



Access to Information for Elected Members

Centre for Governance and Scrutiny

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About the Centre for Governance and Scrutiny

CfGS exists to promote better governance and scrutiny, both in policy and in practice. We support local government, the public, corporate and voluntary sectors in ensuring transparency, accountability and greater involvement in their governance processes.

Governance and scrutiny are essential for the successful working of any organisation. Now, more than ever, trusted decisions are needed. We believe that decisions are better made when they are open to challenge and involve others – whether that’s democratically elected representatives, those affected by decisions, or other key stakeholders.

At the heart of better governance and scrutiny are the right behaviours and culture. Our work champions these relational aspects and designs the structures to support them, leading to more effective decision-making and improved outcomes for organisations and people.

<https://www.cfgs.org.uk/>

Contents

Purpose of this guide	4
Introduction	5
What information is available?	6
How councils manage information	9
Accessing documents, or accessing information?	13
Making requests.....	134
What officers can do.....	156

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Purpose of this guide

This guide is focused on the rights and needs of councillors who need access to information in order to carry out their constitutional role. This includes the information access rights held by overview and scrutiny councillors.

It complements information produced by CfGS, principally as part of the “[Good scrutiny guide](#)” (2019), which explains how information can be used, once it has been accessed.

It does not cover the processing of personal information under GDPR – councillors who are data processors (for example, in respect of their ward work) will need to have regard to the specific policies of their councils, and the advice given by the ICO on these points, which can be accessed [here](#).

This guide has two aims:

- If you are a councillor not on Cabinet (or, under the committee system, not on a service committee), to support you to understand what your rights are, in respect of access to information, and what your expectations ought to be in how those rights are satisfied;
- To support officers to understand how they can best support members, and how they can work together to develop a culture of positive information use that supports and promotes the fundamental principles of local democracy.

The document is, however, primarily addressed to a councillor audience.

This document applies to England only.

Introduction

If you are an elected councillor, this guide has been produced to support you to understand your rights to access information.

Doing your job properly requires timely access to high quality information. Information helps you and your fellow councillors to make decisions and helps them to hold other decision-makers to account. In turns, it helps to ensure that the executive can be held to account themselves, by the public and by scrutiny councillors.

Officers, too, need access to information – to manage services effectively, to understand where need lies and where resource needs to be directed.

This means that the flow of information within and around a local authority is one of the critical features of a robust governance framework. The creation, sharing, collation and analysis of information – in the right way, at the right time, and by the right people – is fundamental to ensuring that councils, as democratic institutions delivered a complex array of services, are working transparently and accountably.

Councils produce a large amount of information. If you are a councillor, you should not need to use the Freedom of Information Act 2000 to access information held by your own authority.

Councillors have information access rights that go over and above those held by members of the general public. Scrutiny councillors in councils that operate executive arrangements have additional rights

There is therefore a job of work for you, and the officers who support you, to do in understand what you need to see, and whether you have a right to see it. This starts with your formal rights, which means that there are certain classes of information to which others may not have access, but you do.

Making requests for this information is likely to mean you will need to demonstrate how your rights apply in each individual case. This guide will help you to understand and apply those rights – and will also help you to understand your obligations in respect of the information that you hold.

What information is available?

There is a range of information to which you should expect to have access.

In an authority operating executive arrangements (either the Mayoral, or the leader-cabinet system) the Council's executive will, by and large, have access to all information held by the authority, apart from personal information the council holds about individuals.

In an authority operating under the committee system, information will be made available to the members of committees where the information relates to their decision-making responsibilities – and may be made available more generally under the “need to know” principle (see below) or by local arrangements (for example where the constitution provides for it).

Some of this information may also be **publicly available**, some may not be available to the general public but may be accessible **to councillors**, even if it is exempt from publication. Some information may only be available to **overview and scrutiny councillors** in addition to the executive.

We have divided this material up into categories for ease of reading. The list is not exhaustive.

“Management information”

This information may include:

- Performance information. This may be presented in the form of spreadsheets or tables often called “scorecards”, or through online tools commonly called “dashboards”.
- “In-year” financial information. This may be presented as income and expenditure tables, or often as tables setting out financial performs against budget projections, or which may compare this month's spending with last month's.
- Risk registers. Individual council departments will often produce registers identifying where risks might arise, assessing the likelihood of risks coming to pass and the impact if they do, alongside measures to mitigate. There will usually be a single corporate risk register as well. The corporate risk register will usually be sent to the Audit Committee for regular consideration – it should also periodically be considered by Cabinet (and, in the case of a committee system authority, by a “corporate” service committee).
- Project and programme management documentation. If the Council has a corporate Programme Management Office (PMO), progress against the corporate programme and important, high- profile projects, will be recorded and reported regularly.

Material supporting decision-making

- The Forward Plan. Now usually called the “schedule of key decisions”, key decisions must be placed on the Plan 28 days prior to the date when it is proposed that they be made. This can provide useful early warning of important forthcoming decisions

- Formal reports supporting decision-making. Officer reports will set out the rationale for certain decisions, as well as signposting to other relevant material;
- Background papers / documents. Documents listed in officer reports as being “background papers” must be made available publicly, although these are likely to be a range of support materials, some of which may not be formally listed as a “background document”. These might include:
 - Business cases. Where the Council plans to embark on a major project (usually one involving contracting) it will produce an outline, and/or full, business case. Portions of this full business case may be exempt from publication (for example, if they relate to the Council’s plans to procure external contractors to meet the requirements in that business case, and contains bidding information);
 - Options appraisals. Supporting major decisions, options appraisals are used to explore alternatives to the recommended decisions. Options appraisals should usually be publicly available, but elements that may relate to expected procurement or sensitive commercial arrangements may be kept private under certain circumstances. This may include the detail of commercial terms;
 - Background research. A variety of different research products might exist – produced internal, or by external contractors or partners. This might be the outcome of consultation exercises, demographic research, or other kinds of user needs research. Councils might also carry out research on “good practice” in other places, to benchmark the Council’s plans against those taken by others.

Material supporting governance

- Agendas, minutes, and reports of Council meetings. These will be publicly available on the Council’s website. Usually (but see below) information that is exempt from publication will also be available to councillors.
- The constitution, and related governance documents. This material, too, is largely publicly available. Information about how the Council works – how decisions are made and by whom, and some of the procedures that underpin this – are important for councillors to know and understand.
- Documents produced in support of governance improvement. The Annual Governance Statement and the external auditor’s Statement of Accounts (including their Value for Money Statement) are useful sources of evidence about the strength, or otherwise, of governance arrangements at the authority;
- Documents relating to company governance. If the Council owns (wholly or partly) a commercial entity, or otherwise has a stake in an external body, there will be documentation relating to the Council’s role in that entity.

Material from external organisations about the Council

- Inspectorates, like Ofsted and the Care Quality Commission (CQC), carry out reviews of Council services, which will be published. If they make adverse findings, the Council will need to produce improvement plans, which will also be available;

- Ombudsman reports. The Housing Ombudsman, and the Local Government and Social Care Ombudsman (LGSCO) may periodically produce reports about the Council’s ability to resolve complaints;
- The LGA carries out corporate peer challenges (CPCs) at the invitation of councils which ultimately are funded by Government as part of a commitment to sector improvement, and as such are provided free to councils. CPCs cover local priorities and outcomes, leadership, governance, financial planning and capacity for improvement. They involve the production of a short report following a brief but intensive period of on-site research, and a follow-up visit to review progress. Councils are required to publish the report and their action plan in response to the CPC recommendations;
- Bodies like the Chartered Institute of Public Finance and Accountancy (CIPFA), SOLACE carry out reviews of corporate governance, finance, and other Council services, which will usually be paid for. These may, or may not, be published by the Council;
- Free services such as [LG Inform](#) provide valuable comparative data, including the ability to compare the council with its ‘nearest statistical neighbours’;
- The Council may subscribe to analytics services, such as those provided by CIPFA and the Local Government Information Unit (LGIU), to compare themselves with their “nearest neighbours”; councillors may have access to some of this information.

Material from partners

Much of the material described above will also be available, in some form, from partners.

Anecdote

You may have heard it said that “the plural of anecdote is not data” – but it can be. Anecdote on its own is a dangerous basis for decision-making, but things you know from your casework, from local community groups, from talking to your colleagues, from door knocking and local campaigning can all give you insights that provide a jumping off point for wanting to know more about a given subject. You can use your local insights to contextualise official data that the council and others produce. If there is a variance between what you are told out in the local community, and what officers are telling you at the committee table, that forms the basis of a series of legitimate questions.

How councils manage information

There are a number of categories of information which councils manage. These can be summarised as follows:

- Information that is exempt from publication;
- Information that is available to the public;
- Information that may not be available to the public, but may be available to councillors;
- Information that may not be available to the public but may (in an authority operating executive arrangements) be available to the Cabinet and to councillors on scrutiny committees.

1. Information that is exempt from publication

Councils are obliged to manage information in a way that complies with the law. Some information (like personal information) is subject to stringent legal safeguards, such as the General Data Protection Regulation (GDPR). The council might also be subject to legal restrictions, such as confidentiality, which means that it cannot make certain information public.

For this reason, in conducting its formal business, a council may need to designate some information as **exempt from publication**. There are a set of specific exemptions which can be found in Schedule 12A of the Local Government Act 1972.

The seven categories of Schedule 12A exemptions

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;
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
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.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

Practice at meetings

When exempt or exempt and confidential matters are proposed to be discussed at a formal council meeting, the papers relating to that item are not published, but are made available to the committee's members.

They are usually differentiated from the rest of the committee agenda (in hard copy) by being printed on different colour paper. Agenda items, and information, proposed to be discussed under these conditions are usually described as being "in Part II" or "in Part B".

In order for the committee (or other body) to consider the item in this way, it must resolve that the public be excluded from the meeting – this resolution can be put to the vote. When a resolution is agreed, the committee moves into private session, and the discussion proceeds. The minutes of the discussion on exempt matters is kept separately, and is not published, although it does form part of the official record of the meeting.

The management of exempt business is a standard feature of council meetings. Cabinet meetings (or service committee meetings, under the committee system) may discuss and agree matters under "Part II" because discussion makes reference to sensitive commercial or financial considerations – on procurement matters, for example. On scrutiny (and at other places, like the audit committee) the situation is a little less certain. Open, transparent, accountable governance requires that business be transacted in public where possible – particularly where that business is bringing scrutiny to the work of the authority.

Scrutiny committees may carry out "pre-decision" scrutiny on matters which are due to go to Cabinet in the near future. In councils operating "hybrid" governance arrangements, this will be a regular feature.

Sometimes, those Cabinet decisions may relate to exempt information. Under these circumstances, a scrutiny committee can take one of two approaches:

- Ask that the full information going to Cabinet also be submitted to scrutiny, and that scrutiny consider that information privately before making a recommendation;
- Ask that exempt information be excised from reports and seek to consider the issues involved without reference to it – meaning that discussion will proceed in public.

Where the need to see the exempt information is critical to informed debate on the decision in question, the first option will probably need to be taken.

Members' duties in dealing with exempt or confidential information

Where you have access to exempt, or confidential, information you have a responsibility not to distribute or circulate it – even if you believe that the person to whom you wish to give it has a right to see it.

This obligation may be formally highlighted by the Monitoring Officer when certain information is shared, but even if it isn't, you will need to take care in how you use, and store, this information – ensuring that you are aware of your council's data

security policies in doing so. If in doubt you should seek the advice of the Council's Monitoring Officer.

This includes making references to exempt or confidential information in public – including in formal meetings of the council held in public. Unlike in Parliament, what you say in a formal meeting is not privileged!

2. Information that is publicly available

There will be a wide range of information available to the general public, to which councillors will already have access. Some of this we set out in the section [What information is available?](#)

Councils produce and process a large volume of information. A lot of this will be highly technical and operational in nature. Some may however be useful to:

- Support casework;
- Support decision-making;
- Support overview and scrutiny activity.

3. Information to which you have general rights of access as a councillor

Section 100F of the Local Government Act 1972 provides some additional information entitlements to councillors in respect of matters covered by Paragraphs 3 and 6 of Schedule 12A. Importantly though, councillors are only entitled to this otherwise exempt information where it forms part of the papers for a council meeting.

The "need to know"

It is a long-established principle of the common law that councillors are entitled to access information held by the authority of which they are a member, if they can demonstrate a "need to know" that information.

That "need" varies according to circumstances. It means that councillors with a general interest in getting hold of large amounts of information purely out of curiosity, on a "fishing expedition", are unlikely to be able to demonstrate this need.

But councillors able to clearly articulate how their role requires that they have information (for example, because they sit on a committee whose remit covers the information to which a request relates) should be able to access it. The judgment of the House of Lords in *R v Birmingham City Council, ex p. O* [1983] 1 AC 578 is usually taken to be the leading authority on this point.

Case law on this point has not evolved since the laying of the 2012 Regulations (or, indeed, since the adoption by councils of executive arrangements in 2000), so how the "need to know" principle would now be interpreted by the courts is impossible to predict.

The assumption remains that Monitoring Officers, in making a determination on this matter, will adopt a permissive approach which recognises councillors' democratic role – within the limits of legislation and the council's obligations to

others as regards confidentiality. You can find out more about your duties relating to confidentiality as a councillor by looking at your authority's councillor code of conduct, and by reviewing guidance on this subject prepared by the LGA (<https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#confidentiality-and-access-to-information->)

Ward business

Often, councils will have in their constitution provisions to share information with members where that information relates to the members' Ward. Where decisions are proposed, and action taken – of a significant and important nature – engagement with relevant Ward councillors is usually seen as an integral part of the process.

4. Information to which you have rights of access specifically as member of an overview and scrutiny committee

If you are a member of an overview and scrutiny committee in an authority which operates executive arrangements, you hold enhanced rights to access information where it relates to your scrutiny responsibilities.

The Local Government (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 says that:

“a member of an overview and scrutiny committee [...] is entitled to a copy of a document which is in the possession or under the control of the executive of that authority and contains material relating to [business carried out at a meeting of the executive, or an executive decision, including executive decisions made by officers].

[T]he executive must provide that document as soon as reasonably practicable and, in any case no later than 10 clear days after the executive receives the request.”

The Regulations go on to say that exempt or confidential information should be provided to the member in question if it relates to:

- An action or decision that that member is reviewing or scrutinising;
- Any review contained in any programme of work of an OSC.

In practice, this should be interpreted fairly permissively, but you should be prepared to demonstrate (as with other forms of information request) why it is that you are requesting the information in question, with reference to these criteria.

These rights are not available to members of overview and scrutiny committees in councils operating under the committee system. Here councillors will need to rely on the “need to know”, and on the general rights made available in s100F of the 1972 Act, described above.

Accessing documents, or accessing information?

Some of members' rights to access information are framed in terms of a right to access "documents" rather than information.

Documents contain information, some of which may be exempt from publication, some of which may not be.

Exempt information can be redacted from documents – and where a document as a whole might be confidential, exempt from publication or otherwise difficult to provide in its full form to councillors, it is possible that the information within that document which meets those criteria can be removed, or reworded, to remove those restrictions.

Whether this is possible or advisable will be a matter for the Monitoring Officer to determine. This includes making a determination if an officer considers that extracting information in such a way would involve a lot of work, or if doing so would remove important context.

If a committee wants to avoid discussion of an issue in private session, it might ask that a report be prepared that excludes the relevant exempt information. However, the Monitoring Officer might conclude that to do so would risk the report being inaccurate or misleading.

Making requests

Framing a request in the right way

Making a request – either as an individual councillor or a chair on behalf of a committee – requires care.

Motivation. You have to satisfy yourself that you understand why you are asking for certain information. Doing this serves two purposes –

- it will help you to frame and clarify your request (avoiding the risk that you will be seen as embarking on a “fishing expedition”);
- it will help to articulate to officers why you need the information.

Proportionality. A key tenet of access to information is the maxim that you don’t know what you don’t know. And the more you know, the more you know what you don’t know.

Having easy access to basic information about how the council is run makes it easier to be able to request information in a way that is specific and proportionate. It is easier to understand where the gaps in your knowledge lie, and to direct requests in a way that fills those gaps. You may need to be proactive in using publicly available information to learn what you can about a subject and using that knowledge to refine and clarify your requests for information which the council may not have published.

Making requests for officer reports at committee

The conventional way of getting hold of information is to ask for a report from an officer to be submitted to a committee.

This is, however, often ineffective unless care is taken in framing the request. We have frequent conversations with councillors who are frustrated that officer reports do not contain the right information. Councillors often worry that important information is being kept from them – although in our experience it is more likely that officers do not feel that understand what information is being asked for.

Requests are often made of officers that councillors want an update on a given matter at a scrutiny committee meeting, without further guidance being given. It is up to the officer in question to draft a report which involves guessing as to members’ motivations in wanting to know more about that subject. Inevitably, without clarity and guidance, officers may get this wrong. Sometimes, reports originally intended for other bodies, such as Cabinet, are superficially redrafted and repurposed for scrutiny committees, which will often not meet members’ needs¹.

This tends to be less of an issue for decision-making reports going to service committees, or to Cabinet. Here, information is being prepared to support a specific decision.

¹ An exception is where a scrutiny committee is deliberately undertaking pre-decision scrutiny work, where reviewing Cabinet reports is fundamental to the task at hand.

Good officer reports come from:

- Officers having political skills, and members having a relationship with officers such that officers can have greater confidence in what members' needs and motivations are;
- Members ensuring that their requests are clear and specific – perhaps posing specific questions that the report should answer or highlighting the objective for considering a certain matter at a meeting, which may derive from a scrutiny committee's overall priorities as expressed through the scrutiny work programme;
- Plenty of notice – scrutiny work programmes should highlight some time in advance where reports are expected and what their contents should be;
- Dialogue, and drafting – the chair will have a duty to review early drafts of documents to ensure that the final product meets their, and the wider committee's, needs.

What officers can do

Officers can help by publishing information proactively.

Information is made available “proactively” if a council publishes it, and/or brings it to your attention as a member, without being asked.

You might be consulted on an important forthcoming issue or decision or encouraged to attend a member briefing on an emerging or important matter.

Information may be made available to you in other ways. In previous material (for example, the “Good scrutiny guide” (2019)) CfGS has suggested to councils that they put in place arrangements to regularly share information with councillors that will help them to understand how the authority is run.

We have previously described this material as an “information digest”, but it does not need to be a single document, or a set of material “curated” or drafted especially for a councillor audience. Importantly, making this information available to councillors should not involve the spending of additional resources, but should help to give you more of an active sense of what is going on.

What information is made available on a regular basis is likely to be the subject of local agreement. However, as we have noted above, at its most basic level it is likely to include:

- performance information,
- financial information and
- information relating to risk.

This is information that will be produced at least quarterly, and sometimes more frequently. It may be produced and provided in a way that is quite technical, and you should be offered training and support to understand it to the extent that, in due course, you should be able to interrogate and understand it independently.

(You shouldn't expect to be able to understand this data automatically, or to feel inadequate that you can't do so. This material is produced by professionals for other professionals, usually not for a lay audience. It is entirely legitimate for it to be difficult to understand when you first encounter it).