

# **Standing Orders – Access to Information**

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**E1. Scope**

- E1.1 Standing Orders E1 to E11 and E20 (of these Standing Orders in relation to Access to Information) apply to all meetings of the Council, Boards, Council committees and sub-committees and to meetings of the Cabinet and its committees.
- E1.2 Standing Orders E12 to E18 (of these Standing Orders in relation to Access to Information) apply the Cabinet only (and in relation to associated documents).

**E2. Additional Rights to Information**

- E2.1 These Standing Orders do not affect any more specific rights to information contained elsewhere in this Constitution or the law. Any Council information provided to a Member must only be used by the Member for the purpose for which it was provided i.e. in connection with the proper performance of the Member's Council duties.

**E3. Rights to Attend Meetings**

- E3.1 Members of the public may attend all meetings of the Council, Council committees and sub-committees and the Cabinet and its committees subject only to the exceptions set out elsewhere in these Standing Orders.

**E4. Notices of Meeting**

- E4.1 The Council will normally give at least five clear working days notice of any meeting by posting details of the meeting at the Town Hall, Torquay. Details of all these meetings will also be available on the Council's website ([www.torbay.gov.uk](http://www.torbay.gov.uk)). In exceptional circumstances and where it is not possible to give five clear working days notice, the details of the meeting will be publicised on the date that the meeting is arranged at the Town Hall, Torquay and on the Council's website.
- E4.2 The Head of Governance Support, following consultation with the relevant Chairman/woman or the Civic Mayor where it is not possible to consult the relevant Chairman/woman, may alter the date of or cancel a meeting.

**E5. Access to Agenda and Reports Before and During a Meeting**

- E5.1 Subject to Standing Orders E10 and E11, the Council will make copies of agendas and reports open to the public and available for inspection on the Council's website and at the Town Hall, Torquay and other Council offices by prior arrangement, at least five clear working days before the meeting, or if the meeting is arranged on less than five clear working days notice on the date the meeting is arranged, but nothing in this Standing Order requires copies of any agenda item, or report to be open to inspection by the public until copies are available to the decision-maker and/or members of the Council.
- E5.2 Each member of the Council will be sent by electronic means, or in paper form where they have requested, agenda and reports for meetings of committees to which they have been appointed. Exempt and confidential reports will be provided to non-committee members in accordance with Standing Order E20, if requested on a 'need to know' basis.

- E5.3 If an item is added to the agenda later, a revised agenda and any associated reports will be sent by electronic means, or in paper form where they have requested, to relevant councillors and made available for inspection by the public as soon as it is published.
- E5.4 A reasonable number of copies of the agenda and reports to be considered at a meeting will be made available for the use of the public at that meeting.

**E6. Supply of Copies**

E6.1 Subject to Standing Orders E10 and E11, the Council will supply copies of:

- (i) any agenda and reports that are open to public inspection;
- (ii) any further documents necessary to indicate the nature of the items on the agenda; and
- (iii) if the proper officer thinks fit, any other documents supplied to councillors in connection with an item

to any person on payment of a charge for postage and any other costs.

**E7. Access to information after a decision has been made**

E7.1 The Council will make available copies of the following for six years after a decision is made:

- (i) the minutes of the meeting and/or any record of decisions taken, in accordance with Standing Order E17.;
- (ii) a summary of any proceedings when the meeting was not open to the public or where exempt or confidential information was disclosed;
- (iii) the agenda for the meeting; and
- (iv) reports that were considered when the meeting was open to the public.

This Standing Order shall also apply to decisions taken by the Leader of the Council or individual members of the Cabinet and Cabinet decisions taken by officers.

**E8. Background Papers**

E8.1 At the end of each report, the report author will set out a list of those documents (called background papers) which, in his/her opinion:

- (i) disclose any facts relating to matters on which the report or an important part of the report is based; and
- (ii) have been relied on to a material extent in the preparation of the report,

but will not include published works or those which disclose exempt or confidential information (as defined in Standing Order E10) or, in respect of any Cabinet reports, the advice of a political advisor.

E8.2 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 and these will also be available on the Council’s website.

E8.3 Standing Orders E8.1 and E8.2 shall also apply to Cabinet decisions taken by the Leader of the Cabinet, individual members of the Cabinet and officers.

## E9. Summary of Public’s Rights

E9.1 A summary of the public’s rights to attend meetings and to inspect and copy documents is set out in the Summary, Explanation and Interpretation at the beginning of the Constitution.

## E10. Exclusion of Access by the Public to Meetings

E10.1 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.

E10.2 Confidential information means information given to the Council by a government department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order or any Act.

E10.3 The public **may** be excluded from meetings upon the passing of a resolution 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. The public may also be excluded from meetings where in the reasonable opinion the Chairman/woman it is necessary to exclude them in order to maintain orderly conduct or prevent misbehaviour at a meeting.

E10.4 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 that Act.

E10.5 Exempt information means information defined in Schedule 12A of the Local Government Act 1972 (as amended (SI 2006/88) which falls within the following 7 categories (subject to any condition):

Category	Condition
1. Information relating to any individual.	Information within paragraph 1 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.

Category	Condition
2. Information which is likely to reveal the identity of an individual.	Information within paragraph 2 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.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).	<p>Information within paragraph 3 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. However, information under paragraph 3 is not exempt information if it must be registered under:</p> <ul style="list-style-type: none"> <li>(a) the Companies Acts (1985 and 2006);</li> <li>(b) the Friendly Societies Acts 1974 and 1992;</li> <li>(c) the Industrial and Provident Societies Act 1965 to 1978;</li> <li>(d) the Building Societies Act 1986; or</li> <li>(e) the Charities Act 1993.</li> </ul>
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.	Information within paragraph 4 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.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	Information within paragraph 5 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.

Category	Condition
6. Information which reveals that the Council proposes:	Information within paragraph 6 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.
(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 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.	Information within paragraph 7 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.

E10.6 Information falling within any of paragraphs 1-7 above is not exempt if it relates to proposed development for which the Council can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

E10.7 Where an Cabinet decision is to be made at a private meeting of the Cabinet or its committees, the decision-making body must publish a notice, including the reasons for the meeting to be held in private, at least 28 clear days before the meeting at the Town Hall, Torquay and on the Council's website. At least five clear days before a private meeting of the Cabinet or its committees, the decision-making body will publish a further notice including the reasons for the meeting to be held in private, details of any representations received about why the meeting should be open to the public and a statement responding to such representations.

E10.8 Where the date by which a meeting must be held makes compliance with Standing Order E10.7 impracticable, the meeting may only be held in private where the decision-making body has obtained agreement from:

- (i) the Chairman/woman of the relevant Overview and Scrutiny Committee; or
- (ii) if the Chairman/woman of the relevant Overview and Scrutiny Committee is unable to act, the Civic Mayor or the Deputy Civic Mayor if the Civic Mayor is unable to act

that the meeting is urgent and cannot be reasonably deferred.

As soon as reasonably practicable after the decision-making body has obtained agreement to hold a private meeting it must publish a notice including the reasons why the meeting is urgent and cannot reasonably be deferred at the Town Hall, Torquay and on the Council's website.

**E11. Exclusion of Access by the Public to Reports**

E11.1 If the proper officer thinks fit, the Council may exclude access by the public to reports or parts of reports that, in his/her opinion, relate to items during which (in accordance with Standing Order E10) a meeting is likely not to be open to the public. Such reports or parts of reports will be marked “Restricted and Not for publication” together with an explanation of the reasons why the author of the report considers that the report or parts of the report should be considered with the press and public excluded.

**E12. Procedure Before Taking Key Decisions**

E12.1 Subject to Standing Order E14 (general exception) and Standing Order E15 (special urgency) in relation to Cabinet key decisions, a Key Decision may not be taken unless:

- (i) the matter in question has been entered into and published in a Forward Plan;
- (ii) at least twenty eight clear days in the case of an Cabinet key decision have elapsed since the entry in the Forward Plan has been available for inspection by the public in accordance with Standing Order E13.1; and
- (iii) where the decision is to be taken at a meeting of the Cabinet or its committees, notice of the meeting has been given in accordance with Standing Order E4 (notice of meetings).

(A Key Decision is defined in Article 11.03 of this Constitution.)

**E13. The Forward Plan**

E13.1 A Forward Plan will be prepared on behalf of the Leader of the Council and entries will be published as soon as reasonably practicable once made or substantially amended. The Forward Plan will be available for inspection by the public at the Town Hall, Torquay and on the Council's website ([www.torbay.gov.uk](http://www.torbay.gov.uk)).

E13.2 The Forward Plan will contain matters which the Leader of the Council has reason to believe will be subject of a Key Decision to be taken by the Cabinet, a committee of the Cabinet, individual members of the Cabinet, officers, area committees or under joint arrangements in the course of the discharge of an executive function. The Forward Plan will also include all decisions to be taken by the Council, any Council Committee or Sub-Committee or any officer that would, if they were an Cabinet decision, be regarded as a key decision. It will describe the following particulars in so far as the information is available or might reasonably be obtained:

- (i) that a key decision is to be made;
- (ii) the matter in respect of which a decision is to be made;
- (iii) where the decision taker is an individual, his/her name and title (if any) or where the decision taker is a body, its name and details of membership;
- (iv) the date on which, or the period within which, the decision will be taken;

- (v) a list of the documents submitted to the decision-maker for consideration in relation the matter in respect of which the key decision is to be made;
- (vi) the address from which any documents can be obtained, subject to any prohibition or restriction on their disclosure; and
- (vii) that other documents relevant to decision may be submitted to the decision-maker and the procedure for requesting details of those documents as and when they become available.

In addition to the above, the Forward Plan may include:

- (i) the identity of the principal groups that the decision taker proposes to consult before taking the decision;
- (ii) the means by which any such consultation is proposed to be undertaken; and
- (iii) the steps any person might take if they wish to make representations to the decision taker about the matter on which the decision is to be made and the date by which those steps must be taken.

E13.3 Exempt information need not be included in a Forward Plan and confidential information cannot be included.

#### **E14. General Exception**

E14.1 Where the matter is likely to be a Key Decision and it has not been practicable to include it in the Forward Plan then the decision may still be taken if all of the following apply:

- (i) the decision must be taken by a specified date and it is therefore impracticable to defer the decision to allow for 28 clear days notice in respect of Cabinet key decisions;
- (ii) in respect of Cabinet key decisions, the Proper Officer has informed the Chairman/woman of the relevant Overview and Scrutiny Committee or if he/she cannot reasonably be contacted each member of the relevant Overview and Scrutiny Committee, by written notice, of the matter about which the decision is being made, together with the reasons why Standing Order E13 can not be complied with; or
- (iii) the proper officer has made copies of that notice available to the public at the offices of the Council and on the Council's website; and
- (iv) at least five clear working days have elapsed since the proper officer complied with (iii).

E14.2 If the provisions of Standing Order E14.1 cannot be met, the provisions of Standing Order E15 (special urgency) will apply.

E14.3 Where such a decision is taken at a meeting of the Cabinet, that meeting must be held in public.



**E15. Special Urgency**

E15.1 In respect of Cabinet key decisions, where the date by which a key decision must be made, makes compliance with Standing Orders E13 and/or E14 impracticable, the decision may only be made where the decision-maker has obtained agreement from:

- (i) the Chairman/woman of the relevant Overview and Scrutiny Committee; or
- (ii) if the Chairman/woman of the relevant Overview and Scrutiny Committee is unable to act, the Civic Mayor or the Deputy Civic Mayor if the Civic Mayor is unable to act.

E15.2 As soon as reasonably practicable, after the decision-maker has obtained agreement under Standing Order E15.1, the decision-maker must make available a notice to the public at the offices of the Council and on the Council's website, setting out the reasons that the decision is urgent and why it could not be deferred;

E15.3 The Leader of the Council will submit reports to the next appropriate Council meeting summarising the decision of the Cabinet taken in accordance with Standing Order E15.1 in the preceding three months. The report submitted must include:

- (i) particulars of each decision made; and
- (ii) a summary of the matters in respect each decision was made.

**E16. Reports to Council**

E16.1 If the Overview and Scrutiny Board thinks that a Cabinet Key Decision has been taken which was not:

- (i) included in the Forward Plan; or
- (ii) the subject of the general exception procedure (Standing Order E14); or
- (iii) the subject of an agreement with the Overview and Scrutiny Co-ordinator, the relevant scrutiny lead member or the Civic Mayor or the Deputy Civic Mayor under Standing Order E15;
- (iv) the Overview and Scrutiny Board may require the Cabinet to submit a report to the Council within such reasonable time as the Board specifies. The power to require a report rests with the Board, but it is also delegated to the proper officer, who shall require such a report on behalf of the Board when so requested in writing by any five members.

E16.2 The Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within seven days of the receipt of the written notice or the resolution of the Board, then the report may be submitted to the meeting after that. The report to the Council will set out the particulars of the decision, the decision taker and, if the Leader of the Council is of the opinion that it was not a Key Decision, the reasons for that opinion.

**E17. Record of Decisions**

E17.1 After any meeting of the Cabinet (or any of its committees) or Council meeting where the Leader of the Council makes an executive decision, the proper officer or, where no officer was present the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as practicable. The record of decision will include:

- (i) details of the decision maker;
- (ii) details of the decision including the date it was made;
- (iii) the reason for the decision;
- (iv) background information;
- (v) alternative options considered and rejected at the time of the decision;
- (vi) whether the decision is a Key Decision;
- (vii) whether the call-in procedure applies;
- (viii) any declarations of interest and, if applicable, a note of any dispensation granted;
- (ix) the published date; and
- (x) the anticipated implementation date.

E17.2 Where a Key Decision is taken without consideration of a duly completed report in the Council's usual format, the record of that decision shall, within the section entitled "background information" explain how and why the decision was reached and include the key risks relating to the decision and any relevant financial, legal or equalities implications.

E17.3 When a decision is made by the Leader of the Council or a member of his/her Cabinet, the decision shall be published as soon as reasonably practicable at the Town Hall, Torquay and on the Council's website. All councillors will be sent electronic copies of the records of all such decisions by the person responsible for publishing the decision.

E17.4 The notice of the decision will bear the date on which it is published and will specify that the decision will come into force and may be implemented on the expiry of five clear working days after the publication of the decision unless the call-in procedure is triggered (as set out in the Standing Orders in relation to Overview and Scrutiny).

**E18. Reports intended to be taken into account**

E18.1 Where the Leader of the Council or an individual member of the Cabinet receives a report which he/she intends to take into account in making any decision, then he/she will not make the decision until at least five clear days after receipt of the report. On the giving of such a report to an individual decision maker, the proper officer will give a copy of it to the Chairman/woman of the Overview and Scrutiny Board and make it publicly available at the same time.

**E19. Executive Decisions by Officers**

E19.1 As soon as reasonably practicable after an officer has made an Executive decision, the officer must produce a written statement which must include:-

- (i) details of the decision including the date it was made;
- (iii) the reason for the decision;
- (v) alternative options considered and rejected at the time of the decision;
- (viii) a record of any conflict of interest declared by any cabinet member who is consulted by the officer which relates to the decision; and
- (viii) in respect of any declared conflict of interest of the officer making the decision, a note of dispensation granted by the Monitoring Officer.

and this written statement will be available for inspection in accordance with E17.3.

E19.2 The provisions of Standing Orders E7 and E8 (inspection of documents after meetings) will also apply to the making of Cabinet decisions by officers. This does not require the disclosure of exempt or confidential information.

**E20. Access to Information – Members**

E20.1 All members will be entitled to receive reports and associated documents submitted to the Leader of the Council, individual members of the Cabinet, the Cabinet, committees of the Cabinet, officers, the Overview and Scrutiny Board or other committees, unless those reports and/or associated documents contain confidential and exempt information (where disclosure is not in the public interest), and

- (i) in the case of confidential information, disclosure would be contrary to a court order or government guidance; or
- (ii) a member has (in the reasonable opinion of the Monitoring Officer) a pecuniary interest in the subject matter of the report; or
- (iii) the report contains the advice of a political assistant.

E20.2 Members have a prima facie right to inspect Council documents so far as access to the documents is reasonably necessary to enable the Member to properly perform their duties as a member of the Council.

E20.3 The Member must set out their intention and objective for requesting the document. A Member does not have a right to a 'roving commission' to examine Council documents. Where there is a refusal by a Head of Service which holds the document in question, the Monitoring Officer will determine if the document shall be released.

E20.4 Members of Overview and Scrutiny are entitled to request documents which relate to their work (as identified in their work programme or in respect of reviews they are undertaking) and/or in accordance with the Local Authority (Executive

Arrangements) (Meetings and Access to Information) (England) Regulations 2012. Such requests must set out the intention and objective for requesting the document and be made via [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk) so that the support officer(s) can obtain the required documentation and provide the same within ten working days. If there is dispute, the Monitoring Officer shall determine if the request reasonably relates to the Overview and Scrutiny work programme/review and/or in accordance with the Local Authority (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

E20.5 When dealing with casework, the Member will seek written consent from the individual to access their personal data held by the Council. Where it is not possible to obtain written consent and the relevant service manager considers explicit consent from the individual is necessary due to sensitive personal data being disclosed, the Member will email the service manager with confirmation that they have spoken to the individual who has provided their explicit consent. Members, as individual Data Controllers will be responsible for ensuring that they have obtained the necessary consent. Alternatively or where explicit consent is not given, the casework will be handed over to the service department concerned without any personal data being released to the Member.

#### **E21. Freedom of Information Act 2000**

E21.1 So far as there is any conflict between these Standing Orders and the Freedom of Information Act 2000 the latter shall prevail.

#### **E22. Outside Bodies Reporting Protocol**

E22.1 The Council appoints Members to represent Torbay Council on a number of outside organisations. Representative Members are required to report on the activities of the outside organisation, the impact of those activities on the local community and Council service delivery, in order to keep the Council informed. Reports from Members on outside organisations will also allow the Council to evaluate the value and benefits of its continued membership. Members will not disclose any information that is confidential to that organisation.

E22.2 The Overview and Scrutiny Board will determine a programme for receiving Reports from Representative Members on outside bodies as part of its annual Work Planning. Where possible, Reports will be submitted following the annual meeting of the body, unless exceptional circumstances require a further report. Reports will be prepared by the Representative Member(s) so not to draw on officer resource and be submitted in writing to [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk) using the prescribed form (attached at Appendix 1 to these Standing Orders), and so far as is reasonably practicable, limited to two sides of A4. Reports will be considered by the Overview and Scrutiny Board to enable it to make recommendations to the Council or Cabinet, as appropriate.

E22.3 Where the Council nominates more than one Representative Member to an outside organisation, a Lead Representative Member will be nominated to be responsible for co-ordinating the Report to the Council (this can include a joint report by all members on the outside body being prepared). If an organisation does not have an annual meeting, then the Council's Lead Representative Member will report in the third

quarter of the year so that the Council can consider the benefits of retaining its representation.

**Outside Bodies - Member Reporting Form**

**Name of Organisation:**

**Elected Member:**

**Objectives of Organisation:**

**Role and responsibility of the Council representative?** (For example, Observer, Trustee, Director):

**What have you achieved through the relationship?**

**How often does the organisation meet?**

**How often have you attended meetings?**

**Have you been provided with any training to support your role?** If yes, please give details.

**What at key issues have arisen?**

**What is the performance against their key performance indicators and what action is being taken to address any red or amber performance?**

**What are the key risks for the organisation and what is being done to mitigate the risks?**