

## **SECTION 14 – ACCESS TO INFORMATION PROCEDURE RULES**

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### **Scope**

- 14.1 These Rules apply to all meetings of a Member Body.
- 14.2 The Monitoring Officer shall be the proper officer for the purposes of all statutory and regulatory provisions relating to the identification listing and availability of background papers for any report where such report is within the scope of these Rules.
- 14.3 The Strategic Director – People shall be responsible for securing compliance with the requirements of the Data Protection Act 1998 and of the Freedom of Information Act 2000 in relation to the data and information within the purview of those Acts appearing in agendas, reports and minutes to which these Rules apply.

### **Additional Rights to Information**

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

### **Rights to Attend Meetings**

- 14.5 Members of the public and the press may attend all meetings subject only to the exceptions set out in Rule 14.14. Save for meetings or parts of meetings which are held in confidential session pursuant to Section 14 filming, audio recording and use of social media is permitted during meetings so long as there is no disturbance to the conduct of the meeting, and provided that children and / or vulnerable adults are not participating in the debate by way of a presentation. The right to attend meetings is subject to the Council's right to exclude persons if their conduct is disorderly or if they misbehave at the meeting.

### **Notices of Meeting**

- 14.6 Unless a meeting is convened at short notice in accordance with Rule 14.7, the Council will give at least 3 clear days' notice of any meeting by posting details of the meeting at County Hall Llandrindod Wells Powys LD1 5LG and on its website. Where a meeting is held other than in County Hall the Council will also give at least 3 clear days' notice of that meeting by posting details at the venue.
- 14.7 If a matter is considered by the Monitoring Officer to be so significantly urgent and unexpected that a decision must be taken and that it is not possible to provide three clear days notice of the date of the meeting at which the decision must be taken, then with the agreement of the Chair of the meeting, the Monitoring Officer may call a meeting at short notice, subject to the agenda and reports being available to the public on the same day that they are made available to Members.

### **Access to Agenda and Reports Before the Meeting**

- 14.8 The Council will make copies of the agenda and reports open to the public available for inspection at County Hall and on its website at least 3 clear days before the meeting. If an item is added to the agenda later, or where reports are prepared after the summons has

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been sent out, the Monitoring Officer shall make each revised agenda or report available to the public as soon as the agenda or report is completed and sent to Members.

### **Supply of Copies**

14.9 The Council will supply copies of:

- 14.9.1 any agenda and reports which are open to public inspection;
- 14.9.2 any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- 14.9.3 if the Monitoring Officer thinks fit, copies of any other documents supplied to Members in connection with an item to any person either electronically or on payment of a charge for postage and any other printing and handling costs.

### **Access to Minutes etc after the Meeting**

14.10 The Council will make available either electronic or hard copies of the following for a period of at least six years after the date of a meeting:

- 14.10.1 the minutes of the meeting or record of decisions taken by the Cabinet, excluding any part of the minutes of proceedings when the meeting was not open to the public because Exempt or Confidential Information was being considered;
- 14.10.2 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;
- 14.10.3 the agenda for the meeting; and
- 14.10.4 reports relating to items when the meeting was open to the public.

### **Background Papers**

#### **List of Background Papers**

14.11 The officer preparing the report 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:

- 14.11.1 disclose any facts or matters on which the report or an important part of the report is based; and
- 14.11.2 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 as defined in Rule 14.16.

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### **Public Inspection of Background Papers**

14.12 The Council will make available for public inspection for at least four years after the date of the meeting one copy of each of the documents on the list of background papers.

### **Summary of Public's Rights**

14.13 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 County Hall and on the website.<sup>1</sup>

### **Exclusion of Access by the Public to Meetings**

#### **Confidential Information – Requirement to Exclude Public**

14.14 The public must be excluded from those parts of 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**

14.15.1 The public may be excluded from those parts of 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.

14.15.2 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. Due regard will be had to the wishes of the individual should they elect that the hearing be held in private where the law so permits.

#### **Meaning of Confidential Information**

14.16 Confidential Information means information given to the Council by a Government Department (including Welsh Government) on terms which forbid its public disclosure, or information which cannot be publicly disclosed by Court Order.

#### **Meaning of Exempt Information**

14.17 Exempt Information means information falling within the following eight categories (subject to any condition):

NOTE: Information is not Exempt Information if it relates to proposed development for which the local planning authority may grant itself planning

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<sup>1</sup> Part Va and Part Xi and Schedule 12a of the Local Government Act 1972 (as amended)

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permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.<sup>2</sup>

Category No.	Category of Information	Exempt Condition
1.	Information relating to any individual. <sup>3</sup>	Public interest test applies (see below).
2.	Information which is likely to reveal the identity of an individual. <sup>4</sup>	Public interest test applies (see below).
3.	Information relating to the financial or business affairs of any particular person (including the authority holding that information). <sup>5</sup>	Information falling within paragraph 14 is not exempt information by virtue of that paragraph if it is required to be registered under: <ul style="list-style-type: none"> <li>• The Companies Act 1985;</li> <li>• The Friendly Societies Act 1974;</li> <li>• The Friendly Societies Act 1992;</li> <li>• The Industrial and Provident Societies Acts 1965 to 1978;</li> <li>• The Building Societies Act 1986; or</li> <li>• The Charities Act 1993.</li> </ul> Public interest test applies (see below).
4.	Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority. <sup>6</sup>	Public interest test applies (see below).
5.	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. <sup>7</sup>	

<sup>2</sup> Paragraph 20 of Schedule 12A – Local Government Act 1972 (as amended)

<sup>3</sup> Paragraph 12 of Schedule 12A – Local Government Act 1972 (as amended)

<sup>4</sup> Paragraph 13 of Schedule 12A – Local Government Act 1972 (as amended)

<sup>5</sup> Paragraphs 14 and 19 of Schedule 12A – Local Government Act 1972 (as amended)

<sup>6</sup> Paragraph 15 of Schedule 12A – Local Government Act 1972 (as amended)

<sup>7</sup> Paragraph 16 of Schedule 12A – Local Government Act 1972 (as amended)

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6.	Information which reveals that the authority proposes: <sup>8</sup> <ul style="list-style-type: none"> <li>• to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</li> <li>• to make an order or direction under any enactment.</li> </ul>	Public interest test applies (see below).
7.	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime. <sup>9</sup>	Public interest test applies (see below).
8.	In relation to a meeting of a Standards Committee, or a Sub-Committee of a Standards Committee, which is convened to consider a matter referred under the provisions of section 70(4) or (5) or 71(2) of the Local Government Act 2000: <ul style="list-style-type: none"> <li>• Information which is subject to any obligations of confidentiality.</li> <li>• Information which relates in any way to matters concerning national security.</li> <li>• The deliberations of a Standards Committee or of a Sub-Committee of a Standards Committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred to it.<sup>10</sup></li> </ul>	Public interest test applies (see below).

### Public Interest Test

14.18 Information which:

- 14.18.1 falls within any category numbers 1 to 4, 6,7 and 8 of the table in Rule 14.10.4 above; and

<sup>8</sup> Paragraph 17 of Schedule 12A – Local Government Act 1972 (as amended)

<sup>9</sup> Paragraph 18 of Schedule 12A – Local Government Act 1972 (as amended)

<sup>10</sup> Local Government Act 1972 as amended by the Local Authorities (Executive Arrangements)(Decisions, Documents and Meetings) and the Standards Committees (Wales) (Amendment) Regulations 2007

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14.18.2 is not prevented from being exempt by virtue of the “qualifications” in the table in Rule 14.10.4 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.

### **Assessment of Public Interest.**

- 14.19 The starting point is that there is a general public interest in release and the public authority has to decide whether in any particular case it would serve the interest of the public better to either disclose or withhold the information.
- 14.20 There is a distinction between public interest and what merely interests the public.
- 14.21 There is no legal definition of what the public interest is, but the following have been identified as some of the relevant considerations:
- 14.21.1 further the understanding of and participation in debating issues of the day;
  - 14.21.2 facilitate transparency and accountability in and enhance scrutiny of decisions taken by the Council;
  - 14.21.3 facilitate transparency and accountability in the spending of public money;
  - 14.21.4 help individuals understand the decisions made by the Council affecting their lives;
  - 14.21.5 bring to light information affecting public safety or danger to the environment;
  - 14.21.6 contribute to the administration of justice and enforcement of the law, or the prevention or detection of crime, or the apprehension or prosecution of offenders;
  - 14.21.7 protect the public from unsafe products or rogue traders or practices.
- 14.22 In making such an assessment the following factors shall be regarded as irrelevant:
- 14.22.1 possible embarrassment to the Council or its officers;
  - 14.22.2 possible loss of confidence in the Council or another public body;
  - 14.22.3 the seniority of persons involved in the subject matter;
  - 14.22.4 the risk of the public misinterpreting the information.
- 14.23 Account may be taken of whether disclosure would breach any obligation of confidence, or the rights of any individual under the Data Protection Act 1998 or the Human Rights Act 1998.

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### **Exclusion of Access by the Public to Reports**

14.24 If the Solicitor to the Council 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 14.14, 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 and, if applicable, why it is considered in the public interest it is that the information should not be disclosed. After the meeting access to the report is subject to Rule 14.10.

### **The Forward Work Programmes**

#### **Period of Forward Work Programmes**

14.25 The Forward Work Programmes will be prepared by the Solicitor to the Council to cover a period of 4 months.

#### **Contents of Forward Work Programmes**

14.26 The Forward Work Programmes will contain matters which the Cabinet, Scrutiny Committees and Full Council are likely to consider. It will contain information on:

14.26.1 the timetable for considering the budget and any plans forming part of the Policy Framework and requiring Council approval, and which body is to consider them;

14.26.2 the timetable for considering any plans which are the responsibility of the Cabinet;

14.26.3 any individual matters on which the Cabinet intends to consult in advance of taking a decision, and the timetable for consultation and decision;

14.26.4 the work programmes of the Scrutiny Committees .

14.27 The Forward Work Programmes will be published on the website at least 14 days before the start of the period covered.

#### **Consultation on Proposals to be Considered by the Cabinet**

14.28 Each item in the Cabinet’s Forward Work Programme will contain details as to the consultation (if any) which will be undertaken prior to a decision being taken.

### **Record of Decisions**

#### **The Decision Record**

14.29 A written record will be made of every decision made by the Full Council, Cabinet and its Committees (if any) and by individual Cabinet Members, and Joint Committees and Joint Sub-Committees whose Members are all Members of a local authority executive.

14.30 This decision record will include a statement, for each decision, of:

14.30.1 the decision made;

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- 14.30.2 the date the decision was made;
- 14.30.3 the reasons for that decision;
- 14.30.4 any personal interest declared;
- 14.30.5 any dispensation to speak granted by the Standards Committee;
- 14.30.6 any consultation undertaken prior to the decision.

### **Preparing the Decision Record**

- 14.31 The Solicitor to the Council or his or her representative shall attend any meeting of the Full Council, Cabinet, a committee of the Cabinet or a Joint Committee or joint sub-committee where all its Members are Members of a local authority executive, and shall, as soon as reasonably practicable after the meeting, produce a decision record.
- 14.32 Where an individual Cabinet Member has made a Cabinet decision:
  - 14.32.1 that Member shall as soon as reasonably practicable instruct the Solicitor to the Council to produce a decision record; and
  - 14.32.2 subject to Rule 14.33 below, the decision shall not be implemented until the provisions of Rule 7.37.2 (Call-In) have been complied with (the expiry of 5 clear days after the date of publication of the decision notice) and that decision record has been produced.
- 14.33 Where the urgency of the implementation of the decision makes compliance with Rule 14.32.2 impracticable, the decision may be implemented provided that the provisions of Rule 7.38 have been complied with (exclusion of Call-In for urgency).

### **Decisions by An Individual Member of the Cabinet**

#### **Reports Must Be Taken Into Account**

- 14.34 Where an individual Member of the Cabinet intends to make any decision, then s/he will not make the decision until taking into account the contents of an officer report.
- 14.35. Where an individual member of the Cabinet receives a report which s/he  
1 intends to take into account in making any decision, then s/he will not make the decision until at least 3 clear days after publication of that report.
  - 14.35.2 Where a report contains confidential or Exempt Information as set out in these Rules, the report must be published to Councillors (but not to the public) at least 3 clear days before the decision can be made.
  - 14.35.3 An individual member of the Cabinet can take an urgent decision as set out in Rule 7.38.

#### **Record of Individual Decision by Cabinet Members**

- 14.36 Rules 14.29 to 14.33 will apply. Wherever practicable the Solicitor to the Council shall publish a decision of an individual Member of the Cabinet within two days of it being made.

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### **Members Access to Documents**

#### **Rights of Access**

14.37 Subject to Rules 14.38 to 14.39 below, Members will be entitled to access to any document which is in the possession or control of the Cabinet or its Committees and which contains material relating to:

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

14.37.2 any decision taken by an individual Member of the Cabinet.

#### **Limit on Rights**

14.38 Members will not be entitled to any part of a document that contains advice provided by a political advisor or assistant unless that information is relevant to an action or decision that is being reviewed or scrutinised or any review contained in a programme of work of the Scrutiny Committee.

14.39 No Member shall be entitled to any part of a document if to do so would be in breach of any legislative provision such as the Data Protection Act 1998, any person's rights in respect of confidentiality, or commercial interests, any provision of this Constitution or any Council or Government policy, Rule or procedure.

#### **Nature of Rights**

14.40 The rights of Members under Rule 14.37 are additional to any other right s/he may have, including:

14.40.1 the common law right to inspect documents where this is necessary for a Member to perform his or her duties. Any Member asserting a 'need to know' in relation to documents not otherwise available under these Rules should request the documents from the appropriate Head of Service only and not individual officers, and should take into account the reasonableness of an individual request and of cumulative requests and the impact upon officer time.

14.40.2 the statutory rights available to any person under the Freedom of Information Act 2000 and the Environmental Information Regulations 2005.

14.40.3 Members' 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.

14.41 In exercising rights of access to information Members shall have regard to any guidance issued by the Solicitor to the Council.

### **Information Given in Confidence**

#### **Disclosure**

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- 14.42 Exempt or Confidential Information supplied to a Member in accordance with Rule 14.37 remains exempt or confidential.
- 14.43 Under Part 2, paragraph 5 of the Members' Code of Conduct Members must not disclose information given in confidence, without the express consent of a person authorised to give such consent, or unless required by law to do so.
- 14.44 Members will not make public Confidential or Exempt Information without the consent of the Authority or divulge information given in confidence to anyone other than a Member or officer entitled to know it unless otherwise authorised by law.