



BROMLEY CIVIC CENTRE, STOCKWELL CLOSE, BROMLEY BRI 3UH

TELEPHONE: 020 8464 3333

CONTACT: Graham Walton  
[graham.walton@bromley.gov.uk](mailto:graham.walton@bromley.gov.uk)

DIRECT LINE: 0208 461 7743

FAX: 020 8290 0608

DATE: 19 September 2013

## **GENERAL PURPOSES AND LICENSING COMMITTEE**

**Meeting to be held on Wednesday 25 September 2013**

**Please see the attached report marked “to follow” on the agenda.**

### **6 PUBLICATION OF INTERNAL AUDIT REPORTS (Pages 3 - 12)**

*Copies of the documents referred to above can be obtained from*  
[www.bromley.gov.uk/meetings](http://www.bromley.gov.uk/meetings)

This page is left intentionally blank

# Agenda Item 6

Report No.  
RES13164

London Borough of Bromley

PART ONE - PUBLIC

---

**Decision Maker:** GENERAL PURPOSES AND LICENSING COMMITTEE

**Date:** 25 September 2013

**Decision Type:** Non-Urgent Non-Executive Non-Key

**Title:** PUBLICATION OF INTERNAL AUDIT REPORTS

**Contact Officer:** Graham Walton, Democratic Services Manager  
Tel: 0208 461 7743 E-mail: graham.walton@bromley.gov.uk

**Chief Officer:** Mark Bowen, Director of Corporate Services

**Ward:** N/A

---

1. Reason for report

- 1.1 After consideration of the issue by Executive and Resources PDS Committee, the Constitution Improvement Working Group has recommended to this Committee that a policy of publishing all Internal Audit reports is adopted, except where exemptions apply.

---

2. **RECOMMENDATIONS**

**(1) That the Committee considers the recommendation from the Constitution Improvement Working Group to establish a policy that all Internal Audit Reports are published in full by default, except where exemptions apply, that Audit Sub-Committee is informed of the reasons for non-publication of any reports and that these be subject to review every six months.**

**(2) That Audit Sub-Committee be requested to approve the details of the new arrangements.**

## Corporate Policy

1. Policy Status: New Policy: Bromley does not currently publish Internal Audit reports
  2. BBB Priority: Excellent Council:
- 

## Financial

1. Cost of proposal: Estimated Cost: The proposal will involve additional officer time, but this has not been quantified as yet.
  2. Ongoing costs: Recurring Cost:
  3. Budget head/performance centre: Internal Audit
  4. Total current budget for this head: £552k including 325k net cost for fraud partnership.
  5. Source of funding: General Fund, Admin subsidy, Admin Penalties, Legal cost recoveries, provision of sold services to academies.
- 

## Staff

1. Number of staff (current and additional): 6.4fte including 0.5fte to cover risk management
  2. If from existing staff resources, number of staff hours: N/A
- 

## Legal

1. Legal Requirement: None:
  2. Call-in: Not Applicable: This report does not involve an executive decision.
- 

## Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Not Applicable
- 

## Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: Not Applicable

### 3. COMMENTARY

- 3.1 At the meeting of the Executive and Resources PDS Committee on 27<sup>th</sup> March 2013 Councillor Nicholas Bennett requested guidance from officers on when Internal Audit reports could be published. A note was prepared by the Director of Corporate Services and the Head of Audit which was circulated for the Committee's meetings on 5<sup>th</sup> June and 18<sup>th</sup> July and also circulated but not considered by the Audit Sub-Committee at its meeting on 6<sup>th</sup> June. A copy of the note is attached as appendices A and B.
- 3.2 At the PDS meeting, Members expressed the view that Bromley should be more transparent and open in making these reports available. An informal survey of other authorities, mainly in London, showed that although some did not publish any information about Internal Audit reports, many were more transparent than Bromley and published summaries of limited/no assurance reports in their committee reports. One authority, LB Newham, published limited/no assurance reports in full in committee reports.
- 3.3 Members also commented that the House of Commons Public Accounts Committee published extensive information in its reports, and that publication would not necessarily reveal opportunities for other potential fraudsters, as gaps in the Council's procedures would have already been addressed. Officers advised that it was indeed essential to ensure that potential gaps were closed down before information was published, and that there was also a concern not to have an adverse impact on confidence in the Council amongst both residents and other organisations and businesses.
- 3.4 The view from the Head of Audit is that publication of full audit reports that have to be appropriately sanitised to remove confidential information may not be the best way forward for a number of reasons: the flow of the report following removal of confidential data may result in impact and meaning being lost; time taken to sanitise reports; weaknesses in system controls may be exploited; public confidence in the section that had been audited may be undermined as they could misconstrue audit findings to service delivery issues; staff morale may be undermined; staff may be reluctant to give audit full information if they know that reports may be in the public domain; naming schools may have a detrimental affect. However, a number of London Boroughs do summarise audit reports where a limited or nil assurance opinion has been given. This option is feasible by reporting to Audit Sub Committee through the medium of the Progress Report.
- 3.5 Of the various exemptions to publication referred to in Appendix A probably the most complex is around the publication of personal information. A summary of some of the key considerations and a recent case is attached in Appendix B. In short, where there is a public interest then there may be, particularly for senior employees (or former employees), scope to include personal data in a disclosure.
- 3.6 The issue was then considered by the Constitution Improvement Working Group at its meeting on 29<sup>th</sup> July 2013. Officers advised that some reports would need considerable redactions, and that many of the reports that have been of greatest interest to Members in recent years would not have been suitable for publication.
- 3.7 Councillor Bennett favoured a simple policy of publishing all Internal Audit reports by default unless any of the key exemptions applied. Even if an exemption did apply, he considered that Audit Sub-Committee should be informed of the reasons for non-publication and that these should be reviewed every six months. He also proposed that the policy be backdated to include reports produced in recent years.
- 3.8 The Working Group did consider whether it would be adequate to just publish a summary of each report, an approach taken by a number of local authorities. However, Members concluded

that this would only be likely to stimulate interest in the details contained in the full reports. Members also asked for guidance on how long it would be necessary to delay publication in cases where litigation was anticipated. Potentially this would be a few months in employment cases, but six years for civil litigation or twelve years where documents under seal were concerned.

- 3.9 The Constitution Improvement Working Group’s conclusion was that this Committee should be recommended to agree a default policy of publishing all Internal Audit Reports in full, except where exemptions apply, and Audit Sub-Committee being informed of the reasons for non-publication, with these being subject to review every six months. It is suggested that, if the Committee is minded to support the suggestions made by the Working Group, that Audit Sub-Committee be asked to confirm the details of the new arrangements at its next meeting.

**4. LEGAL IMPLICATIONS**

- 4.1 Under the Freedom of Information Act 2000 there is a presumption that information held by public bodies, including local authorities, should be made available to the public wherever possible, unless specific exemptions apply. Further guidance on this is set out in appendices A and B.

<b>Non-Applicable Sections:</b>	Policy/ Finance/Personnel
Background Documents: (Access via Contact Officer)	Minutes of the Executive and Resources PDS Committee (5 <sup>th</sup> June 2013 and 18 <sup>th</sup> July 2013)  Minutes of Audit Sub-Committee (6 <sup>th</sup> June 2013)

**PRINCIPLES AROUND DISCLOSURE OF AUDIT REPORTS  
AND OTHER SENSITIVE INFORMATION**

**Background**

The provision of local government information was changed by the Freedom of Information Act 2000. Until then the overarching principle was that disclosure only took place where there was a statutory power enable or requiring it.

However, since 2002, the presumption is that information is disclosed unless there is an exemption in the Act which allows it to be withheld. The Act allows for disclosure on request, however, this does not preclude information being made available proactively, although in a recent survey of Local authorities with one exception only summary information is routinely made available.

Historically, Bromley has not published or made full audit reports available. However summaries of priority one findings are routinely published with audit sub-committee papers

In disclosing information, either in response to a specific request or proactively, it is prudent to have regard to the exemptions to disclosure in the act. The key exemptions which would be relevant to audit reports are:

- Section 30 – investigations and proceedings conducted by public authorities
- Section 36 – prejudicial to the effective conduct of public affairs
- Section 40 – personal information
- Section 41 – information provided in confidence
- Section 42 – legal professional privilege
- Section 43 – commercial interests

Personal data, which can include an individual's name, should not routinely be disclosed unless it is already in the public domain or unless there is an empowering provision. Where an exemption is applied, the disclosing authority must be prepared to defend its position to the Information Commissioner and, ultimately, to the Courts.

Even where certain information which could be detrimental to an individual is in the public domain, local authorities can still face sanctions for keeping that information available, for example on their website, for what is deemed to be too long a period of time.

We must ensure that any information we disclose does not conflict with any other legal provision, for example expose us to risk of actions of defamation or breach of a compromise agreement. Unlike Parliamentary bodies which have absolute privilege for an variety of matters, a local authority only benefits from qualified privilege. This means that it will usually be protected unless an individual can show a degree of malice or recklessness in the information disclosed. This does not apply to all Council disclosures. For example there will be an element of protection for Committee reports and minutes but that will not extend to press releases or subsequent disclosures.

Potentially the safest approach to follow for disclosure is to consider publication of full audit reports on a case by case basis whilst, to considering whether the practice of publication of summary information can be enhanced. This could include the Council proactively advising residents of critical issues and how they have been addressed.

Where we look at publication then: in addition to the points mentioned above

- 1) the report should not be disclosed if it could prejudice any future criminal or civil proceedings;
- 2) the report should not be published if it could damage the commercial interests of the Council. For example, disclosing information which would assist others to perpetrate fraud or creating a disproportionate perspective of the merits of “doing business” with the Council;
- 3) where necessary deletions to confidential data contained within audit reports could lead to the flow not being understood.



## Publishing of Audit Reports

	Reports made public?		What is made public?
	Yes	No	
<u>London Boroughs</u>			
Barking & Dagenham		√	Summary of all Limited/No assurance reports in committee reports
Bexley		√	Summary of all Limited/No assurance reports in committee reports
Bromley		√	Nothing
City of London		√	Summary of issues from Limited/No assurance audits in committee report
Ealing		√	Summary of issues from Limited/No assurance audits in committee report
Enfield		√	Summary of all reports in committee reports
Hackney		√	Summary of issues from Limited/No assurance audits in committee report
Hammersmith & Fulham		√	Nothing
Haringey		√	Summary of all Limited/No assurance reports in committee reports
Kensington & Chelsea		√	Summary of all Limited/No assurance reports in committee reports
Lambeth		√	Summary of all reports in committee reports
Newham	√		Limited/No assurance reports in full and summaries of others form part of the audit committee papers.
Richmond		√	Summary of issues from Limited/No assurance audits in committee report
Southwark		√	Nothing
<u>Other Councils</u>			
Huntingdon		√	Nothing
Woking		√	Summary of all Limited/No assurance reports in committee reports
West Sussex CC		√	Nothing



## **Appendix B The personal data exemption**

Under the FOIA, the personal data exemption (which is absolute) provides that a public body will not be required to disclose requested information if it constitutes personal data as defined under the Data Protection Act 1998 (DPA).

The legal tests are complex but, put simply, when read together with the FOIA and the DPA provide that disclosure of personnel-related data (which is 'personal data' and therefore falls under the protection of the DPA) will only be permitted if each of the following criteria is met:

- disclosure of the information would be 'fair and lawful';
- there is a legitimate public interest in disclosing the information and the disclosure is necessary to meet that public interest; and
- the disclosure of the information will not cause unwarranted interference with the rights, freedoms and legitimate interests of the individual the information concerns (the 'data subject').

Essentially, the task for the public body is to consider: (i) whether disclosure would cause any unnecessary or unjustified damage or distress to the data subject; (ii) the data subject's reasonable expectations of what would happen to the information; and (iii) balancing their rights and freedoms with the legitimate public interests that would be served by public disclosure.

### **Compromise Agreements.**

#### ***Gibson v The Information Commissioner and another***

In this case, Mr Gibson requested a copy of a compromise agreement that had been given to the departing Chief Executive of Craven District Council. The Information Commissioner upheld the council's refusal to disclose the information. However, on appeal, the FTT overturned the Information Commissioner's decision and held that the agreement should be disclosed.

In reaching its judgment, the FTT summarised the following factors as being relevant to the personal data exemption balancing exercise:

**1. The privacy concerns of the individual to whom the requested information relates.**

Importantly, there is no suggestion that the FTT will give any weight to the relevant authority's concerns about privacy. As public institutions, public bodies should expect scrutiny from the public domain.

**2. The seniority of the individual to whom the requested information relates.**

The more senior the person involved, the more willing the FTT is likely to be to order disclosure. The rationale is that there is likely to be a more pressing social need to disclose information about senior decision makers than about more junior staff (who are unlikely to be able to exert any influence on the actions of the body in question).

**3. The wider social context.**

The FTT has shown that it will look at the circumstances behind the FOIA individual request. So, in the *Gibson* case, it was willing to award disclosure of a confidential compromise agreement between the council and its former Chief Executive because the Chief Executive had left office with the council's finances in "disarray". This created a legitimate public interest and it was unreasonable for the former Chief Executive to expect that she should be granted privacy in such circumstances.

**4. The potential impact of the disclosure on the individual concerned.**

The FTT will consider the wishes of the individual to whom the requested information relates. However, it seems that, where there is a public interest in disclosure, the impact on the individual concerned will not be determinative. Indeed, in *Gibson*, the FTT gave short shrift to arguments that disclosure of the compromise agreement would be deleterious to the former Chief Executive's emotional well-being and career, saying that disclosure of the information might cause "a level of mischief" but not to a significant degree.

**5. Confidentiality clauses.**

The Information Commissioner's guidance says that while public authorities cannot simply contract out of their FOIA obligations, disclosure may be prevented where the compromise agreement contains an "enforceable" confidentiality clause. No further guidance has been provided on what an 'enforceable' confidentiality clause actually looks like. The Information Commissioner has, however, issued guidance on the application of the FOIA exemption for information provided in confidence (which only applies where there is an 'actionable' breach of confidence.)