

## Investigating local govt finance

### An update

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## Resumé of the legislation

- **The Audit Commission Act 1998**
  - (as amended by the Accounts and Audit Regs 2011)
- S.15 – “interested persons” (local electors, council tax payers, representatives of companies paying business tax in the particular locality) may inspect and copy the accounts of
  - Local councils in England
  - Police authorities in England
- Including contracts, vouchers, receipts, bills and deeds “relating to” the accounts of the preceding financial year
- For **20** working days as advertised by the local authority in a public notice in the local press **and on its website**

## Resumé of the legislation

- Interested persons may not examine personal information about employees or ex-employees relating to the accounts arising by reason of their employment (ie: salary details and pension payments).
- Interested persons may not examine personal information about third parties (but the external auditor must consent to any redaction).
- Local authorities may not amend the documents once the 20-day inspection period is underway, without the auditor’s consent.
- Anyone obstructing an individual, exercising his/her legitimate right to inspect the accounts, commits a **criminal offence**.

## Resumé of the legislation

- **Common law principles**
- Oliver v Northampton Council (1987) An authority cannot supply a summary of the accounts in place of docs requested.
- HTV West v Bristol City Council (2004) An authority has no power to decline access to documentation because it disapproves of the purpose for which the data is sought.
- R W Orange v Lincs County Council (2005) A council is not entitled to use the Data Protection Act to withhold information that falls open to release under the ACA.
- Veolia v Notts County Council (2010) An authority may redact ‘commercially sensitive’ information, but only to protect legitimate trade secrets or genuine confidential information.

## Variations across the UK

- In Scotland the public inspection period is limited to 15 working days, but 20 w/days in Wales and N Ireland.
- No requirement in Scotland, Wales or Northern Ireland for local authorities to advertise inspection dates online. Few do.
- DCLG has now consulted on proposals to remove local electors' rights across England to submit formal objections to item/s in the accounts (under s.16 & 17).
- These objections have triggered investigations by external auditors, and in some cases have led to 'Public Interest Reports' exposing misconduct and corruption.
- Govt considering enhancing powers of the 'Ombudsman'.
- Under review in Scotland, but not Wales and N Ireland.

## Unknowns

- Audit Commission (England) is to disband in 2012. Private audit firms are to assume responsibilities for examining and approving local govt accounts, reporting to NAO.
- National Audit Office (Wales), Audit Scotland and the Northern Ireland Audit Office to continue.
- No details on the future rights of electors in the audit process, once Police Authorities in England are disbanded.
- No long-term commitment from Govt to retain local people's rights in England to inspect and copy annual accounts.
- Govt ordered councils to publicise inspection dates online, but the 2011 Regs repealed the 2003 clause which made any failure to comply with **any** of the Regs an offence!

## Is this 'right' past its sell by date?

- The plain fact is that only a handful of local taxpayers and local electors take up the opportunity to inspect and request copies of financial documents.
- It tends to be representatives of campaign groups.
- Or journalists, mainly interested in the 'bottom line' total (eg: how much did the police spend on informants last year).
- Journalists seldom enforce their rights through the courts.
- Local authorities tend to deflect enquiries down the FOIA route, because it gives officials greater scope to redact information under the range of exemption clauses.
- Or insist that journalists channel their requests through the 'media office', and the journo is happy to sit back and wait.

## Do you agree with this press officer?

- "We make this information available to the public all year round, under the Freedom of Information Act and we would always respond to an enquiry from a journalist asking us a question about the accounts.
- "We do not want to limit this access to the 20 days under the audit rules because we want to be open and transparent about how we spend the money.
- "The Freedom of Information Act has basically overtaken the audit rights because we have to respond to requests and not simply to requests concerning the accounts for the last financial year. You can ask for information from any year."
- *Press Officer, a major unitary council in England (last week).*