

PART 3E – ACCESS TO INFORMATION PROCEDURE RULES

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1. Scope

1.1. Derivation

1.1.1. These Rules implement the requirements of Sections 100A to K and Schedule 12 and 12A of the Local Government Act 1972, Sections 9G and 9GA of the Local Government Act 2000, and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

1.1.2. Rules 1 -13 apply to all meetings of:

- Council
- The Overview & Scrutiny Committees (Place, People, and Health)
- The Executive (i.e. Cabinet)
- Planning Committee
- Audit, Standards & General Purposes Committee and Sub-Committees
- Licensing Committee
- Licensing Sub Committee
- Health and Wellbeing Board
- Greater Brighton Economic Board
- Any other joint Committees, area-based or statutory
- Any other Area Committees or Forums, and any other Statutory Committees
- Any Consultative Committees established under section 102(4) of the Local Government Act 1972 & The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012
- Any sub-committees or panels of the above Committees together referred to in these Rules as “meetings”.

1.1.3. Rules 14 - 21 apply only to meetings of the Executive, Executive Committees and executive decisions taken by individual Members of the Executive or by officers but do not apply to meetings of Consultative Forums or Advisory Panels.

2. Additional Rights to Information

2.1 These Rules do not affect any additional rights to information contained elsewhere in the Constitution or provided by law.

3. Rights to Attend Meetings

3.1 Members of the public and representatives of the Press may attend all meetings subject only to the exceptions in these Rules. Members of the public and representatives of the Press may also attend on any occasion when the Leader is determining a matter that is a Key Decision (see Rule 20).

4. Reporting of meetings

4.1 The reporting of meetings is permitted except where the press and public are excluded under Rule 12 of these Rules.

5. Notice of Meetings and Key Decisions

- 5.1 The Council will give at least five clear working days' notice of any meeting by publishing details of the meeting at Hove Town Hall.
- 5.2 Notice will also be given where the Leader is to take a Key Decision.
- 5.3 At least 28 clear calendar days before a Key Decision is made, a Forward Plan ('the Forward Plan') must be available for inspection by the public - at the offices of the Council and on the Council's website.
- 5.4 At least 28 clear calendar days before a private executive meeting, the Council must make available at the Council's office and published on the Council's website, a notice of its intention to hold the meeting in private. This notice will be included in the Forward Plan ('the Forward Plan') and will apply to both Key and Non-Key Decisions to be taken. See Rule 12.5 for procedure.
- 5.5 While Key Decisions will normally be taken collectively by the Executive at a Cabinet meeting, they may be taken by the Leader in a situation of urgency, as provided for in the Executive Procedure Rules at Part 3B and 3B1 of the Constitution. Where this is the case then Rules 16 & 17 of these Rules will normally apply.

6. Access to Agenda and Reports before the Meeting

- 6.1 The Council will make copies of those agenda and reports which are open to the public available for inspection at Hove Town Hall, and on the Council's website, at least five clear working days before the meeting.
- 6.2 Where the meeting is convened at shorter notice than set out in Rule 5, copies of the agenda and reports shall be open to inspection from the time the meeting is convened.
- 6.3 Where an item is added to an agenda, copies of which are open to inspection by the public, copies of any report for the meeting relating to the item shall be available from the time the item is added to the agenda. Nothing in this Rule requires copies of any agenda item or report to be open to inspection by the public until copies are available to councillors. Copies of agendas and reports must be made available at the meeting.

7. Late Reports

- 7.1 In a case where it is considered necessary to add an item to an agenda after the statutory deadline for publication, that item may only be considered if the Chair agrees - by virtue of the special circumstances set out either in the report or on the supplemental agenda - that the item should be considered as a matter of urgency and specified in the minutes of the meeting. If the report involves a Key Decision please also see paragraph 16 of these Rules. This Rule does not apply to the Meetings of the full Council where Council Procedure Rule 6 applies (Part 3A of this Constitution).
- 7.2 Where a report is prepared after the agenda has been sent out, the Head of Democratic Services shall make the report available to the public as soon as the report is completed and sent to councillors.

8. Supply of Copies of Agenda and Reports

- 8.1 The Council will supply copies and make these available on the Council's website:

- 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 on the agenda;
- c) any other documents supplied to councillors in connection with an item, if the Head of Democratic Services considers it appropriate and practical;
- d) where a Key Decision is to be taken by the Leader then a copy of the report for a meeting shall be made available for inspection by members of the public. At the same time, a copy of a list compiled by the Proper Officer of the background papers to the report must be included in the report and at least the title of each of the documents included in that list and a copy of the document to be made available on the Council's website.

9. Access to Minutes and Committee Documents after the Meeting

- 9.1 The Council will make available copies of the following for six years after a meeting:
- a) the minutes of meetings (or the record of all decisions taken at a meeting, together with the reasons, for all meetings of the Executive), excluding any part of the minutes of proceedings when the meeting was not open to the public and which disclose exempt or confidential information;
 - b) a summary of any proceedings not open to the public when the minutes open to inspection do not provide a reasonably clear and coherent record; the agenda for the meeting; and reports relating to items when the meeting was open to the public.

10. Background Papers

- 10.1 List of Background Papers – The officer responsible for the drafting of a report (or in the case of joint reports, the first named Officer) shall set out in the report a list of those documents (called the background papers) relating to the subject matter of the report which in their 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 will not include in such list published works or those which disclose exempt or confidential information (as defined in Rule 12) and in respect of reports to a meeting of the Executive, any advice given by a political advisor.
- 10.2 Public Inspection of Background Papers - The Council will make available for public inspection for at least four years after the date of the meeting a copy of each of the documents on the list of background papers. In the case of the Executive, the background papers will also be available on the Council's website.

11. Summary of the Public's Rights

- 11.1 A written summary of the public's rights to attend meetings and to inspect and copy documents is included in paragraph 6 of the Introduction and Summary in this Constitution.

12. Exclusion of Access by the Public and Press to Meetings

- 12.1 Confidential Information - requirement to exclude the public from a meeting
- 12.1.1 The public and press 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.

- 12.2 Exempt Information - discretion to exclude the public and press from a meeting
- 12.2.1 The public and press 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.
- 12.2.2 When 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. Extract from Article 6 'Right to a fair trial - in the determination of his or her civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time.'

12.3 Meaning of Confidential Information

- 12.3.1 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.

12.4 Meaning of Exempt Information

- 12.4.1 Exempt information means information falling within the following seven categories (subject to the relevant condition)

Category	Condition
1. Information relating to any individual	Information falling within paragraph 1 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 which is likely to reveal the identity of an individual	Information falling within paragraph 2 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.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information) "Financial or business affairs" includes contemplated as well as past or current activities.	Information falling within paragraph 3 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. Information falling within paragraph 3 is not exempt information if it is required to be registered under a) the Companies Act 1985 b) the Friendly Societies Act 1974 c) the Friendly Societies Act 1992

Category	Condition
	d) the Industrial and Provident Societies Act 1965 to 1978 e) the Building Societies Act 1986 f) the Charities Act 1993
4. Information relation 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.	Information falling within paragraph 4 is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemptions outweighs the public interest in disclosing the information. “Labour relations matter” are as 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 or any dispute about a matter within this paragraph.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings	Information falling within paragraph 5 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.
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	Information falling within paragraph 6 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.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	Information falling within paragraph 7 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.

12.4.2 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.

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12.5 Procedures prior to Private Meetings of the Executive

12.5.1 At least 28 clear days before a private meeting, the Council must -

- a) make available at Hove Town Hall a notice of its intention to hold the meeting in private; and
- b) publish that notice on the Council's website.

12.5.2 The notice must include a statement of the reasons for the meeting to be held in private.

12.6 At least five clear days before a private meeting, the Council must -

- a) make available at Hove Town Hall a further notice of its intention to hold the meeting in private;
- b) publish that notice on the Council's website.

12.7 This further notice must include:

- a) a statement of the reasons for the meeting to be held in private;
- b) details of any representations received by the Council about why the meeting should be open to the public;
- c) a statement of its response to any such representations.

12.8 Where the date by which a meeting must be held makes compliance with this paragraph impracticable, the meeting may only be held in private where the Council has obtained agreement from:

- a) the Chair of the relevant Overview and Scrutiny committee;
- b) or if the Chair of the relevant Overview and Scrutiny committee is unable to act, the Mayor;
- c) where there is no Chair of either the relevant Overview and Scrutiny Committee or the Mayor is not available, the Deputy Mayor may give agreement.
- d) Where there is no Chair or Mayor or Deputy Mayor, the Vice-Chair of the relevant Overview and Scrutiny Committee will may give agreement

12.9 As soon as reasonably practicable after the Council has obtained agreement to hold a private meeting, it must:

- a) make available at Hove Town Hall a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred; and
- b) publish that notice on the Council's website.

13. Excluding Public Access to Reports

13.1 The public may be denied access to reports if the Monitoring Officer (in their capacity as Proper Officer) decides that the report relates to matters which, in accordance with Rule 12, will not be considered in a public meeting. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed.

14. Procedure before taking Key Decisions

14.1 Subject to Rule 16 (general exception) and Rule 17 (special urgency), a Key Decision may not be taken unless:

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- a) the Forward Plan ('the Forward Plan') has been published including relevant information in connection with the matter in question at least 28 clear days in advance both at the Hove Town Hall and on the Council's Website of the Forward Plan
- b) where the decision is to be taken at a meeting of the Executive, a notice of the meeting has been given in accordance with Rule 5 (notice of meetings) and a written report providing all relevant and necessary information has been considered by the body taking the decision; and
- c) where the decision is to be taken by the Leader for reasons of urgency, at least five clear working days have elapsed following receipt of the report required under Rule 20.1 and notice of the consideration of a Key Decision has been given under Rule 5 (notice of meetings) and in accordance with (b) above.

15. The Forward Plan

15.1 Period of the Forward Plan

- 15.1.1 The Forward Plan will be prepared by the Head of Democratic Services. It shall include all matters believed to be the subject of a Key Decision scheduled to be taken during the next one to four months.
- 15.1.2 The Forward Plan must include the information outlined in para 15.2.1 below, which must be published at least 28 clear days before the date of the meeting taking the relevant Key Decision.

15.2 Contents of the Forward Plan

- 15.2.1 The Forward Plan will contain matters which the Monitoring Officer/Head of Democratic Services believes will be the subject of a Key Decision to be taken by the Executive or under joint arrangements. Items which relate to the discharge of a Key Decision must be included, but other items may also be included. It will describe the following particulars in so far as the information is available:
 - a) the matter in respect of which a decision is to be made;
 - b) where the decision taker is an individual, their name and title, if any, and where the decision taker is a body, its name and a list of its Members;
 - c) the date on which, or the period within which, the decision is to be made;
 - d) a list of the documents submitted to the decision-maker for consideration in relation to the matter in respect of which the Key decision is to be made;
 - e) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
 - f) a list of the other documents relevant to those matters that may be submitted to the decision maker;
 - g) The procedure for requesting details of those documents (if any) as they become available.

16. General Exception

- 16.1 If a matter which is likely to be a Key Decision has not been included in the Forward Plan, then subject to Rule 17 (special urgency), the decision may still be taken if:
 - a) the Monitoring Officer has informed by written notice the Chair of the Overview and Scrutiny Committee, or if there is no such person available, each Member

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of that Committee, by notice in writing of the matter to which the decision is to be made;

- b) the Monitoring Officer has made available to the public at the Hove Town Hall on the Council's website, a copy of that notice; and
- c) at least five clear working days have elapsed following the day on which the Monitoring Officer complied with (b).

16.2 Any such decision taken by the Executive must be taken in public unless it relates to a matter which is confidential or exempt pursuant to paragraph 12 above.

17. Special Urgency

17.1 If by virtue of the date by which a decision must be taken, then Rule 16 (general exception) cannot be followed, the decision can only be taken if the decision maker (if an individual) or the Chair of the body making the decision obtains the agreement of the Chair of the Overview and Scrutiny Committee that the taking of the decision is urgent and cannot be reasonably deferred. If there is no Chair of the Overview and Scrutiny Committee, or if that Chair is unable to act, then the agreement of the Mayor, or in their absence the agreement of the Deputy Mayor, is required.

17.2 Any such decision taken by the Executive must be taken in public unless it relates to a matter which is confidential or exempt pursuant to paragraph 12 above.

17.3 As soon as reasonably practicable after agreement has been obtained, the decision maker must make available at Hove Town Hall a notice setting out the reasons for urgency and publish the notice on the Council's website.

Note: separate provision is made in the Overview & Scrutiny Procedure Rules at Part 3C1 of this Constitution regarding the application of the Call-In process where the implementation of a decision is considered to be urgent.

18. Requirement for a Report to be made to Council

18.1 Request from the Overview and Scrutiny Committee

18.1.1 If the Overview and Scrutiny Committee thinks that a Key Decision has been taken which was not included in the Forward Plan and in relation to which the Special Urgency process described at para 17.1 above has not been followed, they may require the Executive to submit a report to the Council within such reasonable time as the Committee specifies. The report must include details of the decision and the reasons for it, including the name of the decision maker and the reasons why the decision was not treated as a Key Decision.

18.2 The timing of the report to Council

18.2.1 The Executive will prepare a report for submission to the Council at such intervals as may be determined by the Council. The report to Council will set out particulars of each decision, and a summary of the matters in respect of which each decision was made. The Leader must submit at least one report on special urgency annually, unless otherwise determined by the Council.

18.3 Requirement for quarterly reports on special urgency decisions

18.3.1 In any event the Leader of the Council will submit quarterly reports to the Council on the Executive decisions taken in the circumstances set out in Rule 17 (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.

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19. Record of Decisions

- 19.1 After the meeting of the Executive, the Head of Democratic Services or a Chief Officer present will produce as soon as practicable and make available for inspection by members of the public and on the Council's website:
- a) a record of the decisions taken;
 - b) a statement of the reasons for each decision; and
 - c) any alternative options considered and rejected at that meeting
 - d) a record of any conflict of interest declared by any Executive Members and a note of any dispensation granted.

20. Key Decisions taken by the Leader

20.1 Reports

- 20.1.1 No Key Decision other than an urgent Key Decision shall be taken until twenty-eight clear days after the publication of the Forward Plan and five clear working days have elapsed from receipt of a report which includes relevant and necessary information for the making of the decision.

20.2 Provision of copies of reports to the Overview and Scrutiny Committee

When supplying the report to referred to in 20.1.1 above to the relevant decision maker, the person preparing the report will at the same time give a copy to the Chair of the Overview and Scrutiny Committee and make it publicly available.

20.3 Notice of the Decision

- 20.3.1 Notice of the taking of a Key Decision shall be given in the same way as a notice of a meeting of the Executive (Rule 5). Members of the public and representatives of the Press may attend the taking of a Key Decision by the Leader.

21. Record of Individual Executive Member Non Key Decisions

- 21.1 As soon as reasonably practicable after any Non-Key decision has been taken by an individual Member, a record of the decision will be published including a statement of the reasons for it, any alternative options considered and rejected (see Rule 19), as well as a record of any conflict of interest declared by any Executive Member and a note of any dispensation granted.

22. Inspection of Documents and Background Papers

- 22.1 The provisions of Rules 9 and 10 (access to documents after meetings and background papers) will also apply to the making of Key Decisions by the Leader. This does not require the disclosure of exempt or confidential information.

23. Overview and Scrutiny Committee - Access to Documents

- 23.1 Members of Overview and Scrutiny Committee (including any sub-committees) will be entitled to copies of any document which is in the possession or control of the Executive or a Cabinet member, and which contains material relating to:
- a) any business transacted or to be transacted at a meeting of the Executive, or
 - b) any decision taken by an individual Member of the Executive;
 - c) any decision that has been made by an officer of the authority in accordance with Executive Arrangements.

- 23.2 These documents should be provided by the Executive as soon as reasonably practicable and no later than 10 clear days from the Executive receiving the request from the relevant Overview & Scrutiny Chair.
- 23.3 No Member of the Overview and Scrutiny Committee is entitled to a copy of any such document that contains exempt or confidential information unless the information is relevant to:
- a) An action or decision that the Member is reviewing or scrutinising.
 - b) Any review contained in any programme of work of the Overview and Scrutiny Committee.
- 23.4 Where the Executive determines that a Member of the Overview and Scrutiny Committee is not entitled to a copy of a document (for reasons under Rule 23.3) it must provide a written statement of the decision to the Overview and Scrutiny Committee.

APPENDIX - Access to Information by Members

A: the “need to know”

1. The courts have given guidance on the circumstances in which a Member seeking information from an officer can be presumed to have a “need to know”.
2. Members are presumed to have a good reason for access to all written material relating to a function controlled by a committee on which they serve. Also, a Member of a Committee would have a good reason for access to papers relating to the business of a Sub-Committee of that Committee.
3. A Member with a legitimate concern in a matter in which they are representing a constituent or other person or organisation may be able to demonstrate a “need to know” in relation to papers relevant to that matter, even if the Member concerned is not on the relevant Committee/Sub-Committee.
4. However, even where a Member is a Member of a Committee/Sub-Committee and wishes to see papers relating to the work of that Committee or a Sub-Committee of it, there will not be an automatic right of access to papers if the Member’s interest springs from something other than the wish to pursue rights as a Member of that Committee/Sub-Committee.
5. Party leaders may be able to demonstrate a “need to know” in respect of written material relating to all Committees/Sub-Committees.
6. Notwithstanding that the information requested may come within the above categories, an officer may refuse a request to provide the information if they have cause to think that the information may have been requested for an improper purpose or is otherwise unreasonable or is of a personally sensitive nature.
7. In this context, the courts have been critical of a request by a Member for details of many contracts, and have ruled that a request for details of a Chief Officer’s attendance at the office amounted to harassment.
8. When assessing whether a Member requesting information has a right to it, an officer is entitled to know their reasons for wanting it, and in the absence of cogent reasons is entitled to refuse. Where an officer considers that a Member has not established a “need to know” in support of a request for access to information and refuses to provide the information requested, the officer shall state reasons for doing so.
9. Members are entitled to have enough information to be able to perform their functions properly and the Courts will protect this position. Members should however bear in mind that unreasonable requests or pressure for information may amount to a breach of the Code of Conduct for Members.

B: Access to Confidential Reports

- 9.1 Members’ rights of access to Reports to the Council’s decision-making bodies are set out in paragraph 17 of the Access to Information Procedure Rules. Without prejudice

to any rights that Members may have under those rules, this guidance or the law, the following practice and procedure should apply.

- (a) The Council's approach regarding access to reports will be guided by the general principles of openness and transparency.
- (b) In the practical application of the principles, the Council will have regard to any legal duty of confidentiality and the need to be able to run its business as a responsible authority.
- (c) As far as possible, and to the extent that it is consistent with legal duties and good practice, the Council will endeavour to put as many as possible of the reports it relies on its decision-making in the public realm or, where this is not appropriate, to have an item in the open part that gives the public an indication of the nature of the issue.
- (d) While consideration will be given to providing Group Leaders with copies of any Part II reports the matter under consideration may be such that it is necessary to limit the distribution of reports to Members directly involved in decision-making only, and/or to restrict the copying, distribution, or retention of the reports by Members or Officers.
- (e) In exceptional cases, if the Chief Executive and the Monitoring Officer are of the opinion that significant legal, financial or commercial reasons exist, then the distribution of the reports may be restricted to the person/s making the decision. In coming to such a decision, the Chief Executive and the Monitoring Officer will have regard to the following:
 - Whether the distribution of confidential papers to persons outside the decision-makers would be likely to constitute a breach of any legal duty to which the Council is subject, whether such duty arises from legislation, court order, contractual duty or other express or implied legal obligation;
 - Whether the disclosure of the information would be likely to expose the Council to financial loss;
 - whether the disclosure of the information would be likely to have a detrimental effect on any commercial negotiations;
 - whether the report includes sensitive personal information the disclosure of which would expose the Council to legal or reputational damage;
 - whether the report contains matters relating to labour relations or negotiations with trade unions and the disclosure of such information would be likely to compromise those negotiations.
- (f) steps taken to limit distribution or restrict the manner of use shall be proportionate to the perceived risk. Depending on the Chief Executive and the

Monitoring Officer's assessment, any such measures may include, but are not limited to:

- Circulating the report to the decision makers only;
- Collecting the reports at the conclusion of the meeting;
- Making arrangements for relevant Members to read the report at a pre-arranged venue and not take the report away;
- Restricting any copying of the report.
- Marking reports

- (g) Where a restriction or limitation on distribution is imposed under the above provisions, the Chief Executive or the Monitoring Officer shall inform the Group Leaders.
- (h) The procedure to restrict circulation of reports or the manner of use shall be applied only in exceptional circumstances and the presumption remains that Group Leaders would be entitled see Part II reports.
- (i) The above procedures are without prejudice to any right that Members may have to access information and documents under the common law principle of "need to know."