

Lifting the lid on Town Halls



Expenses, contracts and spending

Richard W Orange, Orchard News Bureau Ltd



© ONB 2010



The legislation

• Audit Commission Act 1998:

- Permits inspection and copying of local government accounts ("contracts, bills, vouchers, deeds and receipts") for the preceding financial year.
- 20 working days in England (Accounts & Audit Regs 2003)
- 20 working days in Wales (Public Audit Wales Act 2004)
- 15 working days in Scotland (LA Accounts Regs 1985)
- 20 working days in N Ireland (Accounts & Audit Regs 2006)
- The dates must be advertised in a Public Notice in a newspaper circulating in the council/police authority area.



Statutory authorities

• Audit Commission Act 1998:

- s.14 - right to inspect statements of accounts (*by elector*).
- s.15 - right to inspect and make copies of all contracts, books, deeds, vouchers, receipts, bills and invoices under audit (*by 'persons interested'*)
- s.15 - details of salaries, benefits and pension payments to current/former staff are exempt.
- s.15 - right to question the auditor (*by elector*)
- s.16 - right to object to the accounts (*by elector/agent*).
- 'Persons interested' defined in law as persons making a direct financial contribution to the authority's accounts (council tax payer) or local elector, or representatives of businesses in the area making indirect contributions to the authority's accounts through uniform, non-domestic business rates.



Statutory authorities



- **Accounts and Audit Regulations 2003**
 - r.14 – inspection increased from 15 to 20 days (England).
 - r.15 – prohibits alterations to accounts during 20-day period.
 - r.22 – breach of regulations an offence.
- **Accounts and Audit Regulations 2007**
 - s.15 amended to allow 'redaction' of personal information concerning third parties (eg: service users) subject to the agreement of the external auditor.
- **Accounts and Audit Regulations 2009**
 - r.7 – accounts to include formal note detailing (by job title) employees earning £50k plus (specifying bonuses, allowances, severance payments & fees), and 'heads of paid service' receiving £150k plus. Exemption (for 2010 inspection period) for pre-existing confidentiality clauses in contracts



Statutory authorities



- **Local Authorities (Members Allowances) Regulations 2003**
 - s.15 – requirement for councils to maintain and make available a public register detailing all payments/expenses to councillors.
- **Local Government Act 2000**
 - s.81 – requirement for councils to maintain and make available a public register detailing personal and financial interests of all elected members and co-opted members.
- **Local Authorities (Model Code of Conduct) Orders 2001**
 - pt.3, s.13 – requirement for councillors to disclose employment, business, property, investment, contractual, political sponsorship, charitable, trade union, and professional interests.



Recent legal cases



- **R. v Bristol City Council ex-parte HTV (2004)**
 - Elias J: Councils can not refuse to disclose information because they disapprove of the use to which the information may be put (eg: a TV documentary).
- **R. (on applic of Orange) v Lincolnshire County Council (2005)**
 - Leveson J: Councils can not use the Data Protection Act to withhold details of the annual accounts from public inspection.
- **Oliver v Northampton Borough Council (1986)**
 - Mann J: A council can not discharge its obligations by providing a summary of the accounts to an elector, in response to a request to view the detailed books.



The Veolia challenge



- ***R. (on applic of Veolia ES Nottinghamshire) v Nottinghamshire County Council (2009)***
 - Heard in the High Court, August 2009
 - Cranston J: The legislation provides no mechanism for contractors or suppliers to compel councils to redact information from the accounts on 'commercial confidentiality' grounds.
- ***R. (on applic of Veolia ES Nottinghamshire) v Nottinghamshire County Council (2010)***
 - Heard in the Court of Appeal, July 2010 (judgment reserved).
 - Application by Veolia for commercial confidentiality and trades secrets to be exempt from inspection, and for electors to be restricted in their use of the information.



The Veolia challenge



- ***Philip Coppel QC (for Veolia)***
 - The auditor is independent of the local authority and is qualified.
 - The right to inspect and copy accounts is not an opportunity for a local government elector to duplicate what the auditor does.
 - The local government elector's role is to raise matters which are helpful to the auditor.
 - The information copied is only to be used in support of making an objection of the accounts to be audited.
 - The principle is that anyone doing business with a council will want to be very sure that, when they provide confidential information to a public authority, that confidentiality is maintained.
 - s.15 lacks a sufficient clear intention to displace the protection afforded to commercially confidential information by the law.
 - The right of access does not extend to such information.



The Veolia challenge



- ***Mr Peter Oldham (for the Audit Commission)***
 - Given our remit to support cost effective local government, we feel a result permitting untainted use of confidential information is not going to support cost effective local government.
 - The reason is that, if the information becomes generally available, it might affect the value that a local authority got from a particular contractor.
 - My learned friend [Mr Coppel] says the information [Veolia] seek to protect is commercially valuable.
 - In other words, if it were to be released generally then clearly that could have a damaging effect on the prices available for that type of service.
 - If the court were to say that the requirement is that the information should only be used for the purposes of the 1998 Act, then I don't think that would pose a problem.



The Veolia challenge



- **Mr Clive Lewis QC (for Notts county council)**

- [Either] it gives a right of access under the Act, so that all information whether confidential or not is obtained for the purpose of the Act, or once you have got the information then you are free to do what you want.
- You can sell it, you can give it to a journalist, and you can show it to any other person.
- Parliament has not specified the interpretation.
- You can say that it is implicit that the information is to be used for the purposes of the Act
- There is the question of how it is to be decided that information is confidential. How does the council know? How does the [elector] work it out?



The Veolia challenge



- **Mr Timothy Pitt-Payne QC (for 1st interested party)**

- There is no express limitation as to the use of the information.
- Electors have a financial interest and the Act encourages the public to scrutinise the accounts. If there is a contract with the council then the electors are paying for it.
- If there is a restriction about the purpose or intention about how the information can be used, that would suggest the local authority can ask questions before the information is disclosed. That would have a chilling or limiting effect on the exercise.
- What if they went to the Press with the information so there would be a story about the authority's accounts? Is that a proper or an improper act?
- What if the local government elector has a friend in another authority and wishes to show the information to that friend who can think about whether similar enquiries or questions could be raised?



The Veolia challenge



- **Lord Justice Rix**

- I see all of that but one has to ask oneself why an elector or interested person would be free to use the information for any purpose at all, when the auditor has wide powers and is qualified and is independent, and is himself limited [by a duty of confidentiality] in section 49 of the Act.

- **Lord Justice Jackson**

- This is an additional right given to electors. It may be that the answers [to Mr Pitt Payne's questions] is no [because] the elector is not the primary mechanism for ensuring good governance. Electors do not make a valuable contribution [to a contract].



The Veolia challenge



- **Lord Justice Rix**
 - Supposing you have a case of fraud and the fraud is achieved through a sham contract. Once you get the contract you realise it is all a subterfuge to cover an illicit payment. You need to see the contract.
- **Lord Justice Jackson**
 - Suppose there is confidential information but the ratepayer or person interested has got wind of some terrible fraud that is going on. It is wrapped up with documentation that the contracting party has sought to hide by describing it as confidential.



The legislative context



- **Right of 'interested persons' to inspect and make copies of the accounts is long-standing**
 - Provisions date back to Public Health Act 1848.
 - Encompasses voters, taxpayers and local companies paying uniform/non-domestic business rates.
 - Electors may appoint agents (*R v Bedwelty UDC 1933*).
- **Right to inspect the accounts is self-standing but nevertheless integral to the audit process**
 - Right to inspect/copy accounts is not conditional on a person raising a matter with the auditor – as it is in the public interest that any (qualifying) 'interested person' may inspect the accounts. Your enquiries are part of the audit process.
 - Journalists have no self-standing rights to inspect the files.



Administrative resources



- **The Council's Constitution**
 - Details financial regulations regarding procurement policies, procedures and record-keeping. Available online.
- **Statements of Accounts**
 - Schedules of expenditure and income (with explanatory notes) divided along departmental and project lines. Generally available online.
- **Credit of reserve notes**
 - Details outstanding debts and payments for works carried out during the financial year in question, which will be included in the subsequent financial year's accounts. Available from council treasurer/chief accountant.



Practicalities and hurdles



• Availability of documents

- Contracts, bills, invoices, receipts etc. are usually stored at various locations, such as schools (invariably closed during the statutory public inspection periods). Many councils 'outsource' financial accounting services to private sector companies, and records may be processed and stored 100s of miles away.

• Notification of inspection period

- All authorities must publish a Public Notice in an edition of a paid-for newspaper circulating in the locality, detailing inspection dates, contacts and venues. Dates change every year. Very few authorities publish the details on the internet.
- Telephone enquiries for details can be problematic without the name of the responsible official.



Practicalities and hurdles



• Familiarity with procedures

- Local council and police authority budgets/accounts are divided and then sub-coded along departmental lines – eg: Corporate Services, Adult Services, Recreation and Leisure, Legal Services, Business Services, Planning, Chairman's and Members Services. Police authority budgets and accounts are also divided along operational and non-operational lines.

• Limitations of data in spreadsheets

- Spreadsheets will give a partial picture about items of interest – eg: Mayoral entertainments budget. But these will record sums that coincide with coding systems in use. The council will not record costs such as 'officer/member time spent on planning the new leisure centre'. Spreadsheets are useful, but the invoices, bills, receipts and contracts tell the 'real' story.



Smokescreens and remedies



• "All requests must be put in writing"

- Local councils and police authorities may tell electors and taxpayers to conduct all enquiries by email or post (enabling officials to filter through the paperwork and send you records they think you should see). But that is not what the law says.

• "You must make an appointment"

- You have a right to view and copy the accounts in person. The Public Notice may claim that people must make appointments before visiting the Town Hall, but that is not what the law says.

• "We need to get permission to show you that"

- Local authorities may claim they must check with companies and individuals named in invoices and contracts, before allowing access. But that is not what the law says.



Smokescreens and remedies



- **“You are only allowed to see the figures”**
 - Local authorities may tell electors and taxpayers they are entitled to view the statements of accounts and nothing more. But that is not what the law says.
- **“You must tell us why you are asking for that information”**
 - You have a right to view and copy the accounts. Councils and police authorities may claim a right to question your motives or interest in the files, but it is none of their business and they are not allowed to stop you viewing public accounts.
- **“We can’t show you that, because it is about members of staff”**
 - Local authorities may claim that any financial document identifying a current or a former member of staff is exempt from viewing. But that is not what the law says.



What you can do about it



- **Preliminary research**
 - Find out when the annual inspection is to take place and have a copy of the Public Notice sent to you.
 - Request spreadsheet data in advance of the 20-day period.
- **During the inspection period**
 - Insist on direct access to all relevant contracts, invoices, receipts etc. – by departmental budget code and description.
- **Do not tolerate any obfuscation or obstruction**
 - Keep written notes of all communications with officials.
 - It is an offence from an official to interfere with a persons' legitimate right to view and copy the accounts.
 - Deal with officials identified in the Public Notice. Do **not** allow your access to documents to be handled by a Press Officer.



Scope for reform?



- **Inspection period**
 - Public inspection from the end of the financial year (April) to the close of the accounts (end of Sept).
- **Publicity**
 - Public Notices to be placed on council websites.
- **Confidentiality**
 - Standard contracts to refer to public inspection rights.
- **Probity**
 - Contracts above £x to be listed in register with tendering 'log'.
 - Online records of councillors' monthly expenses, attendance records and entries in register of interests.


