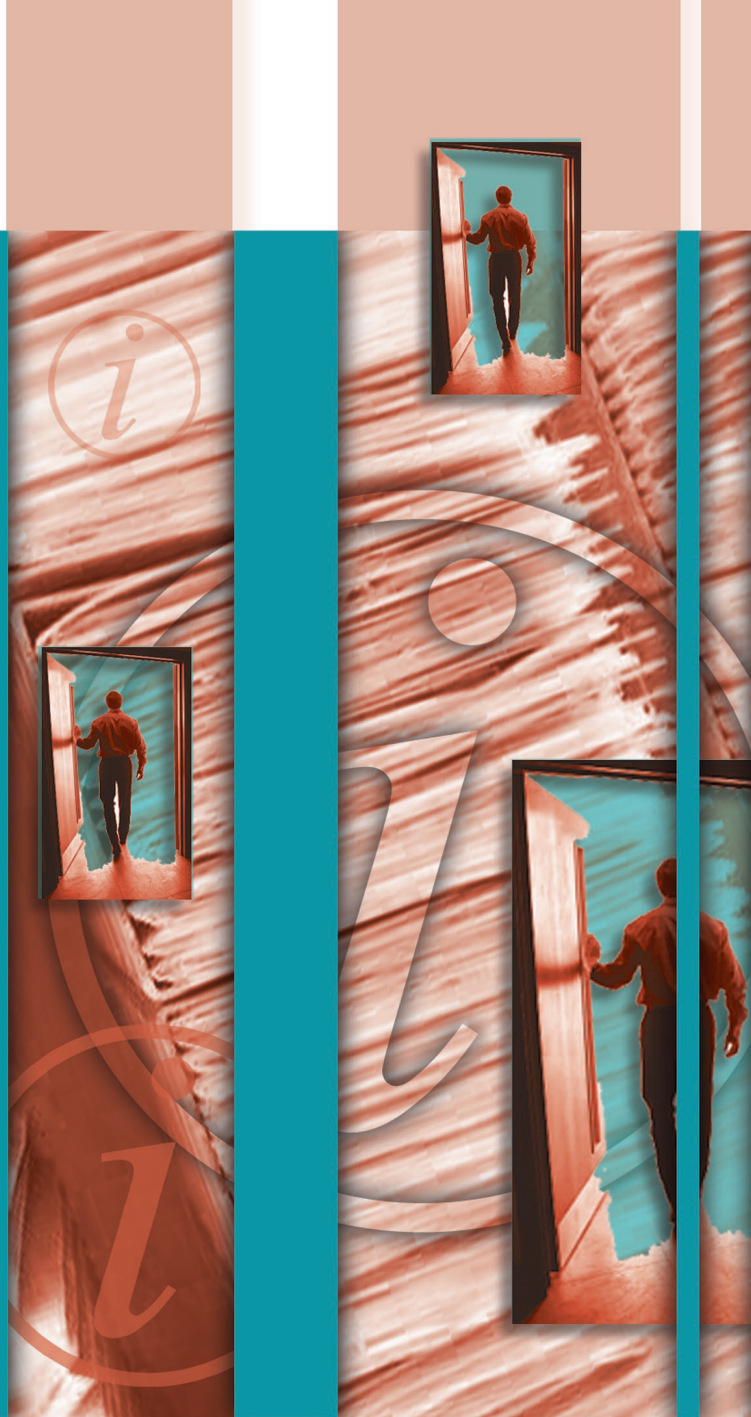


Information is Power



**A guide to the rules on access to
information in local government**



LGiU

Acknowledgements

Information is Power was written by Ramani Chelliah, Policy Officer at the LGIU and ACSeS.

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Introduction

Active citizenship requires processes through which citizens can take part in the making of decisions affecting their lives. Public access to information is a key element in empowering people to become active citizens.

A complex web of laws govern the public's right to information. Elected members of councils have additional rights. This guide provides a brief overview of these various rules as they affect local government. It is designed to help members of the public and members of councils navigate their way through this maze.

This guide applies to England and Wales. In relation to England the term council is used to refer to all types of local authorities including district councils, county councils, unitary authorities and London Borough councils. In Wales all local authorities are unitary authorities and the term council refers to them. Parish and community councils are referred to separately.

What are your rights to information as a member of the public?

Accessing documents

Councils are responsible for a wide range of local functions that affect the everyday lives of residents. Information held by councils is therefore of a great deal of relevance and interest to the public.

Freedom of Information Act 2000

The Freedom of Information Act 2000 (FOI Act) gives a general right of access to all types of recorded information held by public authorities, including councils. When a person requests any piece of information from a council, the council will be under a duty to disclose that information, provided it holds that information. This means that when a member of the public makes a request for information councils must check all paper records for the information, as well as structured files and electronic records. This duty will come into force in January 2005. It is subject to exemptions specified in the legislation (see pages 10-11).

The aim of the FOI Act is to fundamentally change the way in which public authorities provide information to the public, and the extent of the information that individuals can rightfully expect. Councils must treat every written request for information as a request made under the Act and process these requests in accordance with the requirements of the Act.

Since February 2003 every council (including parish and community councils) has been required by the FOI Act to maintain a publication scheme. A publication scheme is a guide to the information a council routinely publishes, or intends to publish. It sets out the classes of information which the council publishes, or intends to publish, the manner in which the council intends to publish the information and whether a charge will be made for the information. Once a publication scheme is adopted by a council it represents a commitment made by the council to make information available as stated in the publication scheme.

The Information Commissioner will have the power to consider appeals against decisions by public authorities in regard to both their publication scheme and full access rights and will have powers of enforcement.

Environmental Information Regulations 1992

The Environmental Information Regulations 1992 provide the public with a right of access to a wide range of environmental information, for example on air pollution and noise pollution, held by public authorities including councils. They advocate a strong presumption in favour of disclosure.

Service specific legislation

There are numerous laws specific to services, such as planning, education, social services and housing, that require councils to publish various pieces of information and/or provide the public with rights to attend meetings. For example councils must maintain registers of street works executed or proposed to be executed in the area as well as of planning applications received and their result. Both of these registers must be available for the public to inspect at reasonable hours at the offices of the council. The last time that a list of these types of provisions was drawn up was in 1986. It resulted in the Local Government (Inspection of Documents) (Summary of Rights) Order 1986 which lists over 51 enactments.

Local Government (Access to Information) Act 1985

The Local Government (Access to Information) Act 1985 covers access to documents associated with meetings. See below for details.

Attending meetings

Council decisions are mainly taken in meetings. In order to ensure that decision makers are held to account and that the decisions taken by the council are responsive to the needs of communities it is necessary for the public to have access to meetings and associated papers.

Local Government (Access to Information) Act 1985

The Local Government (Access to Information) Act 1985 sets down the main access to information rules in relation to all meetings of the council and the formally established committees and sub-committees of the council. It includes meetings of the full council, the executive, overview and scrutiny committees, regulatory committees, the standards committee, neighbourhood committees and related sub-committees. The Act covers all councils apart from parish councils (for provisions on parish councils see page 5).

The general underlying principle of the Act is that reasonable public notice must be given of all matters to be considered at these meetings, with adequate facilities being given for the public and the press to see copies of reports and material on which reports are based. The 1985 Act was inserted into the Local Government Act 1972 and now appears as Part VA of the 1972 Act.

The 1985 Act establishes the following rights on public access:

- The right to attend meetings, except where confidential or exempt information is to be disclosed (see pages 10-11).
- The right to notice of meetings, provided at least five clear working days before the meeting.
- The right to inspect the agenda and connected reports at least five clear working days before the meeting. In cases of urgency a council may follow specified procedures that allow a shorter period for inspection.

- The right to copies of the agenda and reports at the meeting.
- The right to inspect the minutes after meetings.
- The right to inspect the minutes, the agenda and related reports for six years from the date of the meeting.
- The right to inspect background papers. Background papers are those on which reports have been based. This right extends for a period of four years from the date of the meeting.

Parish and community councils

Parish and community councils are covered by the Public Bodies (Admission to Meetings) Act 1960 and Local Government Act 1972 (part 2 section 228 relating to the inspection of documents). These provisions are less comprehensive than those of the 1985 Act. The National Association of Local Councils recommends that the spirit and the letter of the 1985 Act should also be adopted for parish and community council meetings.

Executive decision making

The Local Government Act 2000 introduced new structures for decision-making. It introduced an executive/scrutiny split. The executive has responsibility for decision-making, within the context of a budget and policy framework set by the whole council. Overview and scrutiny committees have the responsibility of holding the executive to account. The aim of the reform is to produce more efficient, transparent and accountable decision-making.

The options for the executive are as follows:

- a cabinet headed by a leader selected by all the elected members of the council
- a cabinet headed by a directly elected mayor
- a directly elected mayor working with a council manager appointed by the council.

A fourth option, in the form of alternative arrangements, is available to smaller district councils in two tier areas in England and to authorities in Wales. This is a streamlined form of the committee system with arrangements made for scrutiny to be carried out. About 60 councils in England and three in Wales are currently operating alternative arrangements. The rest are operating one of the options for executive decision-making.

For councils operating one of the three forms of executive arrangements the legal framework regulating access to information and the openness regime is as follows:

- Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000
- Local Authorities (Executive Arrangements) (Access to Information) (England) Amendment Regulations 2002

- separate statutory guidance issued under section 38 of the Local Government Act 2000 for both England and Wales
- Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001.

These access to information regulations do the following:

- They apply the regime created by the Local Government Access to Information Act 1985 (described on page 4) to the executive decision making process.
- In England they introduce the concept of key decisions and establish public access to meetings and documents related to such decisions.
- In England they require councils to produce a forward plan laying out the key decisions to be taken in the following four months, and for this to be regularly updated.

Key decisions (England only)

A key decision is an executive decision, which is likely:

- a) to result in the council incurring expenditure or making a saving which is significant, or
- b) to be significant in terms of its effects on communities.

Key decisions may be made by the executive, either individually or collectively, or by council officers. Key decisions are subject to the general access requirements in the following ways:

- Executive meetings must be held in public where a key decision will be made or where there will be discussion of matters relating to a key decision to be made within 28 days.
- The public can be excluded from parts of such a meeting only when it is likely that confidential or exempt information is likely to be disclosed (see pages 10-11).
- Also excluded from the access rules are:
 - advice from political advisers and assistants
 - draft reports
 - briefing meetings, where there is no suggestion of decision-making.
- Before a key decision is made at a meeting, relevant reports and the agenda must be available for public inspection for at least five clear working days.
- Similarly, where a key decision is to be made by an individual member or an officer, relevant reports must be made available for public inspection at least five clear working days before the decision is made and copies supplied to the relevant overview and scrutiny committee.

- After the making of a key decision, a written record of the decision (including the reasons for it and any other options considered) must be made publicly available together with reports and background papers. This also applies to non-key executive decisions made by the executive either individually or collectively.

Special procedures may operate if a key decision needs to be taken at short notice. Where the inclusion of a key decision on the forward plan is impracticable the decision may be taken provided that at least five clear days notice is given to the relevant overview and scrutiny committee and the public before the decision is taken. If it is necessary to take a key decision with less than this notice period, it would require the agreement of the chair of the relevant overview and scrutiny committee.

Forward plan (England only)

In order to provide longer term advance notification for the public, councils operating executive arrangements are required to produce a forward plan setting out all key decisions expected to be taken over the following four months, when they are expected to be taken and who is responsible for taking them. Forward plans must be regularly updated and made publicly available.

What are your rights to information as an elected member?

Elected members have all the rights available to members of the public (see pages 3-7) and some additional rights.

Accessing documents

Need to know

The most important additional rights of elected members are those existing at common law. Members have access to all written material in the possession of the council if a *need to know* can be demonstrated in order to perform their duties as a councillor. In order to access documents on the basis of need to know, the member's interest in the documents must be for the proper reasons. This would usually derive from the member's committee responsibilities, but it may also relate to legitimate ward issues. Members will not be able to assert their right under need to know if their motive for seeing documents is indirect, improper or ulterior.

The impact of executive arrangements for decision making on the need to know principle remains to be seen. It may be that carrying out activities related to the representational role, which do not spring directly from membership of a committee, may give rise to a valid need to know that extends the right of members to see material which previously they might not have had access to. Alternatively, the lack of direct involvement in decision-making by non-executive members may mean that there is less reason for them to exercise their need to know right, thereby reducing the scope of this principle in practice.

Local Government (Access to Information) Act 1985

In addition to the rights at common law, elected members have rights under the Local Government (Access to Information) Act 1985 that are wider than the rights granted to the public. The Act provides all members of the council with the right to inspect material relating to any business to be transacted at a meeting of the council committee or subcommittee, apart from certain categories of exempt information.

Rights to see other documents

Members have the right to see the council's accounts and they may also take advantage of the more general rights to see all books, deeds, contracts, bills, vouchers and receipts relating to the accounts.

Executive papers

All members are entitled to documents in the possession and under the control of the executive relating to business to be transacted at a meeting of the executive. This is the same right that exists in relation to ordinary committees and subcommittees under the 1985 Act, and applies before meetings.

Members have a further right that arises after meetings are held or decisions taken. This right covers the inspection of documents relating to private executive meetings, executive decisions taken by individual members and key decisions taken by officers.

Certain categories of exempt information are excluded from these rights as is advice provided by a political adviser or assistant.

Attending meetings

This relates to members who are not members of a committee attending a meeting during the conduct of private business, and hence not open to the public.

Need to know

The need to know principle which applies to the inspection of documents (see page 8) also applies to attendance at meetings that are not open to the public, including meetings of the executive. However, this right can not be asserted if the council can show that allowing attendance would have adverse effects.

Standing orders

These are procedures adopted by councils to govern their meetings and proceedings. In most councils standing orders allow members attendance at a wide range of meetings during the conduct of private business, with a right to speak at the invitation of the chair.

Access by the overview and scrutiny committee

Councils operating executive arrangements are required to have an overview and scrutiny committee to hold the executive to account. The access to information rules provide extra rights to the members of overview and scrutiny committees, who are entitled to copies of certain documents rather than simply having the right to inspect them. They are entitled to the additional right to have copies of all exempt documents if they are relevant to issues that they are reviewing or which are included in their work programme. The only exception is documents containing advice provided by a political adviser or assistant.

What are the limits on your access to information?

The right of the public and elected members to information needs to be balanced against an individual's right to privacy and confidentiality and the council's need to protect its interests where appropriate.

The limits on access to information will sometimes be clear, as when personal information protected by the Data Protection Act 1998 is concerned. More often it will need to represent a fine balance: between the public interest in disclosure and the public interest in non-disclosure; between the duty of confidentiality and the duty to disclose; between the interests of society and that of an individual.

In establishing what information may not be disclosed, or must not be disclosed, several laws need to be taken into account. In relation to two of these, the Local Government (Access to Information) Act 1985 and the Freedom of Information (FOI) Act 2000, the government is currently conducting a review. It is expected that the exemptions under the 1985 Act will soon be aligned with those under the FOI Act so that these two regimes cease to operate in parallel.

Exempt and confidential information under the 1985 Act

Schedule 12A of the Local Government Act 1972, introduced by the Local Government (Access to Information) Act 1985, relates to exempt information, where councils have discretion to withhold information. These exemptions, which are specific to local authorities include:

- personal information relating to staff and applicants for services
- details of contracts and proposed expenditure
- details of industrial relations matters
- information related to legal matters.

A council may, by resolution, exclude the public from a meeting during an item of business, if in their view exempt information is likely to be disclosed. Similarly, in relation to documents, an officer may choose not to disclose exempt information contained in background papers, agendas, reports, and minutes. Councils will have their own procedure for dealing with complaints regarding the classification of exempt information.

Exempt information is different from confidential information under this Act.

Confidential information, which councils are obliged not to disclose is defined as:

- confidential information provided by a government department
- information made confidential by any law or the order of a court.

Exemptions under the Freedom of Information Act 2000

The exemptions under the FOI Act apply to all public bodies, including councils. A few of these exemptions are absolute exemptions in that information in these categories is automatically exempt. These include:

- information relating to national security matters
- personal information (dealt with under the Data Protection Act 1998)
- court records.

The rest of the exemptions are subject to a public interest test. Information in these categories must be released unless the public interest in not disclosing is greater than the public interest in disclosing. The exemptions this test applies to include:

- commercial interests
- legal professional privilege
- health and safety.

A dissatisfied applicant may appeal to the Information Commissioner about a council's decision on where the public interest lies or if they think information has wrongly been withheld. The Commissioner may require disclosure.

Data Protection Act 1998

The public has both formal rights and legitimate expectations that personal privacy will be protected. The Data Protection Act 1998 regulates the manner in which personal data may lawfully be disclosed. Any handling of personal data must be in accordance with the provisions of the Act. Personal data means:

“data which relate to a living individual who can be identified a) from those data, or b) from those data and other information which is in the possession of or is likely to come into the possession of, the data controller ...”.

The Human Rights Act 1998

The Human Rights Act 1998 (HRA) guarantees fundamental human rights, including the right to respect for private and family life. The Act requires public authorities to act in a manner compatible with the rights it enshrines, including the protection of privacy.

Common law duty of confidentiality

The common law duty of confidentiality may make a disclosure unlawful. Most kinds of information can form the subject matter of confidential communications. The key ingredients for a confidential matter is that it must be of limited public availability and it must be clearly defined as confidential.

What if access to information is wrongfully denied?

As outlined above, there is a legal framework that sets the minimum level of openness. Where a council wrongfully denies access to information complaints may be made, as appropriate, to the following:

- The persons designated in the council's complaints procedure.
- The local councillor representing the ward in which the person making the complaint lives.
- The Information Commissioner, appointed by the government under the Freedom of Information Act 2000, where the complaint relates to rights under the FOI Act.
- The Monitoring Officer, who is a statutory officer appointed by the council with responsibility for advising the council on the legality of all its actions.
- The Local Government Ombudsman who is an independent person appointed by the government to investigate allegations of maladministration causing injustice to the person who has complained.

See appendix for contact details.

Why is access to information important?

Access to information is important in order to equip citizens to play an active part in all aspects of life within a democratic system. Establishing effective public access to information, however, requires a fine balancing act that takes into account a range of complex factors.

A balance needs to be struck between speed and efficiency in political decision making and the requirements of democratic accountability and open government. The requirements for joined-up and better designed services need to be weighed against the needs of citizens to have their privacy protected.

In exercising their right to information elected members will, on occasion, need to balance their corporate duty to the council against their responsibilities as representatives of their constituents.

Councils in deciding whether to disclose or withhold information will, in certain situations, need to make difficult judgments as to where the public interest lies.

Where the balance is struck will reflect the interplay between the electorate and the elected within our democratic system and the culture that we nurture within the institutions through which we are governed. The legal framework sets minimum standards of openness. It is the exercise of active citizenship that will push the boundaries of open government and thereby invigorate democracy.

Appendix - contact details

Information Commissioner's Office

www.informationcommissioner.gov.uk

Wycliffe House

Water Lane

Wilmslow

Cheshire SK9 5AF

T: 01625 545 700

E: mail@ico.gsi.gov.uk

Local Government Ombudsman – England

www.lgo.org.uk

There are three Local Government Ombudsmen in England. Each of them deals with complaints from different parts of the country:

London boroughs north of the river Thames (including Richmond but not including Harrow or Tower Hamlets), Essex, Kent, Surrey, Suffolk, East and West Sussex, Berkshire, Buckinghamshire, Hertfordshire and the City of Coventry:

Tony Redmond

Local Government Ombudsman

10th Floor

Milbank Tower

Milbank

London SW1P 4QP

T: 020 7217 4620

London Borough of Tower Hamlets, City of Birmingham, Cheshire, Derbyshire, Nottinghamshire, Lincolnshire and the north of England (except the Cities of York and Lancaster):

Patricia Thomas

Local Government Ombudsman

Beverley House

17 Shipton Road

York YO30 5FZ

T: 01904 380200

London boroughs south of the river Thames (except Richmond) and Harrow; the Cities of York and Lancaster; and the rest of England, not included in the areas of Mr Redmond and Mrs Thomas:

Jerry White

Local Government Ombudsman

The Oaks

No 2 Westwood Way

Westwood Business Park

Coventry CV4 8JB

T: 024 7682 0000

Local Government Ombudsman – Wales

www.ombudsman-wales.org

Derwen House

Court Road

Bridgend CF31 1BN

T: 01656 661325

E: enquiries@ombudsman-wales.org



Association Of Council Secretaries And Solicitors (ACSeS)

The Association is the professional body for the managers of Corporate Governance (legal, administrative, democratic, scrutiny and standards) functions of principal local authorities in England and Wales.

The main objectives of the Association are to:

- advocate the role of local government, reinforcing the primacy of the democratic process in the provision of local services
- act as a high level consultee to government and local government
- create a network between members to provide advice and mutual support.

Contact: Norman Yates, Executive Officer:

Tel/Fax: 01772 740404

Email: acsesny@cybase.co.uk

Website: www.acses.org.uk

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LGiU

The Local Government Information Unit
22 Upper Woburn Place, London WC1H 0TB

Tel 020 7554 2800
Fax 020 7554 2801
E-mail info@lgiu.org.uk
Web www.lgiu.gov.uk