PART 4 – RULES OF PROCEDURE

ACCESS TO INFORMATION PROCEDURE RULES

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1. SCOPE

1.1 These Rules apply to all meetings of the Council, and its Committees and Sub-Committees. They cover Members' rights of access to information and the public's access to information. These Rules do not cover public rights of access to information under the Freedom of Information Act 2000, and the Data Protection Act 1998.

2. ADDITIONAL RIGHTS TO INFORMATION

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

3. RIGHTS TO ATTEND MEETINGS

3.1 Members of the public may attend all meetings subject only to the exceptions in these Rules.

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4. NOTICES OF MEETING

4.1 The Council will give at least five working days notice of any meeting by posting details on its website www.maldon.gov.uk.

5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

5.1 The Council will make copies of the agenda and reports open to the public available for inspection at the Council Offices, Princes Road, Maldon CM9 5DL and on its website, at least five clear working days before the meeting (excluding the day of publication of notice and the day of the meeting). Where reports or associated documents are prepared after the summons has been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to Members.

Note: The Local Government (Access to Information) Act 1985 provides that an item of business may not be considered unless either it is included on the published agenda for a meeting or by reason of special circumstances the Chairperson of the meeting considers it to be urgent. Once the agendas for meetings of the Council, its Committees and Sub-Committees have been produced, there is little scope for issuing supplementary reports. It is not permissible to simply create an agenda item for a report to follow at a later date.

6. SUPPLY OF COPIES

6.1 The Council will supply copies of:

(a) any agenda and reports which are open to public inspection;

(b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and

(c) if the Proper Officer thinks fit, copies of any other documents supplied to Members in connection with an item to any person on payment of a reasonable charge for postage and any other costs.

7. ACCESS TO MINUTES ETC. AFTER THE MEETING

7.1 The Council will make available copies of the following for six years after a meeting:

(a) the minutes of the meeting or records of decisions taken, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;

(b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;

(c) the agenda for the meeting; and

(d) reports relating to items when the meeting was open to the public.

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8. BACKGROUND PAPERS

List of background papers

(a) The Proper Officer will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his opinion:

(i) disclose any facts or matters on which the report or an important part of the report is based; and

(ii) which have been relied on to a material extent in preparing the report but does not include published works or those which disclose exempt or confidential information (as defined) and in respect of executive reports, the advice of a political advisor.

Public inspection of background papers

(a) The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

9. SUMMARY OF PUBLIC'S RIGHTS

9.1 A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and available to the public at the Maldon District Council Offices, Princes Road, Maldon, Essex CM9 5DL.

10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

Confidential information – requirement to exclude public

(a) 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.

Exempt information – discretion to exclude public

(a) The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed. In these circumstances, public access to reports, background papers and minutes will also be excluded.

(b) 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.

Meaning of confidential information

(a) 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 under another Act.

Meaning of exempt information

(a) Subject to the **conditions** detailed in 14 (b) below, exempt information is defined in the Local Government (Access to Information) (Variation) Order 2006 as information falling within any of the following categories:

	Category	Conditions/definitions
1.	Information relating to any individual	1. Conditions - see 14 (b) below
2.	Information which is likely to reveal the identity of an individual	1. Conditions - see 14 (b) below
3.	Information relating to the financial or business affairs of any particular person (including the authority holding that information)	1. Conditions - see 14 (b) below 2. Definitions - "financial or business affairs" includes contemplated as well as past or current activities
4.	Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or officer-holders under, the authority	1. Conditions - see 14 (b) below 2. Definitions - "employee" means a person employed under a contract of service "office holder" means the holder of any paid office appointments to which are or may be made or confirmed by the authority or any Joint Board on which the authority is represented or by any person who holds any such office or is an employee of the authority "labour relations matters" are as specified in paragraphs (a) to (g) of Section 218 (1) of the Trade Union and Labour Relations (Consolidation) Act 1992, i.e. matters which may be the subject of a trade dispute
5.	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings	1. Conditions - see 14 (b) below
6.	Information which reveals that 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 direction under any enactment	1. Conditions - see 14 (b) below
7.	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	1. Conditions - see 14 (b) below

(b) Exempt Information - Conditions

(i)	Information falling within Category 3 is not exempt information if it is required to be registered under the Companies Act 1985 the Friendly Societies Act 1974 the Friendly Societies Act 1992 the Industrial and Provident Societies Acts 1965 to 1978 the Building Societies Act 1986 (and in this context, "registered" means recorded in the public file of the Building Society); or the Charities Act 1993
(ii)	Information is not exempt information under any category if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.
(iii)	Exempt information under any category (and which is not prevented from being exempt by virtue of (a) or (b) above) 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.** The **public interest test** for the purposes of the exempt categories of information is about whether it better serves the interests of the public to withhold or disclose the information. The Information Commissioner's Office has published guidance in connection with the Freedom of Information Act which may be useful in undertaking that test (Freedom of Information Act Awareness Guidance No. 3 The Public Interest Test). Basically, something is considered to be in the public interest if it serves the interests of the public. Examples of the types of factors that would encourage disclosure are: • furthering the understanding and participation of the public debate of issues of the day; • promoting accountability and transparency of public authorities for their decisions; • promoting accountability and transparency in the spending of public money; • allowing individuals and companies to understand decisions made by public authorities that affect their lives and, in some cases, assisting individuals in challenging such decisions; and • bringing to light information affecting public health and safety. The main factors against disclosure of information are those set out in exemptions (1) to (7) themselves such as the need to maintain and not prejudice law enforcement matters. If disclosure of information would adversely affect these matters, then it is relevant to consider the possible adverse effect of disclosure against the positive benefits of openness. Consideration of the European Convention on Human Rights may also lead to a conclusion that information should not be disclosed because it might prejudice the right to a fair hearing.

11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

11.1 If the Proper Officer thinks fit, the Council may exclude access by the public to reports which in their opinion relate to items for which, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed.

11.2 Where an exemption is relied upon, any such report must contain the reasons why, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

12. MEMBER ACCESS TO INFORMATION

12.1 A Member has the same power of inspection of documents as members of the public.

12.2 A Member also has a statutory right of access to documents provided by Section 100F of the Local Government Act 1972. This provides that any document which is in the possession or under the control of the Council and contains material relating to any business to be transacted at a meeting of the Council or a Committee or a Sub-Committee must be open to inspection by a Member of the Council.

12.3 A Member has a common law right to be provided with or to inspect Council documents that it is reasonably necessary for them to see in order to carry out their duties as a Councillor. A Member wishing to exercise this 'need to know' right must inform the Chief Executive in writing of the document they wish to see together with information in support of their claim to have a 'need to know'. The decision of the Chief Executive as to whether or not the right is demonstrated shall be final.

12.4 All Members of the Council shall have access to all minutes and records of decisions.

13. MEMBER ACCESS TO EXEMPT OR CONFIDENTIAL DOCUMENTS

13.1 This Section deals with Member access to documents which contain confidential or exempt information, including agenda papers, background documents and minutes.

13.2 Members of a Committee or Sub-Committee will be provided with, and are entitled to receive, copies of confidential or exempt reports.

13.3 Subject to Rule 24 any Member of the Council may, upon request, receive a copy of a confidential or exempt report or agenda, or inspect an associated background document, on any matter except where the report or document contains information relating to staffing information, or where the identity of individual staff would be revealed.

13.4 Any Member wishing to receive or inspect a report or document containing information referred to in Rule 23 must demonstrate a 'need to know' in accordance with the process set out in Rule 19.