

# **Broxtowe Borough Council Constitution**

## **Chapter 2 – Part 5**

### **Access to Information Procedure Rules**

## **Chapter 2 Part 5: ACCESS TO INFORMATION PROCEDURE RULES**

### **1. SCOPE**

These Rules apply to all meetings of the Council, the Cabinet, the Overview and Scrutiny Committee, Governance, Audit & Standards Committee, the Licensing & Appeals Committee, Planning Committee, Bramcote Bereavement Services Joint Committee, Chief Officer Employment Committee and any Sub-Committees. Additional rules providing for access to information may also apply to any given Committee / Sub-Committee.

### **2. ADDITIONAL RIGHTS TO INFORMATION**

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, the Data Protection Act 2018 and the UK GDPR.

### **3. 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 Chair may warn them. If they continue the interruption and a warning has been given, the Chair may order their 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 Chair may order that part to be cleared.
- 3.4 If the Chair considers the orderly dispatch of business impossible, they may without question adjourn the meeting.
- 3.5 The above powers of the Chair are in addition to any other power vested in them.

### **4. NOTICES OF MEETING**

The Council will give at least five clear working days' notice of any meeting by posting details of the meeting at the Council Offices Foster Avenue, Beeston, Nottingham, NG9 1AB and on its website at [www.broxtowe.gov.uk](http://www.broxtowe.gov.uk).

## **5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING**

- 5.1 The Members of the Overview and 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 Council's website at least five clear 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 Monitoring Officer shall make each such report available to the public as soon as the report is completed and sent to Councillors).

## **6. SUPPLY OF COPIES**

### 6.1 Supply of Copies at the Meeting

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:

- 6.2.1 any agenda and reports which are open to public inspection;
- 6.2.2 any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- 6.2.3 if the Monitoring Officer thinks fit, copies of any other documents supplied to Councillors in connection with an item.

## **7. ACCESS TO MINUTES ETC. AFTER THE MEETING**

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

- 7.1 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;
- 7.2 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;
- 7.3 the agenda for the meeting; and
- 7.4 reports relating to items when the meeting was open to the public.

## **8. BACKGROUND PAPERS**

### 8.1 List of background papers

The Officer preparing a report for a meeting will set out in such report a list of those documents (called background papers) relating to the subject matter of the report which in their opinion:

8.1.1 disclose any facts or matters on which the report or an important part of the report is based; and

8.1.2 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 10),

### 8.2 Public inspection of background papers

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

## **9. 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 Offices at Foster Avenue, Beeston, Nottingham, NG9 1AB and on the Council's website: [www.broxtowe.gov.uk](http://www.broxtowe.gov.uk).

## **10. EXCLUSION OF ACCESS OF THE PUBLIC TO MEETINGS**

### 10.1 Extent of exclusion

The public may only be excluded under Rule 10.3 or 10.44 for the part or parts of the meeting during which it is likely that confidential or exempt information would be divulged.

10.2 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the European Convention on Human Rights 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.

### 10.3 Confidential information – requirement to exclude public

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

#### 10.4 Exempt information – discretion to exclude public

The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed. Such a decision to exclude the public is to be made by resolution of the relevant decision making body.

#### 10.5 Meaning of confidential information

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.

#### 10.6 Meaning of exempt information

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

- 10.6.1 Information relating to any individual;
- 10.6.2 Information which is likely to reveal the identity of an individual;
- 10.6.3 Information relating to the financial or business affairs of any particular person (including the authority holding that information);
- 10.6.4 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;
- 10.6.5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings;
- 10.6.6 Information which reveals that the authority proposes
  - to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - to make an order or direction under any enactment;
- 10.6.7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime;
- 10.6.8 The descriptions of exempt information set out above are subject to the following qualifications:
  - a) Information falling within paragraph 3 10.6.3 is not exempt information by virtue of that paragraph if it is required to be registered under –
    - the Companies Act 2006
    - the Friendly Societies Act 1974
    - the Friendly Societies Act 1992

- the Industrial and Provident Societies Acts 1965 to 1978
  - the Building Societies Act 1986
  - the Charities Act 2011.
- b) Information is not exempt 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
- c) Information which –
- (1) falls within any of 10.6.1 – 10.6.8 above: and
  - (2) is not prevented from being exempt by virtue of paragraph (b) or (c) 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.

**Note:** The Public Interest Test

The public interest test in the Freedom of Information (FOI) Act 2000 is specifically defined –

The Authority must release the information unless *“in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”*.

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.

There is no legal definition of what the public interest is, but the following have been identified as some of the relevant considerations.

There is a distinction between the public interest and what merely interests the public.

- Does it further the understanding of and participation in the public debate of issues of the day?
- Does it promote accountability and transparency by public authorities for decisions taken by them or in the spending of public money?
- Does it allow individuals and companies to understand decisions made by public authorities affecting their lives?
- Does it bring to light information affecting public health and public safety?

**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 their 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**

- 12.1 Rules 13 – 25 apply to the Cabinet and its Committees. If the Cabinet or its Committees meet to take a Key Decision then it must also comply with Rules 1 – 11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A Key Decision is as defined at Chapter 1 Part 2 of this Constitution.

## **13. PROCEDURE BEFORE TAKING KEY DECISIONS**

### **13.1 Notice of Key Decision**

Subject to Rule 15 (general exception) and Rule 16 (special urgency), a Key Decision may not be taken unless:

- 13.1.1 a notice (called here a "Notice of Key Decision") has been published in connection with the matter in question;
- 13.1.2 at least 28 clear days have elapsed since the publication of the "Notice of Key Decision"; and
- 13.1.3 where the decision is to be taken at a meeting of the Cabinet or its Committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

### **13.2 Contents of Notice of Key Decision**

The Notice of Key Decision will state by whom the Key Decision is to be taken in the course of the discharge of an Executive function. It will describe the following particulars:

- 13.2.1 the matter in respect of which the decision is to be made;
- 13.2.2 where the decision maker is a body, its name and a list of its membership;
- 13.2.3 the date on which, or the period within which, the decision is to be made;

- 13.2.4 a list of the documents submitted to the decision maker for consideration in relation to the matter;
- 13.2.5 the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
- 13.2.6 that other documents relevant to those matters may be submitted to the decision maker; and
- 13.2.7 the procedure for requesting details of those documents (if any) as they become available.

### 13.3 Publication of the Notice of Key Decision

The Notice of Key Decision must be made available for inspection by the public at Council Offices, Foster Avenue, Beeston, Nottingham, NG9 1AB and on the Council's website: [www.broxtowe.gov.uk](http://www.broxtowe.gov.uk). This will usually be done through the Cabinet Work Programme.

## 14. THE FORWARD PLAN

The Council is not required by law to publish a Forward Plan. However, a Notice of Key Decision and a Notice of Private Meeting of Cabinet must be published by the Council setting out not just details of specific Key Decisions, but also details of Key decisions over 28 day period (including decisions to be made by Cabinet, individual Cabinet Members or 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. This information will generally be included in the Cabinet Work Programme.

## 15. GENERAL EXCEPTION

- 15.1 If a Notice of Key Decision has not been published, then subject to Rule 16 (special urgency), the decision may still be taken if:
  - 15.1.1 the decision must be taken by such a date that it is impracticable to publish a Notice of Key Decision;
  - 15.1.2 the Monitoring Officer has informed the Chair of the Overview & Scrutiny Committee, or in their absence the Vice-Chair, in writing, or if there is no such person, each Member of that Committee in writing, by notice, of the matter about which the decision is to be made;



- 15.1.3 the Monitoring Officer has made copies of that notice available to the public at the offices of the Council and on the Council's website: [www.broxtowe.gov.uk](http://www.broxtowe.gov.uk); and
- 15.1.4 at least 5 clear days have elapsed since the Monitoring Officer complied with Rules 15.1.2 and 15.1.3.
- 15.2 As soon as reasonably practicable after the Monitoring Officer has complied with Rule 15.1, he must make available at Council Offices, Foster Avenue, Beeston, Nottingham, NG9 1AB and published on the Council's website: [www.broxtowe.gov.uk](http://www.broxtowe.gov.uk) (if any) the reasons why compliance with Rule 14 is impractical.

## **16. SPECIAL URGENCY**

- 16.1 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 Chair of the Overview and Scrutiny Committee or in their absence the Vice-Chair that the taking of the decision cannot be reasonably deferred. If there is no Chair or Vice-Chair of the Overview and Scrutiny Committee, or if the Chair or Vice-Chair of the Overview and Scrutiny Committee is unable to act, then the agreement of the Mayor of the Council, or in their absence the Deputy Mayor of the Council, will suffice.
- 16.2 As soon as reasonably practicable after the decision maker has obtained agreement under Rule 16.1 they must make available at Council Offices Foster Avenue, Beeston, Nottingham, NG9 1AB and publish on [www.broxtowe.gov.uk](http://www.broxtowe.gov.uk) (if any) a notice setting out the reasons that the meeting is urgent and cannot reasonably be deferred.

## **17. REPORT TO COUNCIL**

- 17.1 The Overview and Scrutiny Committee can require a report if the Overview and Scrutiny Committee thinks that a Key Decision has been taken which was not:
- 17.1.1 the subject of a Notice of Key Decision; or
- 17.1.2 the subject of the general exception procedure; or
- 17.1.3 the subject of an agreement with the Chair, or in their absence the Vice-Chair of the Overview and Scrutiny Committee, or the Mayor or Deputy Mayor of the Council under Rule 16;

it may require the Cabinet to submit a report to the Council within such reasonable time as the Overview and 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 Overview and 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 Chair or in their absence the Vice-Chair of the Overview and Scrutiny Committee or any 5 Members of the Committee. Alternatively, the requirement may be raised by resolution passed at a meeting of the Overview and Scrutiny Committee.

#### 17.2 Cabinet's report to Council

The Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the written notice, or the resolution of the decision-maker then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the decision-maker and that Leader of the Council is of the opinion that the decision was not a Key Decision the reasons for that opinion.

### **18. RECORD OF DECISIONS**

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:

- 18.1 a record of the decision including the date it was made;
- 18.2 a record of the reason for the decision;
- 18.3 details of any alternative options considered and rejected by the decision-making body at the meeting at which the decision was made;
- 18.4 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
- 18.5 in respect of any declared conflict of interest, a note of dispensation granted by the Monitoring Officer.

### **19. MEETINGS OF THE CABINET TO BE HELD IN PUBLIC**

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 5 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:-
- 20.2.1 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
  - 20.2.2 publish that notice on the Council's website.
- 20.3 At least 5 clear days before a private meeting, the decision-making body must:-
- 20.3.1 make available at the offices of the Council a further notice of its intention to hold the meeting in private; and
  - 20.3.2 publish that notice on the Council's website.
- 20.4 A notice under paragraph 20.3 must include:
- 20.4.1 a statement of the reasons for the meeting to be held in private
  - 20.4.2 details of any representations received by the decision-making body about why the meeting should be open to the public; and
  - 20.4.3 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:
- 20.5.1 the Chair, or in their absence the Vice-Chair, of the Overview and Scrutiny Committee; or
  - 20.5.2 if there is no such person, or if the Chair or Vice-Chair of the Overview and Scrutiny Committee is unable to act, the Mayor or in their absence the Deputy Mayor 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

20.6.1 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

20.6.2 publish that notice on the Council's website.

## **21. ATTENDANCE AT PRIVATE MEETINGS OF THE CABINET**

21.1 Notice and attendance

21.1.1 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.

21.1.2 All Members of the Cabinet are entitled to attend private meetings of the Cabinet, and its Committees.

21.1.3 Members other than Cabinet Members will not be entitled to attend private meetings of the Cabinet and its Committees.

21.2 Officer attendance

21.2.1 The Chief Executive, Section 151 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 Chief Executive has been given reasonable notice that a meeting is to take place.

21.2.2 The Head of Governance shall arrange for an Officer to attend private Cabinet meetings to record and publish the decisions. In the absence of such an Officer this will be the responsibility of the Chair or in their absence the Vice-Chair of the meeting.

21.2.3 There is no requirement for the Cabinet to meet in the presence of the Officers named in paragraphs 21.2.1 and 21.2.2

## **22. JOINT COMMITTEES**

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

22.1 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 Executive.

22.2 If the Joint Committee contains Members who are not Members of 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.

## **23. OVERVIEW AND SCRUTINY COMMITTEE AND SCRUTINY SUB-COMMITTEES - ACCESS TO DOCUMENTS**

### 23.1 Rights to copies

Subject to Rule 23.2 below, the Overview and Scrutiny Committee and Sub-Committees are 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:

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

23.1.2 any decision taken by an individual Cabinet Member; or

23.1.3 any decision taken by an Officer of the Council in accordance with the Council's Executive arrangements.

### 23.2 Limit on rights

The Overview and Scrutiny Committee and Sub-Committee will be entitled to:

23.2.1 any document that is in draft form;

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

## **24. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS**

### 24.1 Material relating to business to be transacted at a Public Meeting

24.1.1 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) or (b) or applies:

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

(b) 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.

- 24.1.2 Any document which is required by Rule 24.1.1 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-
- (a) where the meeting is convened at shorter notice, such a document must be available for inspection when the meeting is convened; and
  - (b) where an item is added to the agenda at shorter notice, a document that would be required to be available under Rule 24.1.1 in relation to that time, must be available for inspection when the item is added to the agenda.

24.2 Material relating to previous business

- 24.2.1 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 24.1.1(a) or 24.1.1(b) applies.
- 24.2.2 Any document required to be made available for inspection under Rule 24.2 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.

**25. MEMBERS OTHER RIGHTS TO INFORMATION**

- 25.1 A Member of the Council may, for the purposes of their 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.
- 25.2 A Member shall not knowingly inspect or request a copy of any document relating to a matter in which he:
- 25.2.1 is professionally interested; or

- 25.2.2 has a registerable, non-registerable or other registerable personal interest within the meaning of the Code of Conduct for Members as set out in this Constitution.
- 25.3 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 the Freedom of Information Act 2000, the Data Protection Act 2018 and the UK GDPR.
- 25.4 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.

## **26. CONFIDENTIAL INFORMATION AND EXEMPT INFORMATION**

- 26.1 Nothing in these Rules is to be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence.
- 26.2 Nothing in these Rules:
- 26.2.1 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
- 26.2.2 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 is likely to contain exempt information.
- 26.3 Where a Member of the Cabinet or an Officer makes an Executive decision in accordance with Executive arrangements, nothing in these Rules:
- 26.3.1 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
- 26.3.2 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.

26.4 Nothing in these Rules requires a decision making body to permit the taking of any photographs of any proceedings or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later), or the making of any oral report on any proceedings as they take place. The taking of photographs and the making or recordings is subject to the permission of the Chair of the meeting.