

## **Access to Information Procedure Rules**

### **1. SCOPE**

#### **EXECUTIVE ARRANGEMENTS**

Separate 2012 Regulations only apply to the Executive. These rules apply to all meetings of the Council, Scrutiny Committees, Area Committees, the Audit and Standards Committee and Regulatory Committees, and public meetings of the Executive and Joint Committees (together called meetings).

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

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

A record of Executive decisions taken by Officers.

### **3. RIGHTS TO ATTEND MEETINGS**

Members of the public may attend all meetings subject to the law and to the exceptions in these rules.

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

The council will give at least five clear days notice of any meeting by posting details of the meeting at the Town Hall, Burnley. Agendas and reports will also be published on the Council's website.

#### **NOTICE OF PRIVATE PART OF EXECUTIVE MEETING**

For the Executive, the Council will give at least 28 days notice of the private part of an Executive meeting, and also provide a more detailed 5 day notice of a private meeting.

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

The Council will make copies of the agenda and reports open to the public available for inspection at the Town Hall at least five clear days before the meeting and on the Council's website.

If an item is added to the agenda later, the revised agenda (where reports are prepared after the summons has been sent out, the Head of Legal and Democratic Services shall make each report available to the public as soon as the report is completed and sent to councillors) will be open to inspection and be published on the website for the time the item was added to the agenda.

### **6. SUPPLY OF COPIES**

The Council will supply copies of:

- (a) any agenda and reports (and background papers for the Executive) 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 Head of Legal and Democratic Services 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 reasonable costs.

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

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 Executive and Committees/Sub-Committees, 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) 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;
- (c) the agenda for the meeting;
- (d) reports relating to items when the meeting was open to the public; and
- (e) background papers for four years regarding the Executive

## **8. BACKGROUND PAPERS**

### **8.1 List of background papers**

The Officer responsible for 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:

- (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 (as defined in Rule 10) .Background papers will be published on the website and be made available for four years regarding the Executive.

### **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.

The Council will make available for public inspection at the time of

publication of the agenda and on its website one copy of the background papers for Executive Meetings for four years..

**9. SUMMARY OF PUBLIC'S RIGHTS**

A written summary of the public’s rights to attend meetings and to inspect and copy documents must be kept at and available to the public at the Town Hall.

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

**10.1 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.

**10.2 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.

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.

**10.3 Meaning of confidential information**

Confidential information means information given to the Council by a Third Party on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.

**10.4 Meaning of exempt information**

Exempt information means information falling within the following 7 categories (subject to any condition):

<b>Descriptions of Exempt Information</b>	<b>Condition</b>
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).	‘financial or business affairs’ includes contemplated, as well as past or current, activities
4.Information relating to any consultations or negotiations, or contemplated consultations or	‘employee’ means a person employed under a contract of service

<p>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.</p>	<p>‘labour relations matter’ means-</p> <ul style="list-style-type: none"> <li>(a) any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992</li> <li>(b)(matters which may be the subject of a trade dispute, within the meaning of that Act);</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>(b) any dispute about a matter falling within paragraph (a) above;</li> </ul> <p>and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office–holders under the authority as they apply in relation to employees of the authority;</p> <p>‘office-holder’, in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of that authority</p>
<p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>	
<p>6. Information which reveals that the authority proposes –</p> <ul style="list-style-type: none"> <li>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</li> <li>(b) to make an order or direction under any enactment.</li> </ul>	
<p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of a crime.</p>	

<b>Qualifications</b>	
<p>8. Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under-</p> <ul style="list-style-type: none"> <li>(a) the Companies Act 1985 (a);</li> <li>(b) the Friendly Societies Act 1974 (b);</li> <li>(c) the Friendly Societies Act 1992 (c);</li> <li>(d) the Industrial and Provident Societies Acts 1965 to 1978 (d);</li> <li>(e) the Building Societies Act 1986 (e);</li> <li>(f) the Charities AVT 1993 (f).</li> </ul>	<p>‘registered’ in relation to information required to be registered under the Building Societies Act 1986 (c), means recorded in the public file of any building society (within the meaning of that Act)</p>
<p>9. Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992 (a).</p>	
<p>10. Information which –</p> <ul style="list-style-type: none"> <li>(a) falls within any of paragraphs 1 to 7 above; and</li> <li>(b) is not prevented from being exempt by virtue of paragraph 8 or 9 above,</li> </ul> <p>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.</p>	

#### **10.5 Communication of Proceedings of Committees and Sub-Committees to the Public and Press**

Subject to any administrative arrangements which may be introduced from time to time with the agreement of the Council, no Member or Officer of the Council shall disclose to or discuss with the public or press:-

- (a) the proceedings of any Council, Executive, Committee or Sub-Committee meeting which took place following and during the exclusion of the public and the press from that meeting;
- (b) any matters which disclose confidential information within the

meaning of the Local Government Act 1972;

- (c) any matters which are contained in reports marked "not for publication" which for these purposes shall mean "exempt" within the meaning of the Local Government Act 1972.

10.6 Any Member failing to comply with Rule 10.5 may be liable to proceedings for breach of the Code of Conduct for Members.

10.7 Any Officer failing to comply with Rule 10.5 may be liable to proceedings under the Council's Disciplinary Procedure for Employees.

## 11. **EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS**

If the Proper Officer responsible for the report 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 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. However the 'public interest' test regarding Freedom of Information also needs to be considered when deciding whether to exclude access by the public.

## 12. **APPLICATION OF RULES TO THE EXECUTIVE**

Rules 13 – 24 apply to the Executive and any of its Committees. If the Executive 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 13.03 of this Constitution.

If the Executive meet to discuss a key decision to be taken collectively, with an officer other than a political assistant present, within 28 days of the date according to the Notice of Key Decisions by which it is to be decided, 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 13.03 of this Constitution. This requirement does not include meetings, whose sole purpose is for officers to brief members.

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

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

- (a) a notice (called here the Notice of Key Decisions) has been published in connection with the matter in question;
- (b) at least 5 clear days have elapsed since the publication of the Notice of Key Decisions; and
- (c) where the decision is to be taken at a meeting of the Executive or its committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings) in particular Private Part of the Executive meeting.
- (d) where the decision is to be taken by an Officer of the Council either by an express delegation from the Executive or a committee of the Executive, or by a general delegation in accordance with Part 3

Scheme of Delegation, notice of the decision being made has been given in accordance with Rule 4 (Notice of meetings).

## **14. THE NOTICE OF KEY DECISIONS AND PRIVATE PART OF MEETING**

### **14.1 Period of Notice of Key Decisions and Private part of Meeting**

A Notice of Key Decisions and Private Part of Meeting will be prepared by the Leader to cover a period of 28 days prior to the next meeting of the Executive. They will be prepared on a 28 day basis and subsequent plans will cover a 28 day period following the end of the period for the preceding plan.

### **14.2 Contents of Notice of Key Decisions and Private Part of Meeting**

The Notice of Key Decisions and Private Part of Meeting will contain matters which the Leader has reason to believe will be subject of a key decision and/or a Private Part of the meeting to be taken by the executive, individual members of the Executive, Officers, or under joint arrangements in the course of the discharge of an Executive function during the period covered by the plan. It will describe the following particulars in so far as the information is available or might reasonably be obtained:

- (a) the matter in respect of which a decision is to be made and whether or not it is a key decision and/ or a private decision ;
- (b) where the decision taker is an individual, his/her name and title, if any and where the decision taker is a body, its name and details of membership;
- (c) the date on which, or the period within which, the decision will be taken;
- (d) a list of the documents submitted to the decision taker for consideration in relation to the matter in relation to th mater in respect of which the key decision is to be made.
- (e) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any documents listed is available
- (f) that other documents relevant to those matters may be submitted to the decision maker
- (g) the procedure for requesting details of those documents (if any) as they become available

The Notice of Key Decisions and Private Part of Meeting must be published at least 28 days before the date of the Executive meeting when the matter will be decided on.

Exempt and confidential information cannot be included in a Notice of Key Decisions and Private Part of Meeting.

## **15. GENERAL EXCEPTION**

If a matter which is likely to be a public key decision has not been included in

the Notice of Key Decisions and Private Part of Meeting, then subject to Rule 16 (special urgency), the public decision may still be taken if:

- (a) the public decision must be taken by such a date that it is impracticable to defer the public decision until it has been included in the next Notice of Key Decisions and Private Part of Meeting and until the start of the next 28 day period to which the next Notice of Key Decisions and Private Part of Meeting relates;
- (b) the Head of Legal and Democratic Services has informed in writing or by e mail the chair of a relevant scrutiny committees, or if there is no such person, each member of that committee in writing or e mail , by notice, of the matter to which the public key decision is to be made and the reason why it was impracticable to meet the 28 day Notice of Key Decision period;
- (c) the Head of Legal and Democratic Services has made copies of that notice available to the public at the offices of the Council; and
- (d) at least 5 clear days have elapsed since the Head of Legal and Democratic Services complied with (a) and (b).

Where such a decision is taken collectively, it must be taken in public subject to the usual exceptions for confidential or otherwise exempt business.

## 16. **SPECIAL URGENCY**

If by virtue of the date by which a public key decision must be taken Rule 15 (general exception) cannot be followed, or if Rule 4 cannot be followed for a Private Part of Meeting, then those decisions can only be taken if the decision taker (if an individual) or the chair of the body making the decision, obtains the written or e mail agreement of the chair of a relevant scrutiny committees that the taking of those decisions cannot be reasonably deferred. If there is no chair of a relevant scrutiny committee, or if the chair of each relevant scrutiny committee is unable to act, then the agreement of the Mayor, or in his/her absence the Deputy Mayor will suffice In addition a public notice is required giving the reason for urgency and why the matter cannot be deferred.

## 17. **REPORT TO COUNCIL**

### 17.1 **When a scrutiny committee can require a report**

If a scrutiny committee thinks that a key decision or private part of meeting has been taken or taken place which was not:

- (a) included in the Notice of Key Decisions and Private Part of Meeting; or
- (b) the subject of the general exception procedure in Rule 15; or
- (c) the subject of an agreement with the scrutiny committee chair, or the chair/vice chair of the Council under Rule 16;

the committee may require the Executive to submit a report to the Council within such reasonable time as the committee specifies. The power to require a report rests with the 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 and vice chair or any 4 Members. Alternatively the



requirement may be raised by resolution passed at a meeting of the relevant scrutiny committees.

## **17.2 Executive's report to Council**

The Executive 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 working 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 or body making the decision, and if the Leader is of the opinion that it was not a key decision the reasons for that opinion.

## **18. RECORD OF DECISIONS**

After any meeting of the executive or any of its committees or by an Individual Executive Member, whether held in public or private, or after the exercise by an Officer of delegated Urgent Executive powers as set out in Part 3 of the constitution, the Head of Legal and Democratic Services will produce and publish a record of every decision taken at that meeting as soon as practicable.

No decisions will be taken unless the Head of Legal and Democratic Services or his/her representative is present to record that decision. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting. The decisions will be published by providing a copy to each Member of the Council and making them available at the Town Hall.

In the case of an Officer's delegated Urgent Executive decision, the record of the decision will be reported to the next Executive meeting.

## **19. EXECUTIVE MEETINGS RELATING TO MATTERS WHICH ARE NOT KEY DECISIONS**

The Executive will decide whether meetings relating to matters which are not key decisions will be held in public or private. Normally all decisions will be made in public subject to the provisions of Rule 10 (Exclusion of Access by the Public to Meetings). Meetings of the Executive held to develop working arrangements or discuss policy etc. will normally be held in private.

## **20. NOTICE OF PRIVATE MEETING OF THE EXECUTIVE**

Members of the Executive or its committees will 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.

The Council will also give at least 28 days notice of the private part of an Executive meeting and also provide a 5 day notice of a private part of meeting.

## **21. SCRUTINY COMMITTEES ACCESS TO DOCUMENTS**

### **21.1 Rights to copies**

Subject to Rule 21.2 below, a scrutiny committee (including its sub-committees) will be entitled to copies of any document which is in the

possession or control of the executive and which contains material relating to

(a) any business transacted at a public or private meeting of the executive; or

(b) any decision taken by an individual member of the Executive and which relates to the Scrutiny committee's terms of reference.

## **21.2 Limit on rights**

A scrutiny committee will not be entitled to:

- (a) any document which has not been distributed to the executive
- (b) any document that is in draft form;
- (c) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise; or
- (d) the advice of a political adviser
- (e) any exempt documents under Rule 10 which the executive decide to withhold.

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

### **22.1 Material relating to previous business**

All Members will be entitled to inspect any document which is in the possession or under the control of the executive and contains material relating to any business previously transacted at a private meeting unless either (a),(b) or (c) below 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 and the information relates to any terms proposed or to be proposed by the authority in the course of negotiations for a contract
- (c) it contains the advice of a political adviser

### **22.2 Material relating to key decisions**

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 executive which relates to any key decision unless paragraph (a) or (b) above applies.

### **22.3 Nature of rights**

These rights of a member are additional to any other right he/she may have.

## **23. RIGHTS OF ACCESS TO OFFICER DELEGATED DECISIONS**

### **23.1 Type of Officer delegation to be recorded.**

Minutes of a decision taken by an Officer , arising either from an express

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delegation from a Committee or arising from a general Part 3 delegation, of over £50k will be published as soon as is reasonably practicable.

The decision will not be purely operational or administrative and must involve a separate decision to be taken, with the purpose and reasons for the decision and the decision itself to be recorded in the Minute.