;
- 3) the proper officer has made copies of that notice available for inspection by the public and published it on the Council's website; and
- 4) at least five clear days have elapsed since the proper officer complied with Rules 14 1.2) and 3) above.

14.2 As soon as reasonably practicable after the decision-maker has obtained the agreement under 14.1 above a notice setting out the reasons why compliance with Rule 13 is practicable must be published on the Council's website

15 SPECIAL URGENCY

15.1 If ~~the date by which a Key Decision must be made makes compliance with Rule 14 impracticable by virtue of the date by which a Key Decision must be taken, Rule 14 above cannot be followed,~~ then the decision can only be taken if the decision-maker obtains agreement from the chairman of the relevant Overview Committee that the making of the decision is urgent and cannot reasonably be deferred a failure to do so would lead to a loss of income, or result in unnecessary expenditure, or otherwise prejudice the Council's interests and the Chairman of the decision making body, or the Officer acting under delegated powers (as the case may be), obtains the agreement of the Chairman of the relevant Overview Committee. If the Chairman of the relevant Overview Committee is unable to act, then the agreement of the Chairman of the Council, or in his absence the Vice- Chairman of the Council, must be obtained.

15.2 As soon as reasonably practicable after the decision maker has obtained the agreement under 15.1 above a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred must be published on the Council's website.

16 REPORT TO COUNCIL

16.1 When an Overview Committee can require a report

If an Overview Committee considers that a Key Decision made in respect of a matter falling within its Terms of Reference has been taken by the Cabinet or a Committee of the Cabinet, or by a joint Committee or by an Officer acting under delegated powers, which was not:-

- 1) included in the 28 Day Notice Forward Plan; or

- 2) the subject of the general exception procedure in Rule 14 above; or
- 3) the subject of an agreement with the Chairman of the relevant Overview Committee, or the Chairman or Vice-Chairman of the Council under Rule 15 above.

the Committee may require the **Cabinet** Leader to prepare and submit a report to the next Ordinary Meeting of full Council. If the Overview Committee so resolves, the proper officer shall forthwith give written notice to the **Cabinet** Leader of such requirement.

16.2 Cabinet Leader's report to full Council

When required to do so in accordance with Rule 16.1 above, the **Cabinet** Leader will prepare and submit a report for submission to the next Ordinary Meeting of full Council unless that meeting will take place within 14 days of receipt of the written notice from the proper officer, in which case, the report shall be submitted to the Ordinary Meeting of full Council next following. The report shall set out particulars of the decision, the body who made it and the opinion of the **Cabinet** Leader as to whether he considered the decision to be a Key Decision.

16.3 Quarterly reports on Special Urgency Decisions

In any event the Leader will submit quarterly reports to full Council on Key Decisions taken in the circumstances set out in Rule 15 (special urgency) in the preceding quarter. The report shall include the number of decisions so made, a summary of the matters in respect of which those decisions were made and the identity of the body or person who made them.

17 RECORD OF DECISIONS

17.1 Record of Decisions made by the Cabinet at meetings of the Cabinet.

After any meeting of the Cabinet or a Committee of the Cabinet, whether held in public or private, the proper officer 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, any conflict of interest declared and any dispensation granted by the monitoring officer but will not include any confidential or exempt information that was considered in private. Such decision will be published and notified to all members electronically. ~~the Chairman and Vice-Chairman of each of the Overview Committees notified in accordance with Rule 11 of the Overview and Scrutiny Procedure Rules set out at Section C of Part 4 of this Constitution~~

17.2 Record of Decisions made by the Cabinet Leader or a Cabinet Member as an

individual

Decisions made by the Cabinet Leader or a Cabinet Member as an individual shall be recorded as prescribed by Rule 6 of the Cabinet Procedure Rules set out at Section B of Part 4 of this Constitution. Such decision will be published and notified to all members electronically. ~~the Chairman and Vice-Chairman of each of the Overview Committees notified in accordance with Rule 11 of the Overview and Scrutiny Procedure Rules.~~

17.3 Record of Key Decisions made by Officers.

Where an Officer acting under delegated powers makes a Key Decision, he will immediately prepare a record of the decision in the manner prescribed for the recording of non Key Decisions by the Cabinet Leader or a Cabinet Member as an individual as set out in Rule 6 of the Cabinet Procedure Rules. Such decision will be published and the Chairmen and Vice Chairmen of the Overview Committees notified in accordance with Rule 11 of the Overview and Scrutiny Procedure Rules.

18. KEY DECISION THRESHOLD

The Key Decision Threshold referred to in Article 12.3 (4) and (5) of this Constitution is **FIFTY-THIRTY THOUSAND POUNDS** (£530,000). Excluded from this threshold for a Key Decision are contracts for repairs, maintenance and improvement works within budget provision and approved policy where the contract or expenditure has either been properly and specifically approved by or on behalf of the Cabinet or by an Officer acting under delegated powers, except where Contract Procedure Rules require the Cabinet itself to authorize acceptance of a tender and such acceptance has not previously been authorised or delegated by the Cabinet.

[This definition is harmonised with SBDC's definition]

19 OVERVIEW COMMITTEES ACCESS TO DOCUMENTS**19.1 Rights to copies**

Subject to Rule 19.2 below, an Overview Committee (including any of its sub-committee) will be entitled to receive within ten working days of the request being made to the Cabinet, copies of any document which is in the possession or control of the Cabinet or a Committee of the Cabinet, or a joint Committee with power to make decisions in respect of a Cabinet n-Executive Function, or an Officer with delegated powers in respect of any CabinetExecutive Function, and which contains material relating to:-

- 1) any business transacted at a public or private meeting of the Cabinet, Committee of the Cabinet or joint Committee (as the case may be); or
- 2) any decision taken by an individual members of the Cabinet or a Cabinet decision taken by an Officer acting under delegated powers ~~in respect of an~~

~~Executive Function.~~

19.2 Limit on rights

An Overview Committee will not be entitled to:-:

- 1) any document that is in draft form;
- 2) ~~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~~
- 2)3) any note or document prepared by an officer purely for the purpose of briefing the Cabinet Leader or a Member of the Cabinet; or
- 3)4) the advice of a political adviser.

20 ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS

20.1 Material relating to previous business of Cabinet

~~All members will be entitled to inspect any document which is in the possession or under the control of the Cabinet and contains material relating to any business previously transacted at a private meeting unless either a) or b) below applies:~~

- ~~a) It appears to the proper officer that it contains exempt information; or~~
- ~~b) It contains the advice of a political adviser.~~

~~However, the document is required to be open to inspection if the information is of a description falling within:~~

- ~~(i) Paragraph 3 of exempt information (information relating to the financial or business affairs of any particular person including the Council) 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 exempt information (information which reveals that the authority proposes to give notice by virtue of which requirements are imposed on a person or make an order or direction).~~

20.2 Material relating to Key Decisions

~~All members of the Council will be entitled to inspect any document (except those only available in draft form) in the possession or under the control of the Cabinet which relates to any Key Decision unless paragraph 20.1 a) or b) above applies.~~

20.3 Nature of Rights

~~These rights of a member are additional to any other right he/she may have.~~

