

SECTION E2 (a)

ACCESS TO INFORMATION

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Responsible Officer	Section Issued	Section amended/updated	Review Date
Assistant Director Planning & Improvement	December 2014	December 2016 July 2019 June 2021	

A. Access to Information legislation relating to meetings of the Authority

The Local Government Act 1972, (amended by the Access to Information Act), sets out the rights of access to meetings, agenda and papers, both for members of the public and elected Members.

Detailed information about this legislation relating to local authority meetings can be found at: <http://www.legislation.gov.uk/ukpga/1972/70/part/VA>

i. Exempt/confidential information

The Authority may exclude the public, (including the press), from a meeting whenever it is likely that there would otherwise be a disclosure of exempt information to the public.

The descriptions of Exempt Information are:

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 the 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 -
 - 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 or to be taken in connection with the prevention, investigation or prosecution of crime.

Information which falls within any of these paragraphs 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 and press must be excluded from a meeting when it is likely that confidential information would be disclosed in breach of the obligation of confidence. Confidential information is that which has been provided on a confidential basis by a government department and information the disclosure of which has been prohibited by statute or by Court Order

Whenever it is likely that a report contains exempt (or confidential) information, the relevant report on the agenda will specify the particular paragraph(s) of the exemption that should be applied, and the approval of the Fire Authority or Panel will be sought to exclude the press and public during consideration of those reports.

Members are reminded that in law, and also under the Code of Conduct for Members and the Authority's Standing Orders, they should not disclose any information that is deemed to be exempt from publication, or which is confidential.

Members are also reminded of the need to comply with the Data Protection Act requirements and not disclose any personal information.

Information about Members' need to maintain confidentiality is covered in the Member Code of Conduct.

ii. Publication of notices, agendas and reports for meetings

The Local Government Act 1972, (amended by the Access to Information Act), also sets out requirements about the publication of notice of meetings, as well as agenda and reports.

Written time and place of the meeting must be given at least five clear working days (not including Saturdays, Sundays, and Bank and Public Holidays), before the meeting, or if the meeting is convened at shorter notice, then at the time that it is convened. A copy of the agenda and reports must also be available at least five clear working days before the meeting. A reasonable number of the agenda and reports is always made available at meetings to which the public may attend.

The press and public also have a right to inspect agenda, reports and minutes (that do not contain exempt or confidential information), for a period of up to six years. They may also inspect any background papers referred to in reports, as soon as the reports are published, for a period of up to four years. Any request to inspect documents should in the first instance be made to Democratic Services.

iii. The Public Bodies (Admission to Meetings) Act 1960 and the Local Audit and Accountability Act 2014 (section 40 – Access to Local Government meetings and documents)

Amendments have been made to the Public Bodies (Admission to Meetings) Act 1960 and the Local Government Act 1972 that allow members of the press and public to film, photograph or make sound recordings of proceedings at a meeting of the Authority or its Panels/Committees. This includes the use of social media such as tweeting and blogging to report the proceedings of all meetings that are open to the public. It is advisable that anyone wishing to do so informs Democratic Services (democraticservices@esfrs.org) so that reasonable facilities may be provided.

Any person can provide a written commentary during a meeting as well as an oral commentary outside or after the meeting. The rules do not permit oral commentary to be provided during a meeting as this would be disruptive to the good order of the meeting. The Authority may require any such recording to stop if at any stage the meeting becomes a private meeting.

The law of the land applies, including the law of defamation and the law on public order offences. Freedom of speech within the law should also be exercised with personal and social responsibility, showing respect and tolerance towards the views of others.

The regulations can be found at:

<https://www.legislation.gov.uk/ukxi/2014/2095/contents>

Guidance can be found at:

<https://www.gov.uk/government/publications/open-and-accountable-local-government-plain-english-guide>

iv. The Openness of Local Government Bodies Regulations 2014 (SI 2014 No. 2095)

Recording of Officer Decisions

The Openness of Local Government Bodies Regulations 2014 introduce new requirements regarding officer decisions. With effect from 6 August 2014, certain Officer decisions have to be recorded and published. The record of the decision has to include prescribed information.

This depends on whether the officer decision is taken under specific express authority or general authorisation. Specific express authority is authority given to an officer by a resolution of the Authority or a Panel (committee). This

is ad-hoc authority for an officer to take action or make a decision on behalf of the Authority. It is not ongoing, permanent authority to be exercised as and when needed. General authorisation is authority given to Officers under the scheme of delegations to Officers, which forms part of the constitution.

Any decision taken under specific express authority always has to be recorded and published irrespective of how important it is.

If an Officer decision is taken under general authorisation, the decision needs to be recorded if it falls under one or more of the following 3 categories:

- a) granting a permission or licence;
- b) a decision that affects the rights of an individual; or
- c) a decision that involves the award a contract or incurring of expenditure which materially affects the Authority's financial position.

Officer records have to include:

- The date the decision was taken;
- The decision taken along with the reasons for the decision;
- Details of alternative options considered;
- If the decision was under specific authority, the name of any Member who declared an interest at the meeting when the authority to the officer was granted.

There is no requirement to publish confidential or exempt information. This would be decisions covered by the category of exempt information (the same categories used for Authority/Panel reports.) There is no requirement to issue a record of a decision under the regulations if there is existing legal requirement to record and publish the decision with reasons.

The regulations require the record to be produced as soon as reasonably practicable after the decision is made. Failure to produce a record could be the subject of legal challenge or a complaint to the Ombudsman. Refusing to provide written records on request or refusing access to background papers is an offence under the regulations.

The regulations can be found at
<http://www.legislation.gov.uk/uksi/2014/2095/contents/made>

B. Accounts

Any Member of the Authority, and any local government elector within the area of East Sussex and the City of Brighton & Hove, may inspect the

accounts of the Fire Authority. Under the provisions of the Local Audit and Accountability Act 2014, they may also inspect documents related to the accounts, such as all books, deeds, contracts, bills, vouchers and receipts, provided that this does not contain personal information. Further details about the accounts can be obtained from the Treasurer.

For further information about people's rights to see the accounts, see www.gov.uk/government/policies/making-local-councils-more-transparent-and-accountable-to-local-people/supporting-pages/peoples-rights-to-see-council-accounts

C. Reports of the Local Government Ombudsman

The Commission for Local Administration, which runs the Local Government and Social Care Ombudsman (LGO), was set up under the Local Government Act 1974 (amended in 2007). The LGO is appointed by Her Majesty the Queen. The LGO has the same powers as the High Court to obtain documents, and although the LGO's decisions cannot be appealed, they can be challenged in the High Court on a point of law. The LGO may make recommendations relating to the complaint, but the LGO has no powers to enforce any action. The findings of the LGO are published, but the people in the report are not identified, and the LGO has discretion not to publish in certain circumstances. Findings are published no earlier than three months after the date of the decision.

Elected Members and members of the public can inspect the reports of the LGO on the Local Government Ombudsman website, along with information about how this service operates at: <http://www.lgo.org.uk/>

D. Freedom of Information Act 2000 and the Environmental Information Regulations 2004

The aim of this Act is to encourage more open and accountable government by establishing a statutory general right of access to official records and information held by public authorities.

The public has the right under the Freedom of Information Act 2000 to request, in writing, information held by the Authority. The Environmental Information Regulations 2004 enables the public to make requests (not necessarily in writing) for information. East Sussex Fire & Rescue Service has a history of openness in terms of providing information to whoever seeks it. Provided the rights of the individual employee or service user are protected, and personal information is not disclosed, we should be able to respond to all reasonable requests.

The Freedom of Information Act requires all organisations to adopt and maintain a publication scheme that sets out key corporate documents that are available on request. The East Sussex Fire Authority publication scheme has been adopted and is published on our website at: <http://www.esfrs.org/freedomOfInformation/>.

The Information Commissioner's Office (ICO) is an independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. In addition to providing guidance to organisations and the public, the ICO works closely with the Ministry of Justice and can take action against organisations who fail to comply with the requirements of the relevant legislation and guidance, including the Data Protection Act, Environmental Information Regulations and Freedom of Information Act. The ICO's action can include, amongst other things, issuing enforcement notices, criminal prosecutions against individuals and organisations, and imposing fines, which can be substantial.

Information on the Freedom of Information Act is available on the Information Commissioner's website at: www.ico.org.uk

Members are reminded that information held by them in their capacity as a Member of the Authority would be disclosable under the Freedom of Information Act, (subject to it not being personal data or confidential data), and Members are asked to appropriately destroy data as soon as possible. Further information and assistance with destroying documents can be obtained from Democratic Services.

E. Additional Rights of Elected Members

Elected Members of the Authority may have rights under common law to inspect such documents held by the Authority as are reasonably necessary for them to perform their duties.

Additionally, the following rights are given to elected Members:

- i. Any document in the possession or under the control of the Authority which contains material relating to any business to be transacted at a meeting is open to inspection by a Member of the Authority subject to (ii) below:
- ii. Where a document discloses certain specified categories of exempt information it need not be open to inspection by a Member. These categories relate mainly to personal information relating to crime or legal proceedings, or matters concerned with negotiations or industrial relations.

A Member must have good reasons for access. Generally, when a Member of the Fire Authority needs access, membership of the Authority will give him or her a good reason for access to all ESFRS records irrespective of their categorisation, but subject to the preservation of confidentiality by the Member. In other respects, the entitlement of Councillors to access is the same as that of ordinary members of the public. Councillors do not have the right to a “roving commission” to go through ESFRS records. Information is provided on a ‘need to know’ basis.

Members are also referred to Standing Order 34 (Inspection of Documents). Members can make application to the Monitoring Officer to inspect any document that has been considered by a Panel of the Authority so long as it is for the purpose of carrying out their duty as a Member.

Members should not knowingly inspect or ask for documents relating to a matter in which they have a disclosable pecuniary interest or any other interest required to be disclosed under the Authority’s Code of Conduct for Members.

F. GDPR & Data Protection Act 2018

Personal data is subject to the Data Protection Act 2018. Personal data includes any information about a living identifiable individual, including their name, address, phone number, E-Mail address, and any other information about the individual. Any organisation holding paper or electronic data that relates to identifiable living individuals must comply with the legislation. This will include data held by Members.

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Members must ensure that they do not retain any personal data about individuals either in paper or electronic form any longer than is necessary, and must ensure that they do not release any information about individuals. Further information about the implementation of the GDPR & Data Protection Act can be obtained from the DCFO. Democratic Services can assist with the destruction of documents.

Information on the GDPR & Data Protection Act is available on the Information Commissioner’s website at: www.ico.org.uk