

## **Appendix 13 – Access to Information Procedure Rules**

### **1. Meetings**

- 1.1 Procedure Rules 1.2-1.8 below apply to all meetings of the Council, Cabinet, the Council's Committees and Joint Committees.

### **2. Rights to attend meetings**

- 2.1 Members of the public and the media may attend all meetings, subject to the exceptions specified in the particular rules that govern meetings of the Council, the Cabinet and the Council's Committees and Joint Committees as well as the exceptions below.

### **3. Notice of meeting**

- 3.1 The Assistant Director of Governance (Democratic and Regulatory Services) will give at least five clear days' notice of any meeting by posting details of the meeting at County Hall, Norwich and on the Council's website.

### **4. Access to agenda and reports before the meeting**

- 4.1 The Assistant Director of Governance (Democratic and Regulatory Services) will make copies of the agenda and reports available for public inspection at County Hall and on the Council's website at least five clear days before the meeting. If an item is later added to the agenda, the revised agenda will be open to public inspection from the time the item was added to the agenda. Where reports are prepared after the agenda has been sent out, the Assistant Director of Governance (Democratic and Regulatory Services) will make such reports available for public inspection as soon as the report is sent to Members.
- 4.2 The Assistant Director of Governance (Democratic and Regulatory Services) may withhold reports, or appendices to reports, from public inspection if they consider the reports contain exempt or confidential information (as defined in paragraphs 8 and 9 of these Rules). Such reports will be marked "Not for publication" and the exemption category of information indicated and will be printed on pink paper. The Council is committed to transparency and will keep information withheld from public inspection to the minimum necessary.

### **5. Exclusion of the Media and Public from Meetings**

- 5.1 The media and 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 (as defined in paragraph 8 of these Rules) will be disclosed.
- 5.2 The media and 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 (as defined in paragraph 9 of these Rules) will be disclosed.

- 5.3 The decision to exclude the media and the public must be made after considering the public interest test, by a resolution of the meeting which must (in the case of exempt information) state the reasons for the exclusion (by reference to the relevant statutory category) which must be recorded in the minutes of the meeting.

## **6. Access to minutes of meetings**

- 6.1 The Assistant Director of Governance (Democratic and Regulatory Services) will retain and make available for public inspection for six years after a meeting of a decision-making body, copies of the following:
1. the minutes of the meeting, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
  2. 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;

## **7. Supply of copies**

- 7.1 Following a request by any person and on payment by them of a reasonable charge to meet copying and clerical costs, the Council will supply copies of any agendas, reports, minutes and records of decisions which are open to public inspection, although any requestor will be encouraged to use electronic copies that are readily available.

## **8. List of background documents**

- 8.1 The author of any report will set out in the report a list of background documents relating to the subject matter of the report which in their opinion:
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 preparing the report (not including published works or those which disclose exempt or confidential information as defined in paragraphs 8 and 9 of these Rules).

## **9. Public inspection of background documents**

- 9.1 The Head of Paid Service and Chief Officers are responsible for ensuring that one copy of each background document included in the list of background documents is retained and made available for public inspection and published on the Council's website after the date of any meeting or decision.

## **10. Summary of public's rights**

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

10.2 A summary of the public's rights to attend meetings and to inspect and copy documents will be retained and made available to the public at County Hall, Norwich.

## 11. Rights of access for Members generally

11.1 Under Section 100F of the Local Government Act 1972, a Member has a right to see any document in the possession of, or under the control of, the Council relating to any business to be transacted at a meeting of the Council, a Committee or Sub-Committee. However, the Assistant Director of Governance (Democratic and Regulatory Services ) has the power to withhold any such document which in their opinion contains exempt information of certain types: e.g. relating to individuals, the terms of a proposed contract, consultations or negotiations regarding labour relations matters, or legal proceedings.

11.2 A member has a right, under Section 228 of the Local Government Act 1972, to inspect the accounts of the Council and of any proper officer of the Council.

11.3 At common law a Member has a right to see any document under the control of the Council if that Member can show a "need to know" the contents of the document in order to perform their duties as a Councillor. A Member is not given a roving commission; nor can inspection be demanded out of idle curiosity or if there is any improper or indirect motive. In the event of a dispute as to whether a Member has a "need to know", the question is to be decided ultimately by the Council itself.

11.4 Annex 1 to this Appendix contains a protocol agreed by the County Council for the exercise of the rights of Members to inspect and have copies of documents.

11.4 **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 virtue of a Court Order.

11.5 **Exempt information** means information which falls within one or more of the following seven categories and in respect of which, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

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. (However, information is not exempt information under this category if it is required to be registered under the Companies Act 2006, the Friendly Societies Acts 1974 and 1992, the Industrial and Provident Acts 1965 to 1978, the Building Societies Act 1986 or the Charities Act 2011).

4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the County Council or a Minister of the Crown and employees of, or office holders under, the County Council.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the Council 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.

Information falling within any of the above paragraphs (1) to (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.

## **Annex 1 – Protocol relating to Members’ rights to access and copies of documents**

### **1. Introduction**

Members can ask any Senior Officer to provide them with information, explanation and advice so that they can carry out their role as Councillors. This can range from a request for general information about some aspect of a Service's activities to a request for specific information on behalf of a constituent.

### **2. The Purpose of the Protocol**

The purpose of the protocol in paragraph 4 is to help clarify for Members what they are entitled to see, and how to go about seeing it, and to give officers clear guidelines about the Members rights. The Council is developing separate arrangements to make sure that Members get to know information in a timely and appropriate manner.

### **3. The Legal Position**

#### **3.1 Statutory Provisions**

Any Member can see documents which contain information relating to the public and private meetings of the Council and its Committees and any decisions to be taken by an individual officer. This statutory right does not extend to certain categories of exempt and confidential information.

#### **3.2 The Common Law Position**

(a) The common law right of Members is much wider than this and is based on the principle that any Member has a prima facie right to inspect any Council documents *if access to the documents is reasonably necessary to enable the Member properly to perform their duties as a Member of the Council*. This principle is commonly referred to as the "need to know" principle.

(b) The exercise of this common law right depends upon the Member's ability to demonstrate a "need to know". In this respect, a Member does not have "a roving commission" to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is whether there is a "need to know".

#### **3.3 Data Protection**

Data protection legislation restricts the processing of information relating to individuals. As a result, any such information cannot be shared without the agreement of that individual or unless one of the legal exemptions applies.

#### 4. The Protocol

Against this background the Council has agreed the following protocol: -

- (1) An initial request should be made to the relevant Senior Officer and in this the Member should: -
  - (a) identify what they need to see;
  - (b) state the reason(s) that they need to see it; and
  - (c) make it clear whether they have a personal interest in the matter (as defined in the Members' Code of Conduct) and if so, what it is.

The Senior Officer is entitled to ask the Member to make this request in writing if they are in any doubt about any of these matters.

- (2) Any officer who is in any reasonable doubt regarding the release of the information will consult the Monitoring Officer for advice.
- (3) If, after receiving this advice, it is not considered appropriate to release the information either because:

- the Member has not established a need to see it, or
- because the officer has other concerns (for example the Councillor has personal interest in the matter, the information is commercially or otherwise sensitive, or the amount of work involved in identifying and producing the information is considered to be excessive)

and the Member takes a different view, the matter will be referred to the Head of Paid Service, who will consult the relevant Group Leader before making a decision.

- (4) Any information provided must be only used in connection with the Members' duties as a Councillor, e.g. speaking at a relevant Committee or at full Council. Information not already in the public domain should not be divulged to third parties (including the press) nor should information be used improperly.
- (5) Finally, the effect of the Data Protection legislation is that information relating to an individual should not be provided unless either the individual has agreed to its release or one of the legal exemptions applies. As a result, any Member wishing to obtain access to personal information should first seek that person's consent. A form is provided for this purpose. If that consent is not given, or there is a difficulty with requesting it, then legal advice should be sought.

## **Annex 2 – Protocol relating to the disclosure of information held by the Council in relation to Members**

- (1) The County Council on its computer systems or premises holds a significant amount of information that is received or created by Councillors. The County Council complies with its legal obligations to ensure the security of data that it holds. Save for information created or received by a Councillor for private or political purposes, other information created or received by a Councillor will be regarded as held by the County Council.
  
- (2) Councillors have the right to expect that information that relates to them and produced by them which is held by the Council, will not be accessed and/or disclosed to third parties without their written consent or as may be required by law.