

The Information Commissioner's response to the  
Consultation on the Code of recommended practice for local  
authorities on data transparency

**Consultation**

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 (DPA) and the Freedom of Information Act 2000 (FOIA). He is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

The Information Commissioner's Office (ICO) welcomes the opportunity to respond to this consultation. In the response we shall focus on issues that have transparency, data protection and privacy implications.

**General comments**

The ICO welcomes this proposed Code. It makes clear the types of information that local authorities should be routinely publishing, how they should publish the information and why they have to publish the information. In that respect it complements the core aims of the Freedom of Information Act that openness and transparency should be the expected standard from all public authorities (and this includes local authorities). The proposed Code puts local authorities at the forefront of data transparency.

We are also pleased to see the draft Code makes it clear that local authorities must comply with the Data Protection Act. We share the Government's view that in general local transparency can be implemented in a way that is compliant with the DPA. However we also consider that at times local authorities will have to balance public openness and personal privacy. We would want to see careful consideration being given where such tension arises rather than an

approach of what could be described as “openness at all costs” or alternatively “privacy at all costs”.

We would welcome further consideration as to how the Code will interact with the requirement for public authorities to maintain publication schemes under section 19 of the Freedom of Information Act and the proactive disclosure requirements of the Environmental Information Regulations under regulation 4.

Within the next year we plan to consult (with public authorities and the public) on revising both the [model scheme](#) issued under section 20 of FOIA and the sector based guidance on publication schemes for the full range of public bodies covered. Guidance on the requirements for local authority publication schemes is currently contained in a [definition document](#). Much of what the Code covers could be incorporated into a revised definition document for local authority publication schemes. We also consider that other categories of information such as environmental health inspection reports could be added to local authority publication schemes.

The ICO would also welcome further guidance on how the proposed Code will interact with the amendments proposed to the Freedom of Information Act in the Protection of Freedoms Bill currently progressing through Parliament.

It is also worth noting that where public authorities fail to meet the obligations imposed on them by section 19 of FOIA then the Information Commissioner has enforcement powers available to compel public authorities to comply with these obligations.

### **Specific points**

Q – “Do you believe that all the bodies covered in paragraph 3 of the proposed code should be included?”

As set out the bodies included in paragraph 3 broadly follow those listed in Schedule 1, Part II of the Freedom of Information Act. This being the case we think that their inclusion under the Code’s provisions is appropriate.

Q – “The Government’s preference is for a threshold of £58,200 to apply to disclosure of senior salaries in local authorities. This is intended to increase accountability and ensure salaries are consistent with level of responsibility. Would a ‘function test’ such as that used in Audit and Account Regulations in 2009 be better e.g. “a person who has responsibility for the management of the relevant body to the extent that the person has power to direct or

control the major activities of the body (in particular activities involving the expenditure of money), whether solely or collectively with other persons”? Or a definition based on legal definitions e.g. the salaries of the head of paid staff, statutory chief officers, non-statutory chief officers and deputy chief officers, as defined in the Local Government and Housing Act 1989?”

The approach taken by the ICO when balancing public accountability and personal privacy is to focus on specific job roles and responsibilities. In general more senior staff who are responsible for major policy and financial initiatives can expect greater scrutiny of their pay than more junior employees. It will nearly always be unfair to disclose the exact salaries of junior employees. However we do think that it is fair to provide information about salary scales for all employees.

Further information is provided in our guidance [Public sector salaries: how and when to disclose](#).

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