

**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 a 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