

Extended Material

Chapter 31: Other information rights and access to meetings

Chapter summary

The public and journalists have rights to information under various laws, most notably as regards the workings of local government. These rights can be used to get policy documents from public bodies, and ensure journalists can report important meetings. For some types of material the laws are better than the Freedom of Information Act (see previous chapter), as they offer quicker rights to obtain copies of or inspect documents.

31.1 Local government

Local government is a major source of stories and should be subjected to rigorous scrutiny by journalists.

Local authorities fall into two categories. Principal authorities include County and Metropolitan councils, District Councils, London boroughs, the London Assembly and fire authorities. The others – Parish Councils and Community Councils – are not principal authorities (and some relevant details about them are covered in 31.7, below).

Devolution means that at present journalists' and citizens' rights to access to information from principal authorities differs in England and Wales. New national rules for councils and other local government bodies in England are contained in the Openness of Local Government Bodies Regulations 2014 (S.I. 2014/2095) and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (S.I. 2012/2089). The Public Bodies (Admission to Meetings) Act 1960 is also relevant to non-principal councils. The Local Government Act 1972 has some effect in Wales. But the Welsh Assembly government is also conducting a consultation on introducing its own reforms to local government and the media's rights to attend and report on local authorities.

31.2 Principal authorities

The Local Government Act 2000, which has since been amended by the Localism Act 2011, reformed the way authorities are run, introducing new models of 'cabinet style' government, of which two survive – a leader (elected by council members) and cabinet, and a directly elected Mayor and cabinet. Access to information from principal authorities which have not adopted these models remains governed by the Local Government Act 1972, as amended by the Local Government (Access to Information) Act 1985. Law in these Acts is explained later in this chapter.

Some details of the rights of journalists and the public to attend and report on meetings of local authorities and some other public bodies are available in the guidance *Open and Accountable Local Government* published by the Department for Communities and Local Government—see Useful Websites at the end of this chapter.

Laws which require Police and Crime Commissioners, health authorities and NHS trusts to hold public meetings and provide information are also discussed later in the chapter.

31.3 The Local Government Act 2000

The regulations covering access to information under the Local Government Act 2000 Act – known as the national rules – are contained in the two statutory instruments cited above. They apply to unitary authorities, London borough councils, county and metropolitan councils and district councils in England which operate arrangements under the Act, and a variety of other local government organisations in England such as Transport for London and fire and rescue authorities.

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and Openness of Local Government Bodies Regulations 2014 allow journalists and anyone else reporting on authorities in England do so by filming or recording meetings, and live blogging and tweeting from them, as long as this does not disrupt proceedings. In Wales, the Assembly has published a Code of Recommended Practice on Local Authority Publicity for Wales which encourages councils to permit filming. See Useful Websites at the end of this chapter for the Code.

References in this chapter are to the 2012 regulations, unless stated. See Useful Websites, below, for these regulations.

The full text of all the sets of regulations mentioned – should any journalist need to cite part of them to unhelpful officials – is at www.legislation.gov.uk/uksi.

31.3.1 When bodies must meet in public

Meetings of decision-making bodies – local authority executives and their committees – must be open to the public (Regulation 3). Previously, authorities only had to meet in public when making ‘key decisions’. The same rules apply to meetings of non-executive local authority bodies which are open to the public. Different rules, under different legislation, apply to parish and town councils and the Council of the Isles of Scilly.

But the public may be excluded from a public meeting if

- it is likely that confidential information would be disclosed in breach of the obligation of confidence; or
- the decision-making body passes a resolution to exclude the public during an item in which disclosure of exempt information is likely – the resolution must describe the exempt information concerned; or
- it is necessary to maintain orderly conduct or prevent misbehaviour at a meeting.

The public may only be excluded under the first two for the part or parts of the meeting when confidential or exempt information is likely to be disclosed.

Case study: In June 2017 the leader of the Royal Borough of Kensington and Chelsea announced that the public and press would be barred from a Cabinet meeting to discuss the disastrous fire at the authority-owned Grenfell Tower, in which 71 people died, because of fears of disruption, and

because of concerns that reporting could prejudice the public inquiry set up to investigate the tragedy. A group of media organisations persuaded Mrs Justice O'Farrell to make a High Court order that the council must allow journalists to attend, on the grounds that there was no legal basis on which they could be excluded as they would not cause disruption. But when the reporters entered the meeting council leader Nicholas Paget-Brown, in the chair, immediately abandoned it. The decision attracted widespread criticism, including a rebuke from Downing Street, and Mr Paget-Brown stepped down as leader the following day (*Press Gazette*, 29 June 2017; *The Guardian*, 29 and 30 June 2017; *Media Lawyer*, 4 July 2017).

31.3.1.1 Confidential information

'Confidential information' is information provided to the local authority by a government department upon terms (however expressed) forbidding its disclosure to the public, or information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court.

31.3.1.2 Exempt information

Exempt information in England is information relating to:

- (1) an employee, job applicant or office holder of the council, or an employee, applicant or official of the magistrates' courts or probationary committee;
- (2) a particular council tenant or applicant for council services or grants;
- (3) the care, adoption or fostering of a child;
- (4) a particular person's financial or business affairs;
- (5) the supply of goods or services to or the acquisition of property by the council, if disclosing the information would place a particular person in a more favourable bargaining position or otherwise prejudice negotiations;
- (6) labour relations matters between the council and its employees, if and so long as disclosing it would prejudice negotiations or discussions;
- (7) instructions to and advice from counsel;
- (8) the investigation and prosecution of offenders, if disclosing the information would enable the wrongdoer to evade notice being served on him.

But note that the fact that exempt information might be discussed does **not** place any legal obligation on an authority to discuss the issue in private.

Any part of an agenda, report or other document which contains exempt information does not have to be made available for inspection.

Exempt information in Wales is similar, but less wide-ranging.

The categories of exempt information are wider than the categories of information which an authority is not obliged to disclose under the Freedom of Information Act – so exempt material might be obtained through an FoI request. Ch. 30 of *McNae's* explains the request process enabled by the FoI Act

31.3.2 Notice of public meetings

A decision-making body or non-executive body must display a notice giving the time and place of a public meeting at its offices, and publish it on its website, at least five clear days before the meeting or, if the meeting is convened at shorter notice, at the time it is convened (Regulation 6).

Items of business may only be considered at a public meeting when a copy of the agenda or part of the agenda including them has been available for inspection by the public for at least five clear days beforehand or, if the meeting is convened at shorter notice, from the time it was convened.

31.3.3 Access to agendas and reports

A copy of the agenda and every report for a meeting must be available for public inspection at the authority's office and on its website (Regulation 7). Copies of reports do not have to include material relating only to matters to be dealt with in private.

Any document which has to be available for inspection by the public must be available for at least five clear days before the meeting, except when the meeting is convened at shorter notice, in which case they must be available for inspection when the meeting is convened.

If an item which would be available for public inspection is added to an agenda, copies of the revised agenda and any report relating to the item must be available for public inspection when it is added. But no documents have to be available for public inspection until a copy is available to members of the decision-making body concerned.

If all or part of a report for a public meeting is not available for public inspection, it must be marked 'not for publication', and say that it contains confidential information, or contains exempt information, which must be described.

A reasonable number of copies of the agenda and reports must be available for the public attending the meeting.

Journalists and members of the public who ask must, on paying for postage, copying or other necessary charge for transmission, be supplied with:

- a copy of the agenda and each report for a public meeting;
- the further statements or details necessary to indicate the nature of the items in the agenda; and
- if the proper officer thinks fit, in the case of an item, a copy of any other document supplied to the executive's members in connection with it.

Regulation 20 says this does not authorise the disclosure of confidential information in breach of the obligation of confidence, or of anything likely to contain exempt information or the advice of a political adviser or assistant.

31.3.4 Notification of private meetings

A decision-making body or non-executive body planning to meet in private must give at least 28 days' clear notice of its intention by making a notification, which explains the reasons, available at its offices and publishing it on its website (Regulation 5).

It must publish a further notice about the meeting at least five clear days before it takes place, and a statement of the reasons for holding it private; details of any representations it has received about why the meeting should be open to the public; and a statement of its response to those representations.

A decision-making body or non-executive body which wishes to hold a meeting so quickly that it cannot comply with these time limits must obtain consent to do so from the chair or deputy chair of a relevant scrutiny committee or, in their absence, the authority's chair or deputy chair.

31.3.5 Key decisions

Special rules apply when a 'key decision' is to be made – this situation is covered by Regulations 9 and 10.

A key decision is one which is likely:

- to result in the authority incurring spending or making savings which are significant having regard to its budget for the relevant service or function; or
- to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions.

31.3.5.1 Publicity in connection with key decisions

At least 28 days before a key decision is made, a local authority must publish, at its office and on its website, a document giving details about it. Regulation 10 says this must specify:

- that a key decision is to be made;
- the matter to be decided;
- if the decision maker is an individual, his/her name, and title, if any, and, if the decision maker is a decision-making body, its name and a list of its members;
- the date on which or period within which the decision is to be made;
- a list of the documents submitted to the decision maker for consideration in relation to it;
- the address from which copies of or extracts from any document listed is available;
- that other documents relevant to those matters may be submitted to the decision maker; and
- the procedure for requesting details of those documents (if any) as they become available.

If the public may be excluded from the meeting at which the matter is to be discussed, or documents relating to the decision do not have to be disclosed to the public, the published notification must contain particulars of the matter but cannot contain any confidential, exempt information or details of advice from a political adviser or assistant.

If the required notification period for a meeting to make a key decision is impractical, the decision may only be made five clear days after various authority members have been notified of the fact in writing, and a

copy of that notification has been made available for public inspection and published on the authority's website.

As soon as reasonably practicable after this, the officer concerned must set out the reasons why compliance with Regulation 9 is impracticable in a notice made available at the authority's offices and on its website.

Similar requirements apply in cases of special urgency – those when the date by which a key decision must be made makes compliance with Regulation 10 impracticable.

31.3.6 Documents that must be made available after a meeting

Regulation 12 requires a written statement to be produced 'as soon as reasonably practicable' after a public or private meeting at which an executive decision is made. It must include:

- (1) a record of the decision;
- (2) a record of the reasons for the decision;
- (3) details of any alternative options considered and rejected at the meeting;
- (4) a record of any conflict of interest and, in that case, a note of any dispensation granted by the authority's standards committee.

An executive decision made by an individual or a key decision made by an officer must be recorded similarly.

The record must be made available at the council office for public inspection as soon as 'reasonably practicable', with any report considered at the meeting or by the individual member or officer making the decision.

A media organisation which requests copies of any of the documents available for public inspection must be supplied with them on payment of postage, copying 'or other necessary charge for transmission' (Regulation 14).

Remember! Sections 69 and 188 of The Town and Country Planning Act 1990 requires local authorities to keep a register of planning applications, the decisions on them and any appeal decisions; a register of development orders; and a register of enforcement and stop notices (for breach of planning controls). Much of this information may be available online on a council's website, but the registers have to be available for inspection at a council building at 'all reasonable hours'. Regulations about the registers, including what they should show, are set out in The Town and Country Planning (Development Management Procedure) (England) Order 2015 and the Town and Country Planning (Development Management Procedure) (Wales) Order 2012. These registers may be a route to discover who controls land and buildings if this is not clear from ownership records in the national Land Register.

31.4 Register of interests

The Localism Act 2011 places a duty on local authority members such as councillors to ensure that certain personal interests are disclosed, including on a publicly available register. It is a criminal offence for

members to fail to disclose for registration some types of pecuniary (financial) interest – for example, their job or business or what land they own in the area, see below. The requirement for each local authority to keep a register of members' pecuniary and non-pecuniary interests is set out in section 29 of the Act. It says that monitoring officers of relevant authorities must make the register available for inspection at all reasonable hours and publish it on their authority's website.

Sections 27 and 28 of the Act require each authority to have a code of conduct which sets out the range of members' pecuniary and non-pecuniary interests' which must be registered. This law says the code must be consistent with the seven 'Nolan' principles of standards in public life - selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The code can require, for example, councillors to ensure the register shows any gift or provision of hospitality, given to them as councillors, above a value specified by the code.

Section 29 also says that the monitoring officer of a principal council must make the register of councillors' interests for any parish council in its area available for inspection and to publish it on the website of the principal council. Parish councils must also publish the register online, if they have a website.

Case study: In October 2018 councillor Robert Davis resigned as planning chair of Westminster Council after it investigated the scale of his acceptance of gifts and hospitality. That scale was described in an official report as 'extraordinary'. Gifts and hospitality he accepted included Christmas hampers, a seat at the first night of a West End show and being a guest at its 'after' party, meals at expensive restaurants and a gift of six bottles of wine. Davis, who was also the council's deputy leader, accepted gifts or hospitality on 530 occasions in the period 5 January 2015 to 8 February 2018. He notified the council's monitoring officer of the vast majority of these in compliance with the council's code of conduct, so they could be included in the register of councillors' interests. The code says that any gift, benefit or hospitality with a value in excess of £25 - which a councillor has accepted as a councillor from any person or body other than the council - must within 28 days of its receipt be notified by the councillor to that officer, or arrangements be made for notification. There had not been notification in 85 of the 530 instances. The report accepted that was due to Councillor Davis's 'administrative oversight' but he said he was confident he had declared these 85 items and blamed 'administrative error' by the council. The official report and his resignation were consequences of investigations published by *The Guardian* newspaper, which pointed out that property developers paid for some of the 530 instances of gifts and hospitality, including developers who made planning applications to the council. After *The Guardian* began publishing its articles, Davis referred himself to the council's monitoring officer for investigation and stood aside from council roles while it took place. He said the gifts and hospitality had been accepted and disclosed honestly in his role as 'ambassador' for the council. The monitoring officer appointed a barrister to be an independent advisor for the investigation, and also consulted the designated 'Independent Person' for the council for such matters, who was Sir Stephen Lamport. This led to the official report being presented to the council's standards committee. The report found that Davis has been 'fastidious' in recording gifts and hospitality for registration, and had made other declarations, and so had not broken the council's code of conduct about what should be registered or the law. In fact, the code did not require him to declare at least

80 of the 530 instances which he did declare. But Sir Stephen, while acknowledging Councillor Davis's 'deep commitment' to the work of the council, said that the volume and frequency of hospitality and gifts was 'extraordinary'. In the report the investigating officer said: 'Although the number of gifts and hospitality received is not unlawful I do find that Cllr Davis has prima facie breached the code of conduct ...and it is to do with the proximity and timing of Cllr Davis' acceptance of some of the gifts and hospitality from developers who were involved in the planning process at the time. In other words, a few of the gifts and hospitality received were too close to the planning application/ decision.... Therefore I find that Cllr Davis by accepting gifts and hospitality, close to the committee decision point, from developers or someone linked to the planning process whilst in itself is not evidence of any inappropriate conduct by Cllr Davis it also does not rule out a conclusion that he has placed himself in a position where people might have sought to influence him in the performance of his duties. I am not suggesting that the donors of the gifts and or/ hospitality have sought to influence Cllr Davis...I find that by accepting the large scale of gifts and hospitality Cllr Davis has not promoted and supported high standards of conduct through leadership and by example. His conduct has attracted media and public attention which has an impact of the council as a whole.' Council leader Nickie Aiken said: 'Our residents rightly expect the highest standards of those in public office. It is clear from the report that Councillor Davis breached the code of conduct. The planning process must be, and be seen to be, impartial'. Councillor Davis told the council that although he considered the report contained 'significant factual and legal errors', he had resigned and wished 'to draw a line under this matter' and so did not intend addressing these 'errors' in detail (*The Guardian*, 19 and 20 February, and 8 March 2018; *BBC News* online, 10 October 2018; *Leader's statement*, 10 October 2018 – for this and the official report see Useful Websites, below; *Evening Standard*, 11 October 2018).

Disclosure of pecuniary interests

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 specify what pecuniary (financial) interests a local authority member, such as a councillor, must disclose to comply with law set out in chapter 7 of the 2011 Act. For example, a failure by a councillor to notify the council's monitoring officer of a disclosable pecuniary interest within 28 days of election or the provision of false or misleading information in this respect is a criminal offence punishable by a fine and possible disqualification from membership of the authority for up to five years. The monitoring officer should ensure the register of interests includes each such interest, so the public can be aware of it. A member also usually commits an offence if he or she has a disclosable pecuniary interest in a matter to be considered, or being considered, at an authority meeting – for example, a council committee - and participates in the relevant discussion or voting there when the interest is not on the register and he or she did not disclose it to the meeting. Even when the interest is on the register or disclosed at the meeting, the member should not take part in the discussion or voting without 'dispensation' permitted by the Act in some circumstances.

Disclosable pecuniary interests include any employment, office, trade, profession or vocation carried on by the member for profit or gain, any beneficial interest the member has in land which is within the area of the relevant authority and any business contract the member has with the authority; and any such interest of the member's husband or wife or civil partner or anyone the member lives with as if married or as if in a civil partnership.

Remember! If a councillor discloses a pecuniary or other interest at a meeting, the record of the meeting should show this – see 31.3.6.

For detail about the register which must be kept to show councillors' expenses claims and allowances – see 31.8.1.

Remember your rights! If you encounter someone who has custody of a document which must be available for public inspection but who intentionally obstructs you exercising a right to inspect or make a copy of it, or refuses to supply a copy of it, you can warn them that they are committing an offence punishable by a fine of up to £200 under section 100H(4) of the Local Government Act 1972 and under regulation 22 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

31.5 Copyright and defamation

Regulations 21 (3) and (4) (SI 2012/2089) say that any member of the public may reproduce any document supplied to him or her, or made available for public inspection under the Regulations, or provide commentary on it, in any publicly available medium. This will not infringe copyright in the document as long as the local authority is the copyright holder. But the provision does not authorise infringement of anyone else's copyright (*McNae's* ch. 29 explains copyright law).

On defamation, provision in the Regulations extends the protection of privilege to the publication of any defamatory matter contained in any document required by them to be open to inspection by the public or to be supplied for a newspaper's benefit, though this protection does not apply if the publication is proved to be with malice. For explanation of this type of privilege, and an outline of the concept of malice - see 22.7 in *McNae's*.

Remember! If a local authority holds a meeting in private under any of the legislation referred to, a defamatory media report of the discussion in such meetings, and of documents considered in them, if leaked unofficially to the media, would not be protected by the defence of qualified privilege under schedule 1 of the Defamation Act 1996. But media coverage of an official statement issued to journalists about a meeting held in private will be protected by the defence if its requirements are met.

Media coverage of the public proceedings of local authorities, whether in full council, committees or sub-committees, and of minutes, agendas, reports or other documents officially made available to journalists or the public, are protected by the defence if its requirements are met. See 22.7 in *McNae's* for explanation of this defence.

31.6 The Local Government (Access to Information) Act 1985

The Local Government (Access to Information) Act 1985 predates the introduction of cabinet-style councils. It inserted new parts—Part VA and Schedule 12A—into the Local Government Act 1972, containing the requirements set out in the following passages (which include later amendments).

31.6.1 When meetings must be in public

All meetings of principal authorities, their committees and their sub-committees must be open to the public unless dealing with confidential or exempt information (although the position about working parties and advisory or study groups, which may in effect act as sub-committees without the name, is unclear).

Principal authorities, their committees and their sub-committees must exclude the public when confidential information is likely to be disclosed.

A local authority may exclude the public when disclosure of exempt information is likely by passing a resolution, which must state the part of the meeting to which the exclusion applies and describe the category of exempt information (the categories are in Schedule 12A to the 1972 Act).

While the meeting is open to the public, 'duly accredited representatives' of newspapers or news agencies must, under section 100A(6)(c) of the 1972 Act, so far as is 'practicable' be afforded 'reasonable facilities' to help them report it.

31.6.2 Documents that must be made available

A newspaper or news agency must on request (and on payment of postage or other transmission charge) be supplied with (a) agendas, (b) further particulars necessary to indicate the nature of the items on the agenda, and (c) if the 'proper officer' thinks fit, copies of any other documents supplied to council members, although he/she may exclude from what he/she sends out any report, or part of a report, relating to items not likely to be discussed in public.

Late items, reports and supplementary information can be admitted at the meeting only if the chair regards the matter as urgent and specifies the reason for the urgency.

Copies of agendas and of any report for a meeting of a council must be open to public inspection at least five clear working days before the meeting (except for items not likely to be discussed in public). Where a meeting is called at shorter notice they must be open to inspection from the time the meeting is convened.

31.6.3 Fire authorities

The 1972 Act, as amended by the Local Government (Access to Information) Act 1985, also applies to fire authorities, meetings of joint consultative committees of health and local authorities and to some joint boards.

31.7 Parish and community councils, and Water Act bodies

The Public Bodies (Admission to Meetings) Act 1960 sets out information and access rights relating to parish, town and community councils, parish meetings and meetings of bodies set up under the Water Act 1989—regional and local flood defence committees, regional rivers advisory committees, salmon and freshwater fisheries advisory committees, and customer service committees.

The 1960 Act says such bodies must admit the public to their meetings and to meetings of committees consisting of all members of the body. It also allows for the public to be excluded for all or part of a meeting 'whenever publicity would be prejudicial to the public interest because of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings'.

The 1960 Act says that public notice of the time and place of a meeting must be given by posting it at the offices at least three days before the meeting, or, if the meeting is convened at shorter notice, when it is convened.

On request and on payment of postage, if required, the body must supply to any media organisation a copy of the agenda as supplied to its members, but excluding, if thought fit, items to be discussed when the meeting is not likely to be open to the public.

The 1960 Act says that, so far as is practicable, reporters shall be afforded reasonable facilities to help them report meetings they can attend.

Minutes of the proceedings of a parish or community council must, under the Local Government Act 1972, as amended by the Local Government (Access to Information) Act 1985 be open to inspection.

31.1.1 Parish meetings and other public bodies

Rights to admission and to reporting facilities, agendas and telephones, see earlier, under the terms of the 1960 Act also apply to:

- (1) parish meetings of rural parishes where there are fewer than 200 electors;
- (2) bodies set up under the Water Act 1989 – regional and local flood defence committees, regional rivers advisory committees, salmon and freshwater fisheries advisory committees and customer service committees.

31.8 Access to financial accounts

The authors wish to thank Richard Orange, a media consultant with Orchard News (www.orchardnews.com) for his help in compiling this section of the chapter.

Journalists have golden opportunities to dig out local government stories by taking advantage of legal rights to scrutinise spending files under the Local Audit and Accountancy Act 2014.

This legislation, together with the Local Audit (Access to Documents) Act 2017, revised arrangements in England which entitle local electors and journalists to examine and copy paperwork and electronic records of all transactions conducted by councils or some other local authorities during the preceding financial year. A journalist can exercise the same rights in Wales, if she or he is an elector in the relevant authority area - see below.

The local authorities covered include fire and civil defence authorities, police and crime commissioners, national parks bodies, community councils and certain transport related authorities (such as Transport for London). Health service bodies are excluded.

Section 25 of the 2014 Act says a relevant authority must ensure that a local government elector for its area may inspect and make copies of the statement of accounts prepared by the authority, the local auditor's opinion on the statement and any public interest report made as part of the annual audit. These documents must be available for inspection free of charge, but a charge may be made for copies.

With the exception of a public interest report, these general documents are unlikely to provide material worthy of a major story. But the statement of accounts is a useful signpost for where a journalist should delve further into the detail and substance of the accounts under audit.

Section 26 of the 2014 Act says the authority must advertise on its website the arrangements under which any local government elector for its area may make an appointment to visit in person, to inspect and make copies of any of the following categories of documents which record expenditure, investments and income listed in the annual statement of accounts:

- Bills and receipts (including original invoices and receipts held in paper or electronic form);
- Deeds (including records of property transactions, estate holdings and legal documents detailing grants and rights);
- Books (including financial records listing expenditure and income held by different departments, teams and authority-run bodies such as schools);
- Vouchers (including credit notes and expenses claims);
- Contracts (including commercial contracts and schedules/appendixes but excluding staff employment contracts);
- Other documents relating to the accounts (including paperwork and emails authorising an item of expenditure, a contract and payment of a bill or claim but excluding staff expenses claims and former staff pension payments).

The authority cannot charge for access to the documents listed above.

But Regulation 14 of the Accounts and Audit Regulations 2015 allows only a 30 working-day window (typically during late June and July in England) for local electors and journalists to exercise their rights to access the files. The equivalent Welsh regulations, for electors, allow a shorter period of 20 working days.

The 2017 Act enabled 'any journalist including a citizen journalist' to inspect and make copies of the documents listed above of any local authority in England, and so they do not need to be a local elector to

exercise those rights. . The authority can charge a reasonable fee for copies of any documents requested as part of the audit. These general rights for journalists do not yet apply in Wales but a journalist who is an elector in the relevant area in Wales can exercise the inspection and copying rights, as an elector.

If an elector for the area asks, the local auditor must give him/her an opportunity to ask questions about the accounting records. An elector may raise an objection to an item in the accounts, and request an investigation by the local auditor, who may issue a public interest report. A journalist who is not a local elector in the area does not have the same right to question the auditor or register an objection to the accounts.

A local elector or journalist's motive in seeking material is irrelevant – see *R (on the application of HTV) v Bristol City Council* ([2004] EWHC 1219 (Admin); [2004] 1 WLR 2717). But the 2014 Act does not give the right to inspect or copy any part of any record or document containing information which the authority considers to be protected on the grounds of commercial confidentiality, or the right to require the authority or the local auditor to release the information in response to any question.

In *Veolia v Nottinghamshire County Council* ([2010] EWCA Civ 1214), the Court of Appeal ruled that commercial confidentiality should be applied to protect legitimate trade secrets contained in contracts, but should not be engaged as a matter of course to any commercial contract with a local authority. Likewise, the 2014 Act enables an authority to redact personal information from inspection and copying within the scope of the Act. This is a relatively recent change in the law adopted following a High Court challenge to a local authority attempt to withhold information from a journalist on data protection grounds. Lord Justice Leveson held that it was by no means clear at that time that the Data Protection Act 1998 overrode rights of inspection enshrined in the old Audit Commission Act 1998 – see *R (on the application of Orange) v Lincolnshire County Council* [2005] EWHC 2458 (Admin). Parliament removed this uncertainty a year later by amending the audit regulations and adding data restrictions.

Personal data is broadly defined as information which identifies a particular individual or enables a particular individual to be identified, or relates to an officer of the relevant authority by virtue of his/her employment by the authority, or because the authority has made payments to another body because of work done by it by that individual. However, it does not enable a local authority to redact personal data of an individual who has received a payment as a sole trader. It also should not apply to a document in which an officer or member of staff's identity is recorded in respect of their authorising a payment, contract or transaction as part of their duties. If a local authority does redact the identity of an officer authorising or approving a transaction, journalists should consider requesting the document under the Freedom of Information Act. Again, the FoI Act is explained in ch. 30 of *McNae's*.

The fact that officials can see documents first and redact confidential and/or personal information not mean that journalists have to engage in correspondence from afar in order to obtain financial data, akin to making a Freedom of Information Act request in writing and then waiting for the authority to respond with materials at a later date. The local elector or journalist retains the right to inspect the records in person, and to sift through items of expenditure and income listed under particular budget headings and codes, before asking for and obtaining copies of (redacted) documents. Authorities are permitted to redact bank account data.

The 2014 audit regime provides journalists with an opportunity to cross-check financial transactions between elected members and authorities, especially where politicians sit on multiple bodies. There can be cross-checking too with what councillors have declared on the council's register of their interests – see 31.4, above.

Some journalists ask a local authority (via the press office) to send them photocopies or electronic copies of 'spending on such and such an issue'. This takes them outside the regime of the Local Audit and Accountability Act and gives the authority the opportunity to delay responding or to treat the request as a freedom of information request and then deny access on grounds which would not apply had the same request been made under the 2014 Act and/or within the limited timescale of the public inspection period.

The public notice which the local authority must publish on its website should give contact details of the 'proper officer' who is responsible for making arrangements for local electors and journalists to attend in person – usually its Chief Executive, or Solicitor or Director of Finance. It is not delegated to a press officer, and neither should a local authority respond to a request to inspect and copy accounts during the inspection period by directing a journalist to a public relations officer.

The People's Audit group, which encourages the public to use this inspection law, has published a guide to the 2014 Act inspection rights. The National Audit Office too has published a guide. See Useful Websites, below.

31.8.1 Personal expenses of councillors

Under Regulation 15 of the Local Authorities (Members Allowances) (England) Regulations 2003, county, district and London borough councils must keep a register of expenses claims submitted by councillors open to inspection all year round. Note that restrictions on release of personal data do not apply to the register. The Regulations say these councils must send the local media information about amounts paid to councillors in the previous financial year and reports on recommendations about the levels of allowances.

The Independent Remuneration Panel for Wales, established by the Local Government (Wales) Measure 2011, decides the level of allowances which councillors in Wales can claim. It publishes annual reports. These set out regulations about what relevant authorities should annually publish concerning sums paid to each councillor.

31.9 Health authorities and NHS Trusts

Admission to meetings of local health authorities and NHS Trusts, and rights to their agendas, are subject to the Public Bodies (Admission to Meetings) Act 1960.

Department of Health guidance to these bodies in 1998 (Health Service Circular 1998/207) said the government was 'committed to ending what it sees as excessive secrecy in decision making in public bodies' and that although authorities and trusts could exclude press and public in the public interest under the terms of the 1960 Act, they were expected to conduct their business in public in as open a manner as possible.

The 1960 Act gives the same rights of admission to any committee of a health authority consisting of all members of the authority.

The Health and Social Care Act 2001 gave new powers to overview and scrutinise committees of those local authorities with social services responsibilities (county councils, London borough councils, unitary authorities), and these are subject to similar access to information provisions as other committees covered by Local Government (Access to Information) Act 1985, explained earlier.

But extended exemptions apply – see Schedule 1 to the Health and Social Care Act 2001. These go further than the exemptions in the 1985 Act by exempting also information on: (1) a person providing or applying to provide NHS services, (2) an employee of such a person, or (3) information relating to a person's health. Minutes, agendas and reports are open to public inspection for only three years and background papers for only two years.

31.10 Police and Crime Commissioners

Police and Crime Commissioners must, under provision in sections 5 and 12 of the Police Reform and Social Responsibility Act 2011, publish a Police and Crime Plan and annual reports. Financial and other information, including a register of interests, must be published, as specified in the Elected Local Policing Bodies (Specified Information) Order 2011 (SI 2011/3050). See Useful Websites at the end of this chapter for the Order.

31.10.1 Police and crime panels

Much of the law on access to information referred to in this chapter also applies to the police and crime panels in each police area – see the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012 (SI 2012/2734). See Useful Websites at the end of this chapter for the Regulations.

31.11 Quangos

Many day-to-day services to the public which were administered by bodies on which representatives of the public served have become semi-independent agencies with managing bodies staffed by appointees rather than representatives.

The term quango (quasi-autonomous non-governmental organisation) describes non-elected public bodies operating outside the civil service and funded by the taxpayer. Generally, there is no right of access to meetings of quangos, although there is a right to information to most of them under the FoI Act, explained in ch. 30.

Recap of major points

- People have rights to other information from local authorities, such as annual budget figures and agendas, as well as rights to attend meetings.
- In certain circumstances authorities have the right to withhold documents or to deny public access to meetings.

- Laws giving rights to examine accounts can be a very good source of stories, provided the journalist knows where to look.
- There are rights to attend the meetings of health authorities and these bodies are required to publish each year their performance in key areas of health provision.

Useful Websites

www.gov.uk/government/uploads/system/uploads/attachment_data/file/343182/140812_Openness_Guide.pdf

Department for Communities and Local Government guidance, Open and Accountable Local Government

<http://gov.wales/docs/dpsp/publications/140814-local-authority-publicity-en.pdf>

Welsh Assembly Code of Recommended Practice on Local Authority Publicity

<http://www.legislation.gov.uk/uksi/2012/2089/contents/made>

Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

<https://www.westminster.gov.uk/statement-from-leader>

https://www.westminster.gov.uk/sites/default/files/cllr_davis_report_bundle.pdf

Leader's Statement and official report arising from Westminster Council's investigation into scale of Robert Davis's acceptance of gifts and hospitality

<http://www.thepeoplesaudit.info/guide-to-audit-rights/>

The People's Audit guide to inspection rights under Local Audit and Accountability Act 2014

<https://www.nao.org.uk/code-audit-practice/wp-content/uploads/sites/29/2015/03/Council-accounts-a-guide-to-your-rights.pdf>

National Audit Office guide to inspection rights under Local Audit and Accountability Act 2014

<http://www.legislation.gov.uk/uksi/2012/2479/article/1/made>

Elected Local Policing Bodies (Specified Information) Order 2011 and amendments

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/143836/publishing-information.pdf

Government guidance to Police and Crime Commissioners on publishing information

<http://www.legislation.gov.uk/uksi/2012/2734/made>

Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012 and their Explanatory Notes

<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06046>

House of Commons Briefing Paper No 06046, November 10, 2015, on Local government transparency in England

<https://www.local.gov.uk/sites/default/files/documents/probity-planning-councill-d92.pdf>

'Probity in planning' – Local Government Association guidance for councillors and officers