

Under the Freedom of Information Act (FoIA) the Audit Commission has the right to refuse to disclose any part of the information requested if exemptions defined within the FoIA apply. After consideration of the information requested, the Commission has concluded that in this case exemptions apply and therefore some information is excluded from our response, as follows:

Minutes of the July 2008 meeting

The Minutes of the July 2008 are currently in draft form, and are therefore being withheld at this time via Section 22 of the FoIA - Intended for future publication. Once the draft minutes receive approval by the Board at its next meeting on 23 October, the minutes will be prepared for disclosure.

The Commission's Corporate Governance Framework reserves the approval of the minutes to the Board alone. The Commission believes that the public interest in withholding the July 2008 minutes at this time outweighs the public interest in disclosure because there is a public interest in the Commission following procedures – for example, taking minutes; producing and circulating a draft set of minutes; the review and sign off by the attendees of the meeting – that enables the effective conduct of public affairs. The proposed timescale for the preparation and publication of the minutes is believed to be reasonable.

Section 33 – Audit Functions

The Commission believes that disclosure of the information denoted in the minutes by the wording **[Section 33]** could harm relations between the Audit Commission and specific Audited and Inspected Bodies (AIBs). This would affect the ability of the auditors to carry out their functions effectively.

The Commission believes there is a public interest in the disclosure of information that would lead to greater public confidence in the integrity of the audit process. However, there is a strong public interest in the Commission facilitating accountability and transparency in the spending of public money via the audit process; there is therefore a clear public interest in protecting the effectiveness of the Commission's audit functions. The Commission believes that the public interest in withholding the information highlighted outweighs the public interest in disclosure because the risk of substantial damage to the relationships between the Commission and the specific AIBs, which would in turn damage the effectiveness of our audits.

Section 36 – Prejudice to effective conduct of public affairs

Section 36(2)(b)(i) – likely to inhibit the free and frank provision of advice

Section 36(2)(b)(ii) – likely to inhibit the free and frank exchange of views for the purposes of deliberation

In the reasonable opinion of the Audit Commission's qualified person (Steve Bundred, Chief Executive), the disclosure of the information denoted in the Minutes by the wording **[Section 36(2)(b)(i)]** and **[Section 36(2)(b)(ii)]** would be likely to inhibit either the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation.

The Commission recognises that the status of the minutes is unlikely to justify the application of an exemption; however, the fact that they record meetings of the most senior officials of the Commission does mean that sensitive matters are regularly discussed. The minutes therefore contain reference to advice provided to the Board from both internal and external sources on a variety of topics, for example, Comprehensive Area Assessment (CAA), working emerging from studies, draft policy proposals and new projects.

Public disclosure of such advice prior to a final decision being reached on the topic under discussion would be likely to harm the volume and nature of the advice sought and received in future. There is a risk that external sources would be less likely to engage with the Commission – especially if there is no obligation to work with the Commission – and internal sources would refrain from providing unwelcome advice.

The minutes also record the discussions of the Board members; their observations and suggestions on the topics under discussion, and their views on how best to proceed. The information therefore reveals the internal processes – the expressions of opinion; opinion forming; recommendations and evaluations that are essential in ensuring a robust review process is undertaken at the most senior level of the Commission.

The public disclosure of this information would be likely to decrease and/or suppress the freedom with which opinions or options are expressed, harming the frankness and candour of the deliberations. This is because many of the topics covered are current and a final view has not been reached. There is therefore a risk that disclosure of free and frank views expressed while topics are being discussed would enable differences of opinion and/or any concerns raised to be used by interested parties to influence the Commission. The disclosure of such information once a decision has been reached – i.e. once a particular methodology / process is in place, or policy agreed – would be a different matter, as the Commission would need to weigh up the benefits of demonstrating that decisions are being taken on the basis of the best available information and after robust deliberations, against the harm that may still be caused by disclosure. Such issues have been considered when assessing the information that has been disclosed.

The Commission believes that it is striking the right balance between openness and transparency in the decision making of senior officials and ensuring that the Commission is able to partake in candid, robust discussions while addressing often sensitive matters without there being a detrimental impact on the quality of decision making.

Section 36(2)(c) – likely otherwise to prejudice the effective conduct of public affairs

In the reasonable opinion of the Audit Commission's qualified person, the disclosure of the information denoted in the Minutes by the wording **[Section 36(2)(c)]** would be likely otherwise to prejudice the effective conduct of public affairs.

This is because the disclosure of the information would harm the relationships it has with government departments and Audited and Inspected Bodies; these relationships are essential in ensuring that the Commission can continue to meet its wider objectives. Disclosure of the information would be likely to disrupt these working relationships, and would be likely to require a diversion of resources to manage the impact of the disclosure.

Public Interest

The Commission recognised the public interest in open decision making, and that such openness may lead to increased trust and engagement between citizens and the Commission. More open decision-making can result in better policy formulation, with a wider range of views and opinions being canvassed. To that end, 71% of the information contained in the minutes is being disclosed. [Based on total word count of all 9 sets of minutes before and after removal of exempt information]. Also, the decisions reached in relation to the topics being discussed - recorded in the minutes in bold text, starting with the words **The Board...** - are being disclosed in full in all but one case. The policies and methodologies followed by the Commission, and our final reports, are also in the public domain.

However, the timing of any request for minutes is of vital importance. Disclosure of ongoing discussions and current topics – before a consensus is reached or a final decision is made – is not in the public interest, as Board members are entitled to expect the time and space necessary to receive advice, discuss issues and explore safe and radical options and opinions without the threat of publicity undermining their ability to conduct a robust analysis of the issues.

The minutes relate to a period of some 14 months, from April 2007 to June 2008. They therefore cover a period that is relatively contemporary, especially given the long-term nature of many projects that the Commission is involved in. There is therefore a strong public interest in senior Commission officials having the space to develop their thinking and explore options, to receive advice and engaging in communications and discussions with others without the threat that their preliminary views are made public. It is in the public interest that rigorous and candid assessments of current and emerging work is undertaken in the knowledge that, where justify, the information will be withheld. The Commission believe that the public interest in withholding the information highlighted does outweigh the public interest in disclosure.

Section 40 – Personal data

The Commission believes that disclosure of the information denoted in the Minutes by the wording **[Section 40]** would breach one of the eight Data Protection Principles defined by the Data Protection Act 1998 (DPA).

Section 40(2) of the FoIA exempts the personal information of third parties if its disclosure would breach one of the eight Data Protection Principles defined by the DPA.

In this instance, it was considered that the disclosure of third party personal information would breach the First Data Protection Principle because the individuals involved do not expect their personal information to be made publicly available. They have a reasonable expectation that their personal information will remain confidential between the council and themselves, especially as they are not informed that their personal information may be made publicly available in response to a Freedom of Information request.

To disclose the third party personal information into the public domain would therefore be unlawful (a breach of confidence) and unfair (they were not informed); this would therefore be a breach of the first Data Protection Principle, which states that personal information shall be processed fairly and lawfully. Also, the Commission does not consider there to be a valid Schedule 2 condition, also required in order to disclose the information.