

Access to Information Procedure Rules

1.0 Scope

- 1.1 Subject to paragraph 1.2 below, these rules apply to all meetings of the Council, the Cabinet, the Scrutiny Committee, area committees (if any) the Audit Committee, Policy Development Groups, Standards Committee and Regulatory Committees (together called meetings).
- 1.2 Where the Standards Sub-Committee is convened to consider or review, as the case may be, an allegation that a member has contravened the Council's Code of Conduct for Members, the provisions set out in the Standards Committee's Procedure for Local Assessment of Complaints shall apply and the meeting and papers will not be open to the public

2.0 Additional Rights to Information

- 2.1 These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law nor do these rules limit or diminish the Council's duties to protect certain information, including personal information. This includes the rights and duties from the provisions of the Freedom of Information Act 2000 and the Data Protection Act 1998.

3.0 Rights to attend meetings

- 3.1 Members of the public may attend all meetings subject only to the exceptions in these Rules.
- 3.2 If a member of the public or press interrupts the proceedings at any meeting the Chairman may warn him/her. If he/she continues the interruption and a warning has been given, the Chairman may order his/her removal from the meeting place.
- 3.3 In the event of a general disturbance in any part of the meeting place open to the public, the Chairman may order that part to be cleared.
- 3.4 If the Chairman considers the orderly dispatch of business impossible, he/she may without question adjourn the meeting.
- 3.5 The above powers of the Chairman are in addition to any other power vested in him/her.

4.0 Notices of meeting

- 4.1 The Council will give at least five clear days notice of any meeting by posting details of the meeting at Phoenix House, Phoenix Lane, Tiverton Devon known as the designated office or on its website at www.middevon.gov.uk.

5.0 Access to Agenda and Reports before the meeting

- 5.1 The Members of the Scrutiny Committee shall be provided with full copies of the agenda and reports presented to the Cabinet including those containing exempt and/or confidential information.
- 5.2 The Council will make copies of the agenda and reports open to the public available for inspection at the designated office and available on the website (if any) at least five clear working days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the agenda (where reports are prepared

after the summons has been sent out, the Member Services Manager shall make each such report available to the public as soon as the report is completed and sent to Councillors).

6.0 Supply of copies

6.1 The Council will make available to the public present at a meeting a reasonable number of copies of the agenda and of the reports for the meeting (save during any part of the meeting to which the public are excluded)

6.2 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.

7.0 Access to Minutes etc. after the meeting

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

- (a) the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of the Cabinet, 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) records to decisions taken by individual Members or officers
- (c) 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;
- (d) the agenda for the meeting; and
- (e) reports relating to items when the meeting was open to the public.

8.0 Background Papers

8.1 The Chief Executive Officer will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) which have been relied on to a material extent in preparing the report

but does not include published works or those which disclose exempt or confidential information.

8.2 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.

9.0 Summary of Public's Rights

- 9.1 A written summary of the public's rights to attend meetings and to inspect and copy documents will be kept at and made available to the public at the Council's main offices at Phoenix House, Phoenix Lane, Tiverton, Devon and on the Councils website www.middevon.gov.uk.

10.0 Exclusion of Access of the Public to Meetings

Extent of Exclusion

- 10.1 The public may only be excluded under 10.2 or 10.3 for the part or parts of the meeting during which it is likely that confidential or exempt information would be divulged.

Confidential information – requirement to exclude public

- 10.2 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.

Exempt information – discretion to exclude public

- 10.3 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. Such a decision to exclude the public is to be made by resolution of the relevant decision making body.

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.

Meaning of confidential information

- 10.4 Confidential information means information given to the Council by a Government Service or Agency on terms which forbid its public disclosure or information which cannot be publicly disclosed by any enactment or Court Order.

Meaning of exempt information

- 10.5 Exempt information means information falling within the following categories (subject to any qualification)

Categories of exempt 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)
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relating 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

The above categories are subject to qualifications and to the public interest test. These are laid down in Schedule 12A to the Local Government Act and further details can be found in Appendix E

Extent of Exclusion

- 10.6 The public may only be excluded under 10.2 or 10.3 for the part or parts of the meeting during which it is likely that confidential or exempt information would be divulged.

[NOTE Information falling within any of paragraphs 1 – 7 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.]

11 Exclusion of Access by the Public to Reports

- 11.1 If the Monitoring Officer thinks fit, the Council may exclude access by the public to reports which in his/her opinion relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked “Not for publication” together with the category of information likely to be disclosed. If the information is exempt information, the category of the exempt information must also be marked on the report.
- 11.2 The relevant body is requested in the agenda to confirm the action set out in 11.1 by resolution. Arrangements will be made to recall the press and public immediately should the motion not be passed.
- 11.3 If the matter is considered in public, any related report will also become available to the public.

12. Application of Rules to the Cabinet

Rules 13–27 apply to the Cabinet and its Committees (if any). If the Cabinet or its Committees meet to take a key decision then it must also comply with Rules 1 – 11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is as defined in Article 15 of this Constitution.

13. Procedure before taking Key Decisions

Notice of Key Decision

- 13.1 Subject to Rule 15 (general exception) and Rule 16 (special urgency), a key decision may not be taken unless:
- a) a notice (called here a "Notice of Key Decision") has been published in connection with the matter in question;

b) at least 28 clear days have elapsed since the publication of the "Notice of Key Decision"; 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 4.1 (notice of meetings).

Contents of Notice of Key Decision

13.2 The Notice of Key Decision will state that a key decision is 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 an executive function. It will describe the following particulars:

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

b) where the decision maker is an individual, his/her name and title, if any and where the decision maker is a body, its name and a list of its membership;

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;

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) that other documents relevant to those matters may be submitted to the decision maker; and

g) the procedure for requesting details of those documents (if any) as they become available.

Publication of the Notice of Key Decision

13.3 The Notice of Key Decision must be made available for inspection by the public at Phoenix House, Phoenix Lane, Tiverton Devon known as the designated office or on its website at www.middevon.gov.uk.

14. The Forward Plan

14.1 The Council is not required by law to publish a Forward Plan. However, the a Notice of Key Decision and a Notice of Private Meeting of Cabinet published by the Council set out not just details of specific key decisions, but also details of key decisions over a four month period (including decisions to be made by Cabinet, individual Cabinet members or delegated officers, which are not key decisions. In this constitution, such notices are together referred to as the "Forward Plan". The Forward Plan does not have to include exempt information and should not include confidential information.

15. General Exception

15.1 If a Notice of Key Decision has not been published in the Forward Plan, then subject to Rule 16 (special urgency), the decision may still be taken if:

- a) the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next Forward Plan and until the start of the appropriate month to which the next Forward Plan relates;
- b) the Chief Executive has informed the Chairman of the Scrutiny Committee, or in his/her absence the Vice-Chairman, and the Monitoring Officer in writing, of the matter about which the decision is to be made;
- c) the Chief Executive has made copies of that notice available to the public at the offices of the Council and on the Council's website www.middevon.gov.uk ; and
- d) at least 5 clear days have elapsed since the Chief Executive complied with b)and c).

15.2 As soon as reasonably practicable after the Chief Executive has complied with Rule 15.1, he must make available at the Council offices at Phoenix House, Phoenix Lane, Tiverton, Devon and publish on the Council's website www.middevon.gov.uk (if any) the reasons why compliance with Rule 14 is impractical.

16. Special Urgency

16.1 If a decision, (whether a key decision or otherwise), is so urgent that Rule 15 (general exemption) cannot be followed the Leader of the Council or the relevant Cabinet Member may take the decision if he/she has obtained the agreement of the Chairman of the Scrutiny Committee and the Monitoring Officer that the taking of the decision cannot be reasonably deferred. If the Chairman of the Scrutiny Committee is unable to act, then the agreement of the Chairman of the Council, or in his/her absence the Vice-Chairman will suffice.

16.2 A decision taken under this rule will not normally be taken in public by reason of its urgent nature. A decision will be urgent if any delay would seriously prejudice the Council's or the public's interests. The record of the decision shall state why the decision is an urgent one.

16.3 If by virtue of the date by which a key decision must be taken Rule 15 (general exception) cannot be followed, then the key decision can only be taken if the decision maker obtains the agreement of the Chairman of the Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chairman of the Scrutiny Committee, or if the Chairman of the Scrutiny Committee is unable to act, then the agreement of the Chairman of the Council, or in his/her absence the Deputy Chairman of the Council will suffice.

16.4 As soon as reasonably practicable after the decision maker has obtained agreement under Rule 16.3 (and in any event by no later than the end of the next working day), a notice of the decision must be published he/she must make available at and publish on (if any) a notice setting out the reasons that the decision is urgent and has been taken under this Rule 16. cannot reasonably be deferred.

17. **Report to Council**

- 17.1 When the Scrutiny Committee can require a report if the Scrutiny Committee thinks that a key decision has been taken which was not:
- a) the subject of a Notice of Key Decision; or
 - b) the subject of the general exception procedure (under Rule 15); or
 - c) the subject of an agreement with the Chairman of the Scrutiny Committee, or the Chairman or Deputy Chairman of the Council under Rule 16 (special urgency);

it may require the Cabinet to submit a report to the Council within such reasonable time as the Scrutiny Committee specifies. The report must include details of the decision and the reasons for the decision, the decision maker, and the reasons, if any, for the Cabinet believing that the decision was a key decision. The power to require a report rests with the Scrutiny Committee, but is also delegated to the Monitoring Officer, who shall require such a report on behalf of the Committee when so requested by the Chairman of the Scrutiny Committee or any 5 members of the Committee. Alternatively the requirement may be raised by resolution passed at a meeting of the Scrutiny Committee.

Cabinet's report to Council

- 17.2 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 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 member or body making the decision, and Leader of the Council is of the opinion that it was not a key decision the reasons for that opinion.

Quarterly reports on special urgency decisions

- 17.3 ~~In any event~~ The Leader of the Council will report submit quarterly reports to the Council on all the Cabinet decisions taken ~~in the circumstances set out in~~ under Rule 16 (special urgency) to the next meeting of the Council, such report to include a summary of the decision(s) taken. The report may be given verbally where the decision is taken after the publication of the agenda for the Council meeting. in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken

18. Record of Decisions

- 18.1 After any meeting of the Cabinet or any of its Committees, whether held in public or in private, the Monitoring Officer or, where no Officer was present, the person presiding at the meeting, will produce a written record of every decision taken at that meeting as soon as practicable. The record will include:
- a) a record of the decision including the date it was made;
 - (b) a record of the reason for the decision;
 - (c) details of any alternative options considered and rejected by the decision-making body at the meeting at which the decision was made;

- (d) a record of any conflict of interest relating to the matter decided which is declared by any member of the decision-making body which made the decision; and
- (e) in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.

19. Meetings of the Cabinet to be held in public

- 19.1 Meetings of the Cabinet and its committees will be held in public, unless it is likely that exempt or confidential information would be disclosed or whenever a lawful power is used to exclude a member or members of the public in order to maintain orderly conduct or prevent misbehaviour at a meeting. The public may only be excluded for the part or parts of the meeting during which it is likely that exempt or confidential information would be disclosed.

20. Notice of Private Meetings of the Executive

- 20.1 Members of the Cabinet or its committees will be entitled to receive five clear working days notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.
- 20.2 At least 28 clear days before a private meeting, the decision-making body must:-
- a) make available at the offices of the Council a notice of its intention to hold the meeting in private (a "Notice of Private Meeting"); and
 - b) publish that notice on the Council's website.
- 20.3 At least five clear days before a private meeting, the decision-making body must:-
- a) make available at the offices of the Council a further notice of its intention to hold the meeting in private; and
 - b) publish that notice on the Council's website.
- 20.4 A notice under paragraph 20.3 must include:-
- a) a statement of the reasons for the meeting to be held in private
 - b) details of any representations received by the decision-making body about why the meeting should be open to the public; and
 - c) a statement of its response to any such representations.
- 20.5 Where the date by which a meeting must be held makes compliance with this Rule impractical, the meeting may only be held in private where the decision-making body has obtained agreement from:-
- a) the Chairman of the Overview and Scrutiny Committee; or
 - b) if there is no such person, or if the Chairman of the relevant overview and scrutiny committee is unable to act, the Chairman of the Council; or
 - c) where there is no Chairman of either the relevant overview and scrutiny committee or of the Council, the Deputy Chairman of the Council,
- that the meeting is urgent and cannot reasonably be deferred
- 20.6 As soon as reasonably practicable after the decision-making body has obtained agreement under paragraph 20.5 to hold a private meeting, it must

- a) make available at the office of the Council 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.

21. Attendance at Private Meetings of the Cabinet

21.1 Notice and Attendance

- a) All members of the Cabinet will be served notice of all private meetings of the committees of the Cabinet, whether or not they are members of that committee.
- b) All members of the Cabinet are entitled to attend private meetings of the Cabinet, and its committees.
- c) Members other than Cabinet members will not be entitled to attend private meetings of the Cabinet and its committees.

21.2 Officer Involvement

- a) The Head of Paid Service, the Chief Finance Officer and the Monitoring Officer, and their nominees are entitled to attend any meeting of the Cabinet and its committees. The Cabinet may not meet unless the Head of Paid Service has been given reasonable notice that a meeting is to take place.
- b) The Monitoring Officer shall arrange for an officer to attend private Cabinet meetings to record and publish the decisions. In the absence of such officer this will be the responsibility of the Chairman of the meeting.
- c) There is no requirement for the Cabinet to meet in the presence of the officers named in paragraphs a) and b)

22. Key Decisions By Individual Members of the Cabinet

Reports intended to be taken into account

- 22.1 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 will not make the decision until at least 5 clear working days after receipt of that report.

Provision of copies of reports to Overview and Scrutiny Committee

- 22.2 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.

22.3 Record of individual decision

- a) 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 Monitoring Officer to prepare, a report containing:
 - (i) a record of the decision including the date it was made;
 - (ii) a record of the reasons for the decision;
 - (iii) details of any alternative options considered and rejected by the member when making the decision;

(iv) a record of any conflict of interest declared by any executive member who is consulted by the member which relates to the decision; and

(v) in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.

(b) The provisions of Rules 7 and 8 (inspection of documents after meetings) will also apply to the making of decisions by individual Members of the Cabinet. This does not require the disclosure of exempt or confidential information or advice from a political or Chairman's assistant.

22.4 Inspection of documents following executive decisions

a) Subject to Rule 28 , after a meeting of a decision-making body at which an executive decision has been made, or after an individual member or an officer has made an executive decision the Monitoring Officer must ensure that a copy of-

(i) any records prepared in accordance with Rules 18 or 22; and

(ii) any report considered at the meeting or, as the case may be, considered by the individual member or officer and relevant to a decision recorded in accordance with Rules 18 or 22 or, where only part of the report is relevant to such a decision, that part, must be available for inspection by members of the public, as soon as is reasonably practicable, at the offices of the Council, and on the Council's website.

b) Where a request on behalf of a newspaper is made for a copy of any of the documents available for public inspection under Rule a), those documents must be supplied for the benefit of the newspaper by the Council on payment by the newspaper to the Council of postage, copying or other necessary charge for transmission.

22.5 Inspection of background papers

a) Subject to Rule 28, when a copy of the whole or part of a report for a meeting is made available for inspection by members of the public in accordance with Rule 5 or 22.4, at the same time-

(i) a copy of a list compiled by the proper officer of the background paper to the report or part of the report, must be included in the report or, as the case may be, part of the report; and

(ii) at least one copy of each of the documents included in that list, must be available for inspection by the public at the offices of the Council and on www.middevon.gov.uk.

23. **Joint Committees**

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

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

(b) If the joint committee contains members who are not on the Cabinet of any participating authorities then the access to information rules in Part VA of the Local Government Act 1972, as applicable to meetings of the full Council and its committees will apply.

24. Scrutiny Committee- Access to Documents

24.1 Rights to copies

Subject to Rule 24.2 below, the Scrutiny Committee will be entitled to copies of any document which is in the possession or control of the Cabinet or any of its Committees and which contains material relating to:

any business transacted at a meeting of the Cabinet or its Committees;

any decision taken by an individual member of the Cabinet; or

any decision taken by an Officer of the Council in accordance with executive arrangements.

24.2 Limit on rights

The Scrutiny Committee will not be entitled to:

any document that is in draft form;

any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision the Committee are reviewing or scrutinising or intend to scrutinise

25. Additional Rights of Access for Members

25.1 Material relating to business to be transacted at a Public Meeting

a) 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 contain material relating to any business to be transacted at a public meeting unless a) (i) or a) (ii) applies:

(i) it contains exempt information falling within paragraphs 1, 2, 4, 5 or 7 of the categories of exempt information; or

(ii) it contains exempt information falling within paragraph 3 of the categories of exempt information and that information relates to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract; or

b) Any document which is required by Rule a) to be available for inspection by any member of the Council must be available for such inspection for at least five (5) clear days before the meeting except that-

(i) where the meeting is convened at shorter notice, such a document must be available for inspection when the meeting is convened; and

(ii) where an item is added to the agenda at shorter notice, a document that would be required to be available under Rule 0 in relation to that time, must be available for inspection when the item is added to the agenda.

25.2 Material relating to previous business

All members will be entitled to inspect any document (except those available only in draft form) 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 or to any decision made by a Member or Officer in accordance with executive arrangements unless a) (i) or a) (ii) applies.

Any document required to be made available for inspection under 25.2 must be made available when the relevant meeting concludes or, where an executive decision is made by an individual member or officer, immediately after the decision has been made, and in any event, within twenty four (24) hours of the conclusion of the meeting or the decision having been made as the case may be.

26. Nature of rights

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

27. Members Other Rights to Information

27.1 A Member of the Council may, for the purposes of his or her duty as a Member and no other, inspect any document that has been considered by a committee or the Council including background papers. Applications should be made to the Monitoring Officer and, if available, copies will be supplied upon request.

27.2 A member shall not knowingly inspect or request a copy of any document relating to a matter in which he:

is professionally interested; or

has a disclosable pecuniary interest or personal interest within the meaning of the Code of Conduct for Members as set out in this Constitution.

27.3 This shall not preclude the Monitoring Officer from declining to allow inspection of any document which is or would be protected by privilege in the event of legal proceedings arising from the relationship of solicitor and client and should be exempt under either the Freedom of Information Act or the Data Protection Act.

27.4 All reports, background papers to reports and minutes kept by any committee shall be open for the inspection of any member of the Council, as soon as the committee has concluded action on the matter to which such reports or minutes relate.

27.5 Any Councillor may attend any meeting of a committee of the Council and may speak on any agenda item for that meeting. However, in relation to the Planning Committee, the right to speak on a planning application, enforcement item, or other report relating to a particular ward of the Council shall be limited to the rights of a Ward Member to speak as set out in paragraphs 9.2 and 9.3 of the Protocol of Good Practice for Councillors Dealing in Planning Matters (Appendix J to the Constitution)

28. Confidential information, exempt information and advice of a political adviser or assistant

28.1 Nothing in these Rules is to be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence.

28.2 Nothing in these Rules:

a) authorises or requires the Council to disclose to the public or make available for public inspection any document or part of document if, in the opinion of the Monitoring Officer, that document or part of a document contains or may contain confidential information; or

b) requires the Council to disclose to the public or make available for public inspection any document or part of document if, in the opinion of the proper officer, that document or part of a document contains or is likely to contain exempt information or the advice of a political advisers or assistant.

28.3 Where a member of the Cabinet or an officer makes an executive decision in accordance with executive arrangements, nothing in these Rules:

a) authorises or requires documents relating to that decision to be disclosed to the public, or made available for public inspection where, the documents contain confidential information; or

b) requires documents relating to that decision to be disclosed to the public, or made available for public inspection where the disclosure of the documents would, in the opinion of the member or officer making the decision, give rise to the disclosure of exempt information or the advice of a political adviser or assistant.