

APPENDIX A

EXTRACT FROM SECTION 8 – PART 1 OF THE CONSTITUTION

8.6 ACCESS TO INFORMATION PROCEDURE RULES

GENERAL

8.6.1 Part 1 of these rules set out the rights of the public and Members to access information under the decision making process.

8.6.2 Part 2 details Members' wider access rights to access information held by the Council. These rights are complex and are set out in legislation, regulations and the common law. Members' rights go beyond those of the public. **However, Members do not have an automatic right of access to all information held by the Council. A Member's right to access information held by the Council is dependent on their legal and constitutional rights as determined, where necessary, by the Monitoring Officer as an 'independent' arbiter.**

8.6.3 "Need to know": The common law right of Members to have access to Council information on a "need to know" basis is a broad provision based on the principle that a member has a prima facie right to have such access so far as is reasonably necessary to enable him/her to perform their duties as a member of the Council. To exercise this right the Member must be able to demonstrate a genuine "need to know" rather than just undertake a general 'fishing expedition'. Members do not have a general right to access all documents held by the Council. In most cases access will be provided as a matter of course but in some circumstances (e.g. a Member wishing to access Council documents which contain personal information about third parties) justification will be required. In some cases, Members may be required to sign a non-disclosure agreement in order to have a greater level of access to exempt information than would be allowed to Members' generally. Even in these circumstances full access may still not be allowed for legal reasons or where the risks of disclosure are considered too great to the Council, an organisation or an individual. Any Member asked to sign a non-disclosure agreement must be advised of the level of access that will be permitted by signing the agreement. If access is disputed the Monitoring Officer will give a final ruling.

8.6.4 A Member may request information and advice from a council service in connection with their role as a member. Such approaches should however normally be directed to the relevant Director or Strategic Manager. Members must not put undue pressure on Officers to release information and documents to which they are not entitled to have access.

8.6.5 A Member must only use Council information provided for his/ her duties as a member of the Council.

8.6.6 The rules set out in Part 1 apply in full or in part to the Council's Cabinet (executive) decision-making arrangements as indicated. The following rules in Part 1 apply as specified to meetings of Full Council and the Council's Committees, 8.6.7-9, 20-22, 27-29, 31-37, 44 and 47-51. The rules comply with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012).

PART 1 – ACCESS TO INFORMATION RULES – DECISION MAKING

8.6.7 Definitions:

- (a) '5 clear days' – references to the term 'clear' in this context excludes Saturdays, Sundays, Bank and Public Holidays, the day that the agenda is sent to Members and the day of the meeting.
- (b) '28 clear days' - references to the term 'clear' in this context includes weekends and public holidays.
- (c) 'Executive decisions' – are Key or Non-Key decisions taken under the authority of the Leader and by the Leader or delegated to the Cabinet, a committee of the Cabinet, a Cabinet Member or an Officer.
- (d) 'Information' - means information, including any document, report or background paper other than in draft form.
- (e) 'Publication', or derivatives of - means: publication on the Council's website unless otherwise stated. Hard copies of papers are available for inspection or can be provided free of charge on request. If large volumes are requested a charge may be made.

MEMBERS OF COMMITTEES – RECEIPT OF PAPERS

8.6.8 Committee Members receive a printed copy of agendas and papers for meetings of that body unless they have exercised the option to receive the papers electronically via a link to the website. Either method complies with the legal requirement to give notice by the Council under the Local Government (Electronic Communications) (England) Order 2015. A Member may revoke this request at any time.

NOTICE OF MEETINGS:

8.6.9 5 clear days' notice of formal public meetings will be published (including on the public notice board at County Hall, Taunton and at the venue for the meeting if held elsewhere) or at the time the meeting is convened if the notice period is shorter than 5 days.

CABINET FORWARD PLAN OF KEY DECISIONS

8.6.10 The Cabinet Forward Plan of proposed Key Decisions is published weekly. The Council also publishes the Somerset Waste Board Forward Plan of proposed Key Decisions. Normally at least 28 clear days' notice of key decisions is given in the plans. Meeting notices list the key decisions to be taken.

KEY DECISION PROCEDURE

8.6.11 Unless the General Exception Rule (8.6.13) or Special Urgency Rule (8.6.14) is used, a Key Decision can only be taken:

- (a) If published in the relevant Forward Plan;
- (b) At a formally convened meeting;
- (c) By an individual Cabinet Member or Officer, where a notification report has been published at least 5 clear days before the decision is due to be taken or when published if less than 5 clear days can be given.

Key decision details published must include the:

- (a) The key decision title and description
- (b) Name or title of the decision-making body or person
- (c) Date of the decision or the period within which it will be made
- (d) List of documents submitted to the decision maker for consideration
- (e) Details of copies of the documents can be obtained or accessed
- (f) Opportunity for other documents to be submitted to the decision-maker and details of how copies may be obtained.

8.6.12 A Cabinet Member must consider officer advice before committing the Council via a formal decision in any dealings with third parties in relation to the acquisition or disposal of land, property or contractual issues.

KEY DECISIONS – GENERAL EXCEPTION AND SPECIAL URGENCY RULES:

8.6.13 General Exception Rule: If 28 clear days' notice cannot be given, then subject to Rule 8.6.14 (Special Urgency), a Key Decision can only be taken if the Monitoring Officer has published a notice giving 5 clear days' notice of the decision and has informed the Chair of the relevant Scrutiny Committee, or, in their absence, each member of that Committee by email, of the matter for decision.

8.6.14 Special Urgency Procedure Rule: If the 28 day rule and the General Exception Procedure cannot be complied with, then a Key Decision can only be taken with the agreement of the Chair of the relevant Scrutiny Committee (or if unavailable, the Chair of Council or in his/her absence the Vice-Chair of Council), by email that the decision is urgent and cannot be deferred.

8.6.15 If urgency is agreed, the Monitoring Officer will publish a notice (including on the notice board at County Hall, Taunton) stating the reasons for

urgency and why the 28 days' notice and general exception procedures cannot be complied with.

CABINET MEMBER AND OFFICER KEY AND CABINET MEMBER NON-KEY DECISIONS – CONSULTATION REQUIREMENTS

8.6.16 Before a Key Decision can be taken, the following must be consulted:

- (a) The relevant Cabinet Member(s), Junior Cabinet Member (where appropriate) and Senior Leadership Team Officer(s).
- (b) Any local Member whose electoral division is significantly affected. They must also be informed of any subsequent action / outcome.
- (c) The Chief Finance Officer, the Monitoring Officer and the County Solicitor and due regard given to their advice where there are likely to be financial, legal or standards implications.
- (d) The relevant Opposition Spokesperson / Leader
- (e) The Chair of the relevant Scrutiny Committee.

8.6.17 Before a Cabinet Member Non-Key decision is taken, the consultation requirements at (a), (b) and (c) of 8.6.16 above must be met.

In addition, the relevant Opposition Spokesperson / Leader and the Chair of the relevant Scrutiny Committee must be informed of the decision.

QUARTERLY REPORTS ON SPECIAL URGENCY DECISIONS

8.6.18 The Leader reports Special Urgency Key Decisions taken in the preceding three months within the quarterly reports of the Cabinet to the Full Council.

SCRUTINY – RIGHT TO REQUIRE CABINET TO REPORT TO COUNCIL

8.6.19 Where a Scrutiny Committee considers that a non key decision should have been taken as a key decision, the Committee can require the Cabinet to submit a report to the County Council at the earliest opportunity. The report must set out the decision, the reasons for it, the name of the decision maker and, following review, the reasons why it was not treated as a key decision.

PUBLIC ACCESS TO REPORTS AND OTHER DOCUMENTS:

General

8.6.20 Documents for key and Member non-key decisions and for formal meetings are published except those containing confidential or exempt information. Meeting papers are published at least 5 clear days before the meeting or when the meeting is convened if at shorter notice. If a late item is added to an agenda, a revised agenda and any additional report (s) will be published at the same time as being sent to Members.

Background papers

8.6.21 Each decision report includes a list of documents (called background papers) used to prepare the report and which are not already referred to. The list will not include published works or those which disclose exempt or confidential information.

8.6.22 Background papers for all Member decisions, key decisions taken by officers and decisions taken by an Officer under delegated authority from the Cabinet or a Cabinet member are published.

Decision notices

8.6.23 As soon as possible after a decision is taken at a Cabinet meeting or by a Cabinet Member, the Monitoring Officer will produce a decision notice to include:

- (a) A record of the decision including the date
- (b) The reasons for the decision
- (c) Details of any alternative options considered and rejected
- (d) A record of conflicts of interests declared by members of the Cabinet and any dispensations agreed by the Chief Executive.
- (e) Details of whether urgent implementation has been agreed, along with reasons.

There are similar requirements for recording executive decisions taken by officers.

Inspection of documents following a key or non-key decision

8.6.25 Decision notices prepared under 8.6.23 above and supporting papers are published for Member / Officer Key Decisions, Member Non-Key Decisions and Officer Non-Key decisions taken under a direct delegation from the Cabinet or a Cabinet Member.

8.6.26 Hard copies of published decision notices and supporting papers are available on request. Where a number of copies are requested a reasonable charge may be made to cover printing and postage costs.

Access to decision records/reports/minutes/background papers etc after decisions are taken

8.6.27 The Council makes available for inspection via its website the following for a minimum of 6 years from the date of the decision:

- (a) Minutes of Council, Committee or Cabinet meetings
- (b) Records of Cabinet, joint and individual Cabinet Member decisions
- (c) Officers decisions (for Key Decisions / and decisions delegated by Cabinet or an individual Cabinet member only);
- (d) A non-confidential summary of any Minute(s) / decision record (s) containing exempt or confidential information;
- (e) Agendas; and
- (f) Any relevant reports.

8.6.28 Background papers supporting decisions made at formal meetings are also made available for inspection for a minimum of 4 years from the date of the decision. In addition, in the case of a decision taken by the Cabinet, a Cabinet Member or an Officer under delegated authority from the Cabinet or a

Cabinet Member, the background papers are published and available for a minimum of 4 years from the date of the decision.

RIGHTS OF THE PUBLIC TO ATTEND MEETINGS:

8.6.29 Members of the public may attend all formal Members’ meetings except where confidential or exempt information is to be considered.

8.6.30 There are separate rules for the consideration of confidential and exempt Cabinet and Somerset Waste Board business from those that apply to Full Council and Committees. Where a Cabinet or Somerset Waste Board meeting is due to consider confidential or exempt information, advance notice will be published in the relevant Forward Plan together with details of how representations can be made for the business to be considered in public session. A further notice will then be published 5 days before the decision meeting setting out details of any representations received and the Council’s response.

8.6.31 If advance notice of confidential or exempt business required under 8.6.30 cannot be given then the approval of the Chair of the relevant Scrutiny Committee (or where unavailable the Chair or Vice-Chair of the Council) must be given and a notice published as soon as the item is known about.

8.6.32 ‘Confidential’ information is information given to the Council by a Government Department on terms forbidding its public disclosure or information which is prevented from being publicly disclosed by Court Order. Where confidential information is to be considered it is a requirement to exclude the press and public from accessing papers and discussions on such matters and members access is limited by statute. Accordingly, the press and public will be excluded from the meeting by resolution where confidential information is to be considered.

8.6.33 Exempt information is as follows,

Category	Qualifications
<ol style="list-style-type: none"> 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 relations matter arising between the Authority or a Minister of the Crown and employees of, or office holders under, the Authority. 	<ol style="list-style-type: none"> 1. Information is not exempt information if it is required to be registered under the Companies Act, Charities Act etc. 2. Information is not exempt information if it relates to proposed development for which the Council may grant itself planning permission. 3. Subject to paragraphs 1

<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> <p>(a) to give under any enactment notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) to make order or direction under any enactment.</p> <p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>	<p>and 2 above, information which falls within paragraphs 1 to 7 opposite is exempt information if and so long as the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p>
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8.6.34 The press and public may be excluded from a meeting where exempt information is to be considered and any supporting information withheld from publication or the meeting may decide to consider the item of business and any reports with the public present and publish the report after the meeting.

8.6.35 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 of the Act.

RIGHTS OF THE PUBLIC TO SPEAK AT FORMAL MEETINGS OF THE CABINET AND COMMITTEES OF THE COUNCIL – PUBLIC QUESTION TIME (PQT):

Note: Different requirements apply to Public Question Time at Full Council meetings and these are set out in Section 4, paragraphs 4.10 and 4.11.

8.6.36 The relevant Chair has discretion to vary any of the following rules:

- (a) A member of the public may ask a question or make a statement about any item on an agenda for the meeting.
- (b) In addition, a petition may be presented on any matter within the overall remit of the body.
- (c) The agenda will provide for questions/statements/petitions to be taken early in the meeting although the Chair has discretion to take them when the relevant item is reached on an agenda.
- (d) For Committee meetings, a person wishing to speak under public question time should inform the meeting administrator by 12 noon the day before the meeting. For Cabinet meetings the deadline for receipt of representations is 12 noon 3 clear working days before a meeting and they must be in writing.

- (e) The Chair will allow those who have given prior notice to introduce their question / statement / petition - 2 minutes maximum.
- (f) A response will be given once the question/statement/petition has been introduced or when the relevant agenda item is considered. After the response has been given there will be no member debate.
- (g) Normally a maximum of 20 minutes is allowed for public question time.
- (h) Where there are a large number of questioners on the same subject matter, the Chair may ask those concerned to nominate one or more of their number to ask question(s).
- (i) In exceptional circumstances the Chair may adjourn the meeting temporarily to allow views to be expressed more freely.

RECORDING AND REPORTING AT PUBLIC MEETINGS:

8.6.37 Public and press are welcome to record / film / transmit the proceedings of formal meetings in accordance with the Somerset County Council Recording Protocol set out in Part 2 of the Constitution.

8.6.38 The Council makes audio recordings of its main decision making meetings – Full Council, Cabinet and Regulation Committee – available to access on the website immediately following meetings and until the minutes of the meeting have been signed as a correct record at the next meeting. Audio recordings are also made separately available to members via private access arrangements for the same period. Other formal meetings may be recorded on an ad-hoc basis depending on the circumstances and those attending will be informed where this is the case in advance of the start of the meeting.

MEMBERS ACCESS RIGHTS TO REPORTS FOR FORMAL MEETINGS

General

8.6.39 All Members have a statutory right under the Local Government Act 1972 to inspect any Council document for business to be transacted at a Council, Cabinet, or committee meeting. This right extends to any relevant background papers but normally excludes confidential and exempt information.

Cabinet business

8.6.40 Subject to 8.6.41 below, all Members have a statutory right to inspect any Cabinet document (including background papers) in support of business to be transacted at a meeting and this shall be available five clear days before the meeting or at the time when an item is added to an agenda or a meeting convened at shorter notice. These legal rights are restricted in relation to confidential and exempt information.

8.6.41 The right to inspect in 8.6.39 above extends to any document in support of and a decision made by:

- (a) a Cabinet Member under delegated powers, or
- (b) an Officer as a key decision or under a delegation from the Cabinet or a Cabinet Member.

Rights of scrutiny committee to access Cabinet documents

8.6.42 Rights to copies / inspect documents: Subject to Rules 8.6.43 to 8.6.44, members of the Scrutiny Committees are entitled to inspect any Cabinet document and which contains material relating to:-

- (a) Business to be transacted at a Cabinet meeting; or
- (b) A Cabinet Member decision
- (c) Any Key Decision taken by an Officer and Officer Non-Key decisions taken under delegated authority from the Cabinet or a Cabinet member.

8.6.43 A document requested under 8.6.42 will be made available as soon as is practicable after the request and within 10 clear days.

8.6.44 Scrutiny Committee Members are **not** entitled to:

- (a) Draft documents; or
- (b) Any part of a document containing exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise.

8.6.45 The Cabinet can refuse access to information requested by a scrutiny member but must provide a written statement giving the reasons for refusal.

8.6.46 In the event of any conflict between this Protocol, any other policy, protocol, or guidance of the Council and any law (either common law or statutory), the law shall take precedence.

MEMBERS ACCESS TO CONFIDENTIAL / EXEMPT REPORTS FOR FORMAL MEETINGS

8.6.47 The right of access for non-Cabinet members to confidential or exempt information within the ownership of the Cabinet is limited to certain categories of information – see 8.6.48 below. Access is limited to viewing the document after the meeting or after a decision is made and must be available on request within 24 hours of the decision.

8.6.48 The legal right of access only applies to documents that fall under Part 1 of Schedule 12A of the Local Government Act 1972 in the following categories:

- (a) Paragraph 3, ie, information relating to the financial and business affairs of any particular person [including the authority] except for information relating to terms proposed or to be proposed in negotiations for a contract); and
- (b) Paragraph 6, ie, information which reveals 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 directions under any enactment.

8.6.49 The Council goes beyond the legal requirements set out above in providing access to confidential and exempt information held by or on behalf of the Cabinet. Cabinet Members taking a Cabinet or a non-Cabinet decision will receive papers containing confidential or exempt information as necessary in order to be able to take the decision. There is then a presumption that, except in the case of reports which contain confidential personal information about employees or other persons, or where the report contains highly confidential commercially sensitive information, reports containing confidential or exempt information will be made available to other individual non-Cabinet members attending the meeting or on request. As stated above this in addition to any other specific rights that members may have as a result of having a specific role on the Council, eg, as a Scrutiny Member. This presumption of openness also applies to Committee meetings.

8.6.50 There may be occasions where the Monitoring Officer advises that a report contains information which is so sensitive (eg, contains highly sensitive commercial information) that it is necessary to limit access to the report to members not involved in the decision making process. This may be achieved in various ways including giving out named copies at the start of a debate and collecting them in at the end of the debate or requiring Members with a specific interest or role to sign a non-disclosure agreement.

8.6.51 Confidential or exempt information will normally be provided to Members as a confidential annex to a public report. A public summary of the confidential report will be published. The same approach is taken to confidential decision records or the minutes of the meeting.

8.6.52 A Member's entitlement (under common law or under statute) to see a report containing confidential or exempt information, extends to relevant background papers. However, the Member must maintain the confidentiality of the background papers.

8.6.53 A Member who is refused access to information and is dissatisfied with this response, may take the matter up with the appropriate Senior Leadership Team Officer (or Chief Executive for corporate or cross-cutting issues) who, if necessary, will consult with the Leader of the relevant group, the relevant Cabinet Member or Opposition Group Spokesperson and the Monitoring Officer before responding.

PART 2 – Members’ Access to Information and Confidentiality Issues – General.

8.6.54 There are two basic requirements for information to be considered confidential.

- (a) It must not already be published and widely available publicly.
- (b) The information must fall under the protection of the confidentiality laws, eg personal data, commercially sensitive data, military secrets and the like. In many areas of law such as Access to Information, Data Protection and Freedom of Information the categories protecting information are clear. The general law is far less clear and there has to be a legitimate expectation of confidentiality. Without justification, writing “confidential” at the top of a document will not provide legal protection, nor is a document “confidential” merely because its contents may be embarrassing or inconvenient.

8.6.55 Confidentiality usually arises because a person or organisation claims confidentiality for information they have, and wish to withhold from publication. In the public sector anyone wishing to claim protection at law for confidential information is increasingly likely to have to justify that claim.

8.6.56 Confidential information can only be released or passed on with legal justification or with proper authority, eg, with the consent of a person properly authorised to give it. To release confidential information without consent:

- (a) Could lead to legal action (against either the individual personally and/or the Authority).
- (b) Is likely to be a breach of the Council’s Standards of Conduct for Officers or the Members’ Code of Conduct.

If you are unsure whether information passed to you is confidential or not please check its status with the sender before you pass it to anyone else.

8.6.57 The Members’ Code of Conduct includes ‘tests’ that Members must fulfil if they are considering releasing confidential information, as follows:

- (i) The ‘public interest’ test. In order for disclosure to be in the “public interest”, the information should involve one or more of the following matter(s), or something of comparable seriousness:
 - a) a criminal offence;
 - b) failure to comply with a legal obligation;
 - c) a miscarriage of justice;
 - d) serious health or safety issue
 - e) potential damage to the environment
 - f) deliberate concealment of any of the above matters;
- (ii) The ‘good faith’ test. For a disclosure to be in “good faith”, a Member should not be acting with an ulterior motive, eg to achieve a party

political advantage or to settle a score with a political opponent or some other person.

- (iii) The “reasonable requirements of the Authority” test, which requires the Member to comply with the Council’s policy or protocols on matters such as whistle blowing, confidential information and any other specific requirements which the Council may reasonably make. The Member must first raise his or her concerns through the appropriate channels set out in relevant policies or protocols

8.6.58 Anyone considering releasing confidential information without consent is strongly advised to obtain and consider professional advice before passing the information on. In the case of members you must consult the Monitoring Officer or the County Solicitor before releasing such information without consent.

8.6.59 A person passing on confidential information with legal justification or permission must make it clear to the recipient of the information that the information is confidential and must not be disclosed. If the recipient cannot provide appropriate assurance that the confidentiality of the information will be respected, it must not be passed on.