

ACCESS TO INFORMATION RULES

- Rule 1 Scope*
- Rule 2 Rights to Attend Meetings*
- Rule 3 Notices of Meeting*
- Rule 4 Access to Agenda and Reports before the Meeting*
- Rule 5 Supply of Copies*
- Rule 6 Access to Minutes etc after the Meeting*
- Rule 7 Background Papers*
- Rule 8 Summary of Public's Rights*
- Rule 9 Exclusion of Access by the Public to Meetings*
- Rule 10 Exclusion of Access by the Public to Reports*
- Rule 11 Application of Rules to the Cabinet*
- Rule 12 Procedure before taking Key Decisions*
- Rule 13 The Forward Plan*
- Rule 14 General Exception*
- Rule 15 Special Urgency*
- Rule 16 Report to Council*
- Rule 17 Record of Decisions*
- Rule 18 Cabinet Meetings relating to matters which are not Key Decisions*
- Rule 19 Decisions by Cabinet Members*
- Rule 20 Overview & Scrutiny Committee's Access to Documents*
- Rule 21 Additional Rights of Access for Members*

ACCESS TO INFORMATION RULES

Rule 1 – Scope

- 1 These rules apply to all meetings of the Council, Overview and Scrutiny Committee, Local Committees, Planning Committee, Licensing Committee, Audit Committee, Standards Committee and public meetings of the Cabinet.

These rules do not affect any specific rights to information contained elsewhere in the Constitution or the law.

Rule 2 – Rights to Attend Meetings

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

Rule 3 – Notices of Meetings

- 3 The Council will give at least five clear days notice of any meeting by posting details of the meeting at its offices in Braintree, Halstead and Witham and at the public libraries in Braintree, Halstead and Witham.

Rule 4 – Access to Agenda and Rights before the Meeting

- 4 The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least five clear days before the meeting. If an item is added to the agenda later, the revised agenda (where reports are prepared after the summons has been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to Councillors) will be open to inspection from the time the item was added to the agenda.

Rule 5 – Supply of Copies

- 5 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 Chief Executive 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.

Rule 6 – Access to Minutes etc after the Meetings

6 The Council will make available copies of the following for six years after a meeting:

- (a) for all meetings of the Cabinet, 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;
- (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.

Rule 7 – Background Papers

7.1 *List of background papers*

Officers 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 material or those which disclose exempt or confidential information (as defined in Rule 9) and in respect of Cabinet reports, the advice of a political advisor.

7.2 Public inspection of background papers

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.

Rule 8 – Summary of Public’s Rights

- 8 A written summary of the public’s rights to attend meetings and to inspect and copy documents will be kept and available to the public at the Council’s main offices.

Rule 9 – Exclusion of Access by the Public to Meetings

9.1 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.

9.2 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 Court Order.

9.3 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.

9.4 Meaning of exempt information

Exempt information means information covered by exemption in the Data Protection Act 1998 falling within the following 7 categories (subject to any condition/qualifications):

| Category | Qualifications |
|--|--|
| 1. Information relating to any individual. | Public Interest |
| 2. Information which is likely to reveal the identity of an individual. | Public Interest |
| 3. Information relating to the financial or business affairs of any particular person (including the authority holding that information). | Information is not exempt if it is required to be registered under the Companies Act 1985, the Friendly Societies Acts of 1974 or 1992, the Industrial and Provident Societies Acts 1965 to 1978, the Building Societies Act 1986 or the Charities Act 1993. |
| 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 Minister of the Crown and employees of, or office holders under, the authority. | Public Interest |

| | |
|--|-----------------|
| 5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. | Public Interest |
| 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. | Public Interest |
| 7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime. | Public Interest |

9.5 General Qualifications

- (i) 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.
- (ii) Information which falls within any of paragraphs 1-7, and which is not prevented from being exempt by the qualifications set out 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.

9.6 Standards Committee

Where the **Standards Committee** or one of its Sub-Committees meets to determine the outcome of a complaint which has been

referred to the Monitoring Officer by an ethical standards officer, the following additional criteria for exemption from publication shall apply:

- 8A. Information which is subject to any obligation of confidentiality.
- 8B. Information which relates in any way to matters concerning national security.
- 8C. The deliberations of a standards committee or sub-committee established under the provisions of Part III of the Local Government Act 2000 in reaching any finding on a matter referred under the provision of section 60(2) or (3) and 64(2) of the Local Government Act 2000. *(Note: S60(2) and (3) and S64(2) relate to matters which are the subject of investigation and which are referred to the Monitoring Officer by an ethical standards officer).*

Rule 10 – Exclusion of Access by the Public to Reports

- 10 If the proper officer 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 9, 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.

Rule 11 – Application of Rules to the Cabinet

- 11 Rules 12 - 21 apply to the Cabinet and its committees. If the Cabinet or its committees meet to take a key decision then it must also comply with Rules 1 - 10 unless Rule 14 (general exception) or Rule 15 (special urgency) apply. A key decision is as defined in Article 13.03 of this Constitution.

If the Cabinet or its committees meet to discuss a key decision to be taken collectively, with an officer other than a political assistant present, within 28 days of the date according to the forward plan by which it is to be decided, then it must also comply with Rules 1 - 10 unless Rule 14 (general exception) or

Rule 15 (special urgency) apply. A key decision is as defined in Article 13.03 of this Constitution. This requirement does not include meetings, whose sole purpose is for officers to brief members.

Rule 12 – Procedure before taking Key Decisions

- 12 Subject to Rule 14 (general exception) and Rule 15 (special urgency), a key decision may not be taken unless:
- (a) a notice (called here a forward plan) has been published in connection with the matter in question;
 - (b) at least 3 clear days have elapsed since the publication of the forward plan; and
 - (c) where the decision is to be taken at a meeting of the Cabinet or its committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

Rule 13 – Forward Plan

13.1 *Period of forward plan*

Forward plans will be prepared on behalf of the Leader to cover a period of at least four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.

13.2 *Contents of forward plan*

The forward plan will contain matters which the leader has reason to believe will be subject of a key decision to be taken by the Cabinet, a committee of the Cabinet, individual members of the Cabinet, officers, area committees or under joint arrangements in the course of the discharge of a Cabinet function during the period covered by the plan. It will describe the following particulars in so far as the information is available or might reasonably be obtained:

- (a) the matter in respect of which a decision is to be made;

- (b) where the decision taker is an individual, his/her name and title, if any and where the decision taker is a body, its name together with the relevant officers' contact details;
- (c) the date on which, or the period within which, the decision will be taken;
- (d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
- (e) the means by which any such consultation is proposed to be undertaken;
- (f) a list of the background papers submitted to the decision taker for consideration in relation to the matter.

The forward plan must be published at least 14 days before the start of the period covered. The Chief Executive will publish once a year a notice in at least one newspaper circulating in the area, stating:

- (a) that key decisions are to be taken on behalf of the Council;
- (b) that a forward plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;
- (c) that the plan will contain details of the key decisions to be made for the four month period following its publication;
- (d) that each plan will be available for inspection at reasonable hours free of charge at the Council's offices;
- (e) that each plan will contain a list of the documents submitted to the decision takers for consideration in relation to the key decisions on the plan;

- (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the forward plan is available;
- (g) that other documents may be submitted to decision takers;
- (h) the procedure for requesting details of documents (if any) as they become available; and
- (i) the dates on each month in the following year on which each forward plan will be published and available to the public at the Council's offices.

Exempt information need not be included in a forward plan and confidential information cannot be included.

Rule 14 – General Exception

- 14 If a matter which is likely to be a key decision has not been included in the forward plan, then subject to Rule 15 (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 included in the next forward plan and until the start of the first month to which the next forward plan relates;
 - (b) the proper officer has informed the Chairman of the Overview and Scrutiny Committee, in writing, by notice, of the matter to which the decision is to be made;
 - (c) the proper officer has made copies of that notice available to the public at the offices of the Council; and
 - (d) at least 3 clear days have elapsed since the proper officer complied with (a) and (b).

Where such a decision is taken collectively, it must be taken in public.

Rule 15 – Special Urgency

- 15 If by virtue of the date by which a decision must be taken Rule 14 (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 of the Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chairman of the Overview and Scrutiny Committee, or if the Chairman of the Overview and Scrutiny Committee is unable to act, then the agreement of the Chairman of the Council, or in his/her absence the Vice- Chairman of the Council will suffice.

Rule 16 – Report to Council

16.1 *When the Overview & Scrutiny Committee can require a report*

If the Overview and Scrutiny Committee thinks that a key decision has been taken which was not:

- (a) included in the forward plan; or
- (b) the subject of the general exception procedure; or
- (c) the subject of an agreement with the Overview and Scrutiny Chairman, or the Chairman /Vice-Chairman of the Council under Rule 15;

the Overview and Scrutiny Committee may require the Cabinet to submit a report to the Council within such reasonable time as the Overview and Scrutiny Committee specifies. The power to require a report rests with the Overview and Scrutiny Committee, but is also delegated to the proper officer, who shall require such a report on behalf of the Overview and Scrutiny Committee when so requested by any 5 members. Alternatively the requirement may be raised by resolution passed at a meeting of the Overview and Scrutiny Committee.

16.2 **Cabinet's report to Council**

The Cabinet 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 Overview and Scrutiny 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, and if the leader is of the opinion that it was not a key decision the reasons for that opinion.

16.3 ***Quarterly reports on special urgency decisions***

In any event the leader will submit to the next ordinary meeting of the Council reports on the Cabinet decisions taken in the circumstances set out in Rule 15 (special urgency). The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

Rule 17 – Records of Decisions

- 17 After any meeting of the Cabinet or any of its committees, whether held in public or private, Chief Executive 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 either include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting; or refer to the report where these details can be found.

Rule 18 – Cabinet Meetings relating to Matters which are not Key Decisions

- 18 All meetings of the Cabinet will be held in public except where exempt or confidential information (as defined in Rule 9) is being considered.

Rule 19 – Decisions by Cabinet Members

19.1 ***Reports intended to be taken into account***

Where an individual member of the Cabinet receives a report which he/she intends to take into account in making any key decision, then he/she will not make the decision until at least 3 clear days after receipt of that report.

19.2 ***Provision of copies of reports to the Overview & Scrutiny Committee (and its working groups)***

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 the Overview and Scrutiny Committee as soon as reasonably practicable, and make it publicly available at the same time.

19.3 ***Record of individual decision***

As soon as reasonably practicable after a Cabinet decision has been taken by an individual member of the Cabinet or a key decision has been taken by an officer, he/she will prepare, or instruct the proper officer 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 6 and 7 (inspection of documents after meetings) will also apply to the making of decisions by individual members of the Cabinet. This does not require the disclosure of exempt or confidential information or advice from a political or mayor's assistant.

Rule 20 – Overview & Scrutiny Committee's Access to Documents

20.1 ***Rights to copies***

Subject to Rule 20.2 below, the Overview and Scrutiny Committee (including its working groups) will be entitled to copies of any document which is in the possession or control of the Cabinet or its committees and which contains material relating to

- (a) any business transacted at a meeting of the Cabinet or its committees; or
- (b) any decision taken by an individual member of the Cabinet.

20.2 ***Limit on rights***

The Overview and Scrutiny Committee (including its working groups) 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 adviser employed by the Council.

Rule 21 – Additional Rights of Access for Members

21.1 *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 Cabinet or its committees and contains material relating to any business previously transacted at a private meeting of the Cabinet or its Committees unless either (a) or (b) below applies.

- (a) it contains exempt information falling within paragraphs 1 to 6, 9, 11, 12 and 14 of the categories of exempt information; or
- (b) it contains the advice of a political adviser.

21.2 *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 Cabinet or its committees which relates to any key decision unless paragraph 21.1 (a) or (b) above applies.

21.3 *Questions by Members*

In addition to the rights set out in Council Procedure Rule 18 (Part 4 of the Constitution) any Member may, subject to Rule 21.4 at any time ask:

- the Chairman of the Council;
- a Member of the Cabinet;

- the Chairman of any committee, sub-committee, group or panel

a question on any non-operational matter in relation to which the Council has powers or duties or which affects the administrative area of Braintree District Council or part of it or the inhabitants of the area or some of them.

21.4 **Notice of Questions**

A question under Rule 21.3 shall be submitted in writing to the Chief Executive. Written questions may be edited by the Chief Executive if necessary, either to put them in proper form and/or secure reasonable brevity. The Chief Executive may disallow or edit any such question which in his opinion is not relevant under Rule 21.3 or is wholly or in part frivolous or derogatory to the dignity of the Council, or where any question has been incorrectly addressed to a particular Member, redirect the question to any appropriate Member.

21.5 **Response to a Question**

Every question shall receive a written reply within 9 working days of its receipt by the Chief Executive except that the Chairman of the Council, the Cabinet Member or other Chairman (as appropriate) may decline to answer a question if assembling the necessary information would, in his/her opinion, involve excessive cost.

21.6 **Publication of Question and Response**

The Chief Executive shall not later than 10 working days following each written reply received in accordance with Rule 21.5 publish in a manner approved by the Council both the question and the written reply.

21.7 **Nature of Rights**

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