



Neutral Citation Number: [2021] EWHC 1032 (Admin)

Case No: CO/3914/2019

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date:

**Before :**

**THE HON. MRS JUSTICE THORNTON DBE**

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**Between :**

**Derek Moss**

**Claimant**

**- and -**

**Royal Borough of Kingston Upon Thames**

**Defendant**

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**Ms Amy Mannion** (instructed by **ITN**) for the **Claimant**  
**Mr Ranjit Bhose QC** and **Ms Ruchi Parekh** (instructed by **South London Legal Partnership**) for the **Defendant**

Hearing dates: 16 - 17 March 2021  
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**JUDGMENT**  
**(Approved by the court)**

**The Hon. Mrs Justice Thornton:**

**Introduction**

1. A public right to inspect the accounts of a local authority dates back to the Poor Law Amendment Act of 1844. The current version of the right is set out in section 26 of the Local Audit and Accountability Act 2014 (LAAA), which provides, so far as relevant, that:

*“(1) At each audit of accounts under this Act...any persons interested or any journalist may—*

*(a) inspect the accounting records for the financial year to which the audit relates and all books, deeds, contracts, bills, vouchers, receipts and other documents relating to those records, ...”*

2. In the modern digital age, the right to inspect “*all books, deeds, contracts, bills, vouchers, receipts and other documents relating to*” the accounts has the potential to impose a significant burden on a local authority, as demonstrated by the facts of this case.
3. The Claimant sought access to documents relating to the Defendant Council’s housing stock of 4,602 properties for which the revenue expenditure for 2018-19 was in excess of £24 million and its capital expenditure for the same year was in excess of £14 million. The Court was told that many local authorities have much bigger housing stocks. The Defendant Council (“the Council”) estimated that fulfilling the terms of the Claimant’s original request would have required locating, extracting, reviewing and redacting well over 7000 invoices and associated paperwork and at least 28 supplier contracts. It would have taken one staff member around five weeks full time work to extract the documents from the system and redact the necessary personal or confidential information.
4. Nevertheless, the Council sought to process the Claimant’s request. It provided approximately 400 documents before notifying the Claimant that:

*“My team estimate they have spent over 72 hours of their time collating the information you requested to inspect already and a considerable amount of time has also been spent by colleagues in other departments in gathering information. The Council estimates that it will take substantially in excess of 18 hours to determine appropriate material and locate, retrieve and extract the further information requested. Accordingly, the request will not be processed further.”*

5. The issue of principle raised by this claim is whether the Council was lawfully entitled to refuse to process the Claimant’s request because of the time involved in compliance. In turn, it raises a point of statutory construction of s26 LAAA. The Council contends that it is unlikely that Parliament intended to confer a statutory right which, in the modern context of extensive digital accounting records, entitles an individual to inspect each and every document within the scope of section 26(1), irrespective of the time it will take to comply with the request. A relevant authority may, therefore, refuse to process a request where it rationally concludes that a request by a particular individual is disproportionate or manifestly unreasonable. The Claimant contends that implying a ‘time to comply’ provision into section 26 LAAA would be contrary to the longstanding

legislative intent that the public should be able to scrutinise the expenditure of public money.

### **The legislative history of the right to inspect accounting records**

6. The Poor Law Amendment Act 1844 dealt with the financial accountability of parishes. Section 33 gave “every person liable to be rated to the relief of the poor” a right to inspect the parish books of accounts. Those persons were also given the right to make objections to the accounts before the auditor. The Public Health Act 1848 gave ‘persons interested’ a similar right in respect of the accounts of local boards of health (section 122).
7. The Public Health Act 1875 extended the ratepayers’ right of access to documents beyond the accounts themselves to “all rate books, account books, deeds, contracts, accounts, vouchers and receipts mentioned or referred to in such accounts” (section 247(4)).
8. The Local Government Act 1933 reproduced the provisions in similar but not identical terms and broadened the scope of documents which could be inspected beyond documents ‘mentioned or referred to’ in the accounts to documents “relating to the accounts” (section 224(1)). Section 226 conferred a right upon a local government elector for the area to make objection to the accounts.
9. The same arrangement was found in section 159 of the Local Government Act 1972, and then in section 17 of the Local Government Finance Act 1982 (with minor modifications) and, in turn, sections 14 and 15 of the Audit Commission Act 1998 which, in turn, were replaced by sections 26 and 27 of the LAAA.

### **The Local Audit and Accountability Act 2014 (LAAA 2014)**

10. The LAAA established new arrangements for the accounts and auditing of accounts of a ‘relevant authority’. A relevant authority is defined widely and includes, amongst others, a county council, district council, parish council, and chief constable (section 2 and sch. 2, para.3). It is common ground that the Council is a relevant authority.

#### **Basic concepts and requirements**

11. By section 3(1) relevant authorities are required to keep “adequate accounting records”. This means:

*“(2) records that are sufficient—*  
*(a) to show and explain the relevant authority's transactions,*  
*(b) to disclose at any time, with reasonable accuracy, the financial position of the authority at that time, and*  
*(c) to enable the authority to ensure that any statements of accounts required to be prepared by the authority comply with the requirements imposed by or under this Act. (s3(2)).”*

12. Section 4 sets out the general requirements for an audit. The accounts of a relevant authority must be audited in accordance with the Act by an auditor (known as a ‘local auditor’) appointed in accordance with the Act. “Accounts” means the accounting records and the statement of accounts (s4(3)). By section 7 a relevant authority must appoint an auditor to audit its accounts for a financial year not later than 31 December in the preceding financial year.

#### **The conduct of an audit**

13. The general duties of an auditor are set out in section 20. The auditor:

*“(1) ...must, by examination of the accounts and otherwise, be satisfied—*

*(a) that the accounts comply with the requirements of the enactments that apply to them,*

*(b) that proper practices have been observed in the preparation of the statement of accounts, and that the statement presents a true and fair view, and*

*(c) that the authority has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.”*

14. Once the audit is completed the auditor must enter on the statement of accounts, a certificate that the auditor has completed the audit in accordance with the provisions of the Act, as well as the auditor's opinion on the accounts (s20(2)).

15. By section 22, an auditor has a right of access at all reasonable times to documents, information or explanations that he or she thinks is necessary for the purposes of his/her functions under the Act. It is a criminal offence to fail to assist the auditor in this regard (s.23).

16. By section 24 and Schedule 7 an auditor must consider whether, in the public interest, he or she should make a report on any matter coming to his/her attention during the audit so it can be brought to the public's attention. The report is referred to as a “public interest report”. The report must be published (Schedule 7(4)(2)).

#### Public rights of inspection

17. Two separate public rights of inspection are conferred by the Act. The first right is conferred, pursuant to section 25, on a ‘local government elector’ for the area. The elector may inspect and make copies of:

- a. the statement of accounts prepared by the relevant authority;
- b. the local auditor's certificate that the audit of the authority's accounts has been completed;
- c. the local auditor's opinion on the statement of accounts;
- d. any public interest report relating to the authority or any entity connected with it; and
- e. any recommendation relating to the authority or an entity connected with it.

18. ‘Local government elector’ means a person registered as a local government elector in the register of electors in accordance with the Representation of the People Acts (s44).

19. The right under section 25 is not time-limited, although it may not be exercised for a particular financial year until the audit has concluded and the relevant authority has published a notice to that effect.

20. The second access right, which is central to this claim, is set out in section 26 which provides, so far as relevant, that:

*“(1) At each audit of accounts under this Act, other than an audit of accounts of a health service body, any persons interested or any journalist may—*

*(a) inspect the accounting records for the financial year to which the audit relates and all books, deeds, contracts,*

*bills, vouchers, receipts and other documents relating to those records, and*

*(b) make copies of all or any part of those records or documents.*

*(1A) In subsection (1) “journalist” means any person who produces for publication journalistic material (whether paid to do so or otherwise).*

*(2) At the request of a local government elector for any area to which the accounts relate, the local auditor must give the elector, or any representative of the elector, an opportunity to question the auditor about the accounting records.*

*(3) The local auditor's reasonable costs of complying with subsection (2) are recoverable from the relevant authority to which the accounts relate.*

*(4) This section does not entitle a person—*

*(a) to inspect or copy any part of any record or document containing information which is protected on the grounds of commercial confidentiality, or*

*(b) to require any such information to be disclosed in answer to any question.*

*(5) Information is protected on the grounds of commercial confidentiality if—*

*(a) its disclosure would prejudice commercial confidentiality, and*

*(b) there is no overriding public interest in favour of its disclosure.*

*(6) This section does not entitle a person—*

*(a) to inspect or copy any part of any record or document containing personal information, or*

*(b) to require any personal information to be disclosed in answer to any question.*

*(7) Information is personal information if it identifies a particular individual or enables a particular individual to be identified...”*

### The right to raise an objection

21. Section 27 applies if a local government elector makes an objection to the auditor which concerns a matter in respect of which the auditor could make a public interest report or apply to the Court for a declaration that an item in an account is contrary to law. If the objection is properly made, the local auditor must decide whether to consider the objections. However:

*“4) The local auditor may decide not to consider the objection if, in particular, the auditor thinks that –*

*...*

*(b) the cost of the auditor considering the objection would be disproportionate to the sums to which the objection relates,*

*...*

*(5) subsection (4)(b) does not entitle the local auditor to refuse to consider an objection which the auditor thinks might disclose serious concerns about how the relevant authority is managed or led.*

...

*(7) The local auditor's reasonable costs of exercising functions under this section are recoverable from the relevant authority."*

### **The Accounts and Audit Regulations 2015**

22. Regulation 4(3) of the Accounts and Audit Regulations 2015 (SI 2015/234) ("the 2015 Regulations") fleshes out the definition of 'accounting records' in section 3 of the LAAA:

*"(3) The accounting records must, in particular, contain—  
(a) entries from day to day of all sums of money received and expended by the authority and the matters to which its income and expenditure or receipts and payments relate..."*

23. Regulation 14 provides further detail on the timing of the exercise of the rights of inspection, questioning and objection:

*"(1) Any rights of objection, inspection and questioning of the local auditor conferred by sections 26 and 27 of the Act may only be exercised within a single period of 30 working days.*

*(2) The period referred to in paragraph (1) starts with the day on which the period for the exercise of public rights is treated as having been commenced in accordance with regulation 15(3).*

*(3) During the period for the exercise of public rights a relevant authority must make the documents referred to in section 26(1) of the Act available for inspection on reasonable notice at all reasonable times."*

24. Regulation 15 provides detail on the mechanics of the inspection process. The responsible financial officer must publish the draft accounts accompanied by a statement explaining the process for inspection (Regulation 15(2)). The period for the exercise of the public rights starts on the day following the day on which the obligations specified in Regulation 15(2) have been fulfilled.

### **Factual Background**

25. By and large, matters of fact were agreed between the parties.

### **Accounts and auditing process**

26. The financial year for a local authority runs from 1 April to 31 March. Draft accounts are required to be prepared by the end of May following the financial year and are published in draft form prior to being audited by external auditors. The external audit usually takes place over June and July with audits completed by 31 July. If audits are not complete by this date, an authority must publish a notice explaining the reasons. A notice of conclusion of audit is issued after the auditor's opinion on the accounts has

been issued and all other related matters such as enquiries from members of the public have been completed.

#### Housing revenue and expenditure

27. A local housing authority is required, by virtue of Part VI Local Government and Housing Act 1989, to keep a 'Housing Revenue Account', to include all income and expenditure in respect of houses and other buildings provided under Part II Housing Act 1989. Capital expenditure on Part II Housing Act 1985 stock tends to be accounted for separately by local housing authorities (referred to as 'Estate Regeneration' in the Council's accounts).
28. The Council's Part II housing stock comprises some 4,602 individual properties. The Council's revenue expenditure for 2018- 19 was in excess of £24 million and its housing capital expenditure was in excess of £14 million.

#### Chronology of events

29. In accordance with Regulation 15 of the 2015 Regulations, the Council gave notice that its unaudited statement of accounts for the year end 31 March 2019 had been published, and that for the period of 30 days between 1 June and 12 July 2019:

*“any person interested may on reasonable notice and by prior arrangement may inspect and make copies of the accounts of the above named Council for the year ended 31 March 2019 and all books, deeds, contracts, bills, vouchers and receipts, except as provided for in section 26(4) to 26(6) of the Local Audit and Accountability Act 2014 in relation to commercially confidential and personal information. The accounts and other documents will be available for inspection at the offices at which they are normally kept. Application should be made at the address below....”*

30. The notice also provided for electors to question and make objections to the auditor in the same period (i.e. in accordance with the rights under s.26(1), s.26(2) and s.27 LAAA). A draft set of accounts was uploaded to the Council's website. The Court was provided with a similar version of the draft which runs to excess of 200 pages.

#### *The Claimant's request dated 5 June 2019*

31. The Claimant duly applied to inspect. The terms of his request, dated 5 June 2019 were as follows:

*“I wish to exercise my rights to audit the council's accounts in accordance with Section 26 of the Local Audit and Accountability Act 2014.*

*I wish to inspect the accounts on Wednesday 12 June and Thursday 13 June 2019.*

*The items I am particularly interested in viewing are any documents relating to the Housing Revenue Account, Estate Regeneration, Better Homes, the Community Benefit Society and the New housing Model, including the following:*

- *Invoices;*

- Executed contract together with any variations issued in relation to any invoices;
- Purchase Order together with any variations issued;
- All necessary back up calculations to demonstrate the invoice value;
- Contract monitoring reports;

*Specifically but not limited to anything which relates to the following:*

*1. payments to 3ITen Consulting Argus Software (UK), Ark Consultancy, Axis Europe, Blakes Surveyors, BNP Paribas, Countryside Properties, Davies Bell Associates, Electoral Reform Services, Fothergill & Company, Hammond Clarke, Hays Specialist Recruitment, Devonshires, IRG Advisors, Mears, Mitie Property Services (UK), Newman Francis, One Norbiton, Philip Pank Partnership, Pinnacle Group, PPCR, Richmond Housing Partnership, Savills Commercial, Sawyer Fielding, Shoosmiths, United Living (South), Vikingston Minibus Hire, Whatever Design Ltd;*

*2. any other expenditure associated with the Estate Regeneration programme, including property purchases on or around Cambridge Road Estate; costs incurred in preparing the tender for the joint venture contract and any other costs relating to the tendering/bidding/procurement process, including the 'Meet the Bidders' day on 30 June 2018;*

*3. payments to consultants, including the Lead Housing Consultant, or related companies;*

*4. payments to third parties for temporary accommodation, including nightly paid or B&B. These include Apex Housing Solutions, Adam Hotel Management, Ada, Hotels UK, Assetgrove Lettings, Christopher house (London), Crystal & Co, Cyberstyle Lettings, Denham International, Ehomes and Shelters, Elderflower Estate, Euro Hotels, Housing Action Management, Link Estates, London Hounslow Hotel, London Property On Line, London Southwark Hotel, London Wembley Central Hotel, Management T/A Fastmove Properties, Sittara, YMCA St Pauls Group.*

*I will probably need copies of all of these documents, so you may wish to just prepare copies ready for me to collect. After inspecting them at home I may need to request to see further documents.*

*Can you please confirm by close of business on Monday 10 June that the documents requested will be available on the dates listed and provide me with the contact details of the person I need to see when I arrive at the council's offices."*

32. The Claimant's request had five parts to it, as follows:

Request 1 – Payments to the 28 businesses listed in the letter.

Request 2 – Expenditure on estate regeneration (i.e. for capital expenditure on Part II Housing Act 1985 stock).



Request 3 – Payments to consultants.

Request 4 – Payments to third parties for temporary accommodation (i.e. bed and breakfast accommodation or private sector leasing (PSL)).

Request 5 – Relevant contracts and purchase orders.

*Correspondence between the Claimant and the Council: 7 – 13 June 2019*

33. The Council responded to the Claimant's request saying it was working on it but could not provide invoices in relation to temporary accommodation or payments to consultants because they contained personal information, such as the names of tenants.

34. The Claimant's response was as follows:

*"In regards to the B&B and PSL invoices, I believe it is in the public interest that residents have access to these records, as we need to be able to see how much the Council is paying for each unit of accommodation and what type of accommodation it is and its location in order to assess whether the Council is obtaining value for money, which is the purpose of the Local Audit and Accountability Act 2014. Therefore I believe the public interest outweighs any data protection concerns in respect of these records but the public interest can probably be served by providing these records with the tenants' names redacted, thus avoiding any need to weigh the public interest against data protection."*

*Inspection at the Council's offices on 13 June 2019*

35. The Claimant attended the Council's offices on 13 June 2019 as arranged. A first set of purchase orders and invoices were provided to him; as follows:

Request 1 (payments to 28 businesses): Payments to 20 of the 28 businesses were provided. There had been no transactions in relation to four of the businesses. The invoices for the remaining four businesses were withheld because "details of individuals [were] included in the invoices".

Request 2 (Estate regeneration expenditure): a schedule was provided listing property purchases and detailing address, price, features of the property and date along with a list of other expenditure, invoices and miscellaneous catering expenses.

Request 3 (payments to consultants): The documents were withheld because personal details were mentioned on invoices.

Request 4 (payments for temporary accommodation): Documents were withheld for the same reason.

Request 5 (contracts and purchase orders): Not provided.

*Correspondence between 20 June – 5 July 2019*

36. Between 20 June – 5 July 2019 the Claimant continued to request the outstanding information, including the B&B and PSL invoices, "with tenants' names redacted if necessary". He sought some additional documents. The Claimant said he did not require the repairs invoices but he did require the contracts.

37. The Council replied on 27 June 2019. It provided various invoices 'subject to the redaction of confidential information'. It explained that there were 7049 invoices and

it would take “several weeks” to sort out and redact. Instead, the Council offered to provide a sample of the invoices.

38. The Claimant accepted the offer of sample invoices in his response of 28 June but explained why some of the redactions on invoices previously provided to him were problematic. He asked for the invoices in question to be unredacted:

*“Thank you for the additional invoices. Regarding the redactions, I accept that it is reasonable to redact personal addresses and phone numbers and bank account details. I have no issue with you redacting work e-mail addresses and phone numbers either and whilst it seems rather unnecessary to redact the names of the council officers or the staff at the contractors whom the invoices are addressed to, I don't really care about that.*

*However in some cases you have redacted details that I need to see. As you know, the purpose of the Local Audit and Accountability Act 2014 is to allow residents to inspect the accounts so that they can identify anything they might wish to raise questions or objections about with the external auditor. I clearly can't identify any potential concerns if I have been prevented from inspecting the contracts and the relevant details on the associated invoices, which the Act gives me the right to inspect.*

*With the Ark Consultancy invoice at p.11 of your PDF you have redacted the line above "Property Development & Regeneration". Even if this identifies the consultant whom the Council paid to carry out this work this is relevant information that I need to know as it may have a bearing on the value for money of the payments or identify a conflict of interest. The information redacted under Qty and Rate columns is also relevant to that question, as the hourly rate charged by the consultant and the number of hours he was paid for could clearly have a bearing on whether this payment was value for money*

*...*

*So for all of the above, I need you to unredact these details and provide the contracts which relate to these payments...”*

39. On 2 July the Council replied stating that:

*“The information we redacted from the invoices are all confidential information, either personal or information that has been deemed commercially sensitive. This is in line with the requirements of the Act.”*

40. In the same email the Council provided further invoices (also redacted for confidential information), and confirmed there were no relevant contracts. It explained that there were 466 contracts in relation to private sector leases and suggested that the Council provide contracts with the ‘top five’ landlords, stating: *“We hope we can get those to you early next week”*.

41. The Claimant replied on 5 July continuing to object to the Council’s redactions:

*“The Act doesn't permit you to just say "this is commercially confidential so we're not releasing it". S26(5) of the Act specifies that you can only withhold information on the grounds of commercial confidentiality if there is no overriding public interest in favour of its disclosure. There's no evidence that you've considered the public interest arguments in favour of disclosure at all before deciding to withhold this information.*

*The public interest requires that this information be provided because:*

*a) the Local Audit and Accountability Act 2014 gives residents the right to inspect the accounts and if they identify anything that raises any concerns, including about value for money or unlawfulness, to raise questions or objections about those concerns with the external auditor. I clearly can't identify any potential concerns about the payments to Ark, Hammond Clarke, Hays and Odgers Interim when all the details showing what the payments were for have been redacted;*

*b) it is in the public interest that residents can see exactly what the Council is paying various companies for and I cannot share this information with them unless you provide it, as you have a monopoly on it;*

*c) it serves the public interest to make this information available to residents to facilitate public debate about the Council's spending decisions.”*

42. Taking stock of developments by this point in the chronology; the main outstanding documentation still to be provided were the contracts relating to the 2018-2019 expenditure. In addition, the Claimant continued to challenge the redactions to some of the invoices provided to him.

*The Council's decision dated 9 July 2019*

43. On 9 July 2019, the Council sent the following email to the Claimant:

*“The council has considered the public interest in redacting personal data and individual rates from invoices. The council considers that to disclose the personal data of individuals and their roles would be a breach of General Data Protection Regulations (GDPR). The council considers that to publish the breakdown of spend on invoices at the level you have requested would provide commercially confidential information of third parties. The council has sought to be open and transparent by providing you with the redacted invoices which show the supplier and total spend details for your review.*

*Whilst I recognise that there is no time limit set aside for the inspection of accounts process there is a processing time limit for Freedom of Information (FOI) requests which is set at 18 hours. Section 12 of the Freedom of Information Act 2000 makes provision for public authorities to refuse requests for information where the cost of dealing with them would exceed the appropriate*

*limit which, for local government, is set at £450. This represents the estimated cost of one person spending 18 hours at £25 per hour in determining whether the Council holds the information requested, locating the information or documents containing the information, retrieving the information or documents and extracting the information from any document (including editing).*

*My team estimate they have spent over 72 hours of their time collating the information you requested to inspect already and a considerable amount of time has also been spent by colleagues in other departments in gathering information.*

*The Council estimates that it will take substantially in excess of 18 hours to determine appropriate material and locate, retrieve and extract the further information requested. Accordingly, the request will not be processed further.”*

*12 July 2019: Objections to the auditor and closure of the inspection window*

44. On 12<sup>th</sup> July 2019, the 30 day period allowed for inspection came to a close. On the same day the Claimant wrote to the auditor raising a number of objections. He explained that he felt unable to raise objections in respect of some documents/issues because of the non-provision or redaction of information by the Council. He was however able to make a series of objections on the basis of the information he had received. The extract below from the letter gives a flavour of the detail of his objections but does not constitute their totality:

*“1) RBK signed a contract with Electoral Reform Services (ERS) in February 2019 to conduct the Cambridge Road Estate (CRE) regeneration ballot later this year. The report from the Strategic Housing and Planning (SHaP) Committee meeting on 19 March 2019 (attachment 2) confirms at para. 21 that ERS had been appointed some time before that meeting and at para. 40 – 41 that they had been advising [Royal Borough of Kingston] RBK on the wording of the ballot question. At para. 61 the report says that ERA contract is worth around £20,000 and the separate contract for legal advice (awarded to Devonshires Solicitors) is worth around £30,000. The latter is included in the list of ‘Contracts over £5,000’ published here <https://data.kingston.gov.uk/transparency-code/> but the ERS contract is not.*

*In June 2018 I obtained a quote from ERS to ballot the residents of CRE (attachment 3). As you can see, it covers balloting 1,370 individuals in one constituency, with two resolutions/questions and multiple response channels (Post, Online, Telephone and Text) and all material and postage costs and comes in well under £5,000. This quote is commercially sensitive and I was asked by ERS not to publish it (and thus I would ask you to avoid specifying the exact amount in any document you might publish) but they allowed me to share it with RBK/councillors and it is in the public interest that I share it with you to enable you to audit the accounts, as it shows that RBK have agreed to pay over four*

*times more than they needed to pay for this service. As RBK has unlawfully prevented me from inspecting the contract I cannot be sure exactly what ERS has been contracted to do but it is hard to imagine what additional services they might be providing that would justify quadrupling their fee for conducting a ballot.*

*Therefore I object to RBK's failure to include this contract in the published data and submit that its decision to incur this expenditure is unlawful and ask that you apply to the courts for a declaration to that effect, as it is wholly unreasonable or irrational for RBK to pay over four times more than necessary, especially when I had shared the quote ERS gave me with them and thus they knew what a reasonable fee would be.*

...

*3) As the invoices for Shoosmiths show (attachment 5), RBK has a long-standing contract with them to "provide comprehensive legal advice on all aspects of Cambridge Road Estate Regeneration programme" (emphasis added) worth £340,000+VAT. Thus there should be no need for it to spend a further £30,400 instructing Devonshire Solicitors to provide legal advice about the CRE regeneration ballot and the fact it has done so is financially irresponsible.*

*Therefore I object to this unnecessary expenditure as it raises questions about RBK's arrangements for securing value for money and ask that you issue a report in the public interest addressing this.*

*4) The accounts contain the following entry*

*28/03/2019 ARK CONSULTANCY LTD,LEGAL AND PROFESSIONAL SERVICES,Agency Staff- Other,HEAD OF HOUSING,Direct Employee Expenses,Agency Staff – Other,0.00,"15,023.75"*

*Which shows that the Head of Housing was recruited or head-hunted by Ark Consultancy.*

*The list of "Contracts over £5,000" for January to March 2019 show that Ark Consultancy was also awarded a contract worth £462,000 running from 7 January 2019 to 6 January 2022 for "Consultancy services to provide strategic leadership and delivery to achieve effective HRA Business and Financial Planning. Making best use of HRA housing assets and managing homes effectively."*

*I object to both these items of expenditure and submit that it is unlawful for RBK to award a valuable contract to a company to advise it on what it should do with its HRA housing assets whilst also allowing the same company to select, or have any input in selecting, the Head of Housing who they will be effectively working for and advising. This situation will at least give rise to suspicions that Ark Consultancy has been afforded an unreasonable amount of power to influence what happens with the HRA assets and that this puts it in a position where it could easily take advantage of this power to benefit itself and RBK has a responsibility to protect against such possibilities by ensuring*

*it doesn't create any conflicts of interest when awarding contracts."*

6 September 2019: Issue of audit opinion

45. The Council's external auditors investigated the Claimant's objections and formed an initial view that they would not affect the issue of the audit opinion on the Council's accounts, which was issued on 6 September 2019. The auditors' further response was stayed pending the outcome of these proceedings.

### **The Council's evidence**

46. Evidence was given by Rachel Howard, head of the Council team with responsibility for responding to section 26 requests, by witness statement dated 19<sup>th</sup> December 2019.

Ms Howard explained that:

*"I have dealt with similar requests the previous year from Mr Moss and at least 3 other requests from other local electors over the past two years. These requests have been large and wide ranging, far exceeding the typical use of the rights under this Act that other local authorities receive both in volume and complexity."*

47. She referred to the Claimant's *"interest and campaign connected to the redevelopment of the Cambridge Estate including the decanting of residents from the estate"*.

48. She explained that dealing with the Claimant's request had taken approximately 2 weeks (72 hours) of Finance Officer time at the point at which it was decided not to provide any further information and an estimated several days for other departments. To fulfil the original request would require locating, extracting, reviewing and redacting at least 28 supplier contracts, and well over 7000 invoices and associated paperwork. Whilst the Claimant had accepted an offer of a sample of invoices, providing the full request would have taken one staff member around five weeks full time to extract from the system and redact the necessary personal information.

49. As regards the outstanding contracts which had not been provided:

*"The remaining contract documentation that was not provided is difficult to locate due to its age and the staff turnover that has occurred in this period since contracts were let. Providing the contracts would have taken approximately two weeks to locate, extract, redact and review the requested information"*.

50. Under the heading *"The case for commercial confidentiality"* she explained that:

*"Excluding the temporary accommodation invoices which Mr Moss agreed to receive just a sample of, the remaining documents that were not provided to Mr Moss were largely contracts or supporting documentation such as tender submissions. These contracts are agreements between the Council and its suppliers and not between the Council and the public at large. A public contracts register is available which includes name, duration, purpose and estimated value of contracts the Council has let. The more detailed information contained within the contracts themselves will specify the terms under which goods or services are supplied and the payments*

*that will be made in return which we would deem to be commercially confidential, as would the Council's suppliers. There is usually competition for the award of a contract and each bidder works on the basis of the information being provided being held by the Council confidentially. To make this information public, makes it available to suppliers' competitors and therefore reduces competition within the market. It would also be likely to reduce trust between the Council and its suppliers if it was perceived that confidential information would be disclosed and potentially prejudice the terms the Council was offered in the future. We therefore consider that this information should be either withheld or redacted to protect commercial confidentiality."*

51. At the hearing before me the Council sought permission to introduce a second witness statement from Ms Howard. Her second statement exhibits the Council's statement of accounts and explains the nature of the audit process. She then repeats the difficulties the Council would have in providing the contracts:

*"Since the time of Mr Moss' request however there has been staff turnover during the accounting period, including senior staff and unfortunately files were not always adequately handed over..."*

52. Further information is provided on other information requests by the Claimant. The statement concludes with the following:

*"Furthermore it is clear that the request... did not primarily relate to the potential to object to the statement of accounts but instead relates to information gathering for the Defend Council Housing campaign. This calls into question the validity of the request to inspect the accounts as Mr Moss does not appear to be using it for its intended purpose..."*

53. On behalf of the Claimant, Ms Mannion objected to the introduction of the evidence, save for the statement of accounts. The evidence was, she said, prejudicial in seeking to suggest the Claimant was a trouble maker. It was irrelevant so far as it related to other information requests. Moreover, the Claimant was not able to respond to the analysis of commercial confidentiality because he did not have the information in question.

54. I allowed the Claimant to produce a witness statement in response.

### **The Claimant's evidence in response**

55. The Claimant produced a witness statement detailing fourteen previous information requests made to the Council under the Freedom of Information legislation. In relation to his request under section 26 LAAA he explained that:

*"I demonstrated during the chain of correspondence with the Defendant in respect of my s26(1) request that I was willing to reconsider the scope of my request in discussions with them. I showed that I was also able to confirm which documents and types of documents were priorities for me and which were not."*

56. He also explained that he would have been willing to continue to reconsider the scope of his request had the Council explained its difficulties in locating the contracts to him. He concluded by saying his ability to assess whether spends were in the public interest had been hampered by the Council's failure to provide the contracts.
57. In response Mr Bhowse and Ms Parekh produced brief written submissions on behalf of the Council objecting to the Claimant's statement, to which Ms Mannion responded.
58. I have considered all the additional evidence and written submissions put before me.

### **Submissions of the parties**

#### **Submissions on behalf of the Claimant**

59. On behalf of the Claimant, Ms Mannion's submissions were as follows:

- a) Statutory construction of s26 LAAA: it was unlawful for the Council to refuse to comply with the Claimant's request on the basis of the time it would take to respond to it. The LAAA regime has no such limit. There are plainly expressed parameters for inspection already within s.26, including the timetable for inspection and the available documents. A 'time to comply' provision would be contrary to the legislative history of the provision, which shows a longstanding concern that persons interested and electors should be freely able to inspect the documents relating to a Council's expenditure.
- b) The Claimant's legitimate expectation as to the provision of the contracts: This is an alternative ground in the event that the Court finds it was lawful for the Council to refuse to comply with the request on grounds of the time involved. The Council made clear unambiguous representations to the Claimant that the contracts would be provided; in the notice to the public and in correspondence with the Claimant. The Claimant relied on the representations whilst the inspection 'clock' ran down and was only told the contracts were not to be provided three days before the inspection window closed.
- c) Inadequate reasons for the redactions on the invoices: It was not clear from the Council's decision of 9 July 2019 whether the invoices were redacted on grounds of personal information or on grounds of commercial confidentiality. The Claimant had objected to the redactions and had explained why the public interest in disclosure outweighed commercial confidence. There was, accordingly, a particular duty on the Council to explain why it had rejected the Claimant's reasons. The further explanation provided in Ms Howard's witness statement of December 2019, which post-dated the decision, further exposed the inadequacy of the reasons in the decision letter because it suggested that the Council had failed to conduct the necessary public balancing exercise required to assess commercial confidentiality under section 26(5) LAAA.

#### **Submissions on behalf of the Defendant**

60. On behalf of the Council, Mr Bhowse submitted that:

- a) Statutory construction of section 26: Given the modern context of extensive accounting records in a digital age, it is highly unlikely that Parliament intended to confer a statutory right which entitles one particular individual to inspect each and every document within the scope of section 26(1) irrespective of the time taken to comply. The authority would need to undertake complex and potentially lengthy enquiries about redaction of personal and confidential information. This must all be done within the short 30 day inspection window. It is tantamount to requiring the authority to perform the impossible, unless an army of employees is required to undertake all the necessary inquiries and redactions. Accordingly, a proportionality



test enabling the Council to take into account the likely time involved must be implied into section 26. A relevant authority may refuse to process a request where it rationally concludes that a request by a particular individual is disproportionate or manifestly unreasonable.

- b) The Claimant's legitimate expectation as to the provision of the contracts: This is a novel and curious attempt to mount a substantive legitimate expectation challenge on the basis of several emails from the Council to the Claimant prior to the Council's decision. In any event the Council never made an unambiguous promise that the Claimant would get the contracts. The emails simply state that the Council is trying to pull contracts together and reviewing them.
- c) Inadequate Reasons for the redactions on the invoices. There was no duty for the Council to give reasons but in any event the reasons given were adequate.

## **Discussion**

### **The purpose and importance of the s26 right to inspect**

- 61. A public right to inspect a local authority's accounts is a long standing right dating back, in its earliest form, to 1844. The right in the Poor Law Amendment Act 1844 to inspect accounts and make objection to the auditor reflected the "*19th century concept that an audit was a public proceeding which any local government elector could attend*": Lloyd v McMahon ([1987] AC 625, 641C, per Lawton LJ).
- 62. The right of inspection afforded by section 26 LAAA is not akin to the general freestanding rights to access information afforded by, amongst others, the regimes under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. The roots of the section 26 inspection right do not lie in the policy of transparency and openness underlying the modern information legislation. Its roots lie in the financial and democratic accountability of public authorities for the use of public money and the conduct of public business, to which special accountabilities attach (Cranston J in R(Veolia ES Nottinghamshire Ltd) v Nottinghamshire County Council [2009] EWHC 2382 at [82]) and section 1.6 Code of Audit Practice 2015 issued under the LAAA).
- 63. More specifically, the major purpose of the rights to inspect (s26); question the auditor (s26); and object to the accounts (s27) are to enable electors and other persons interested either to assist the auditor in his audit, in advance of its completion, 'or to exercise a form of participatory democratic accountability through the right of question and/or object' (Rix LJ in the Court of Appeal in R(Veolia) v Nottinghamshire County Council [2010] EWCA Civ 1214 at [94]).
- 64. It is apparent from section 20(1)(c) LAAA that the auditor must do more than simply check sums in his/her review of the accounts. He must satisfy himself that 'the authority has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. The point is underlined in the Code of Audit Practice issued in 2105 pursuant to Schedule 6 LAAA:

*"1.6 ..the auditor does have wider duties.. on aspects of public stewardship and the use to which resources have been put. The auditor carries out this work on behalf of the public and in the public interest.*

65. The potential value of the assistance that may be provided to the auditor by the public was outlined by Rix LJ in R (Veolia ES Nottinghamshire) v Nottinghamshire County Council (citation above):  
*“ It is also clear ..that, as a matter of democratic accountability, electors, who have to pay the bills as ratepayers, and other persons interested .....have a role to play in assisting the auditor in his audit, perhaps from their own special local knowledge of people and events, or as a gadfly for the promotion of further inquiry (by representations, questioning or objection). If the auditor is the custodian of the public interest, the electors and other persons interested are the custodians of the custodian ....or at any rate his helpmates”* ([2010] EWCA Civ 1214 at [125] (in relation to section 15 Audit Commission Act 1998 which was the predecessor of section 26 LAAA).
66. In the current context, Mr Bhoose explained to the Court that auditors cannot and do not routinely review or check every transaction. Of particular relevance to the present case he explained that they would not routinely review the contracts requested by the Claimant.

#### The gateways to the exercise of the section 26 right

67. The right of inspection under section 26 is subject to two gateways. Access is dependent on demonstrating sufficient interest and on arriving at the right time in the audit timetable:
- a. Firstly; the right may be exercised by a ‘person interested’ or a journalist (section 26(1) LAAA). A ‘person interested’ includes electors but extends beyond them to all persons who might have a legitimate interest in the accounts or a ‘real and close interest in a council’s activities’ (R(Veolia) v Nottinghamshire County Council [2010] EWCA Civ 1216 at [49] and HTV v Bristol City Council [2004] 1 WLR 2717 at [50]) (the “persons interested gateway”).
  - b. Secondly; the right may only be exercised for a 30 day period during the audit process after the draft accounts have been prepared and before the audit has been completed by the auditor (s26(1) and Regulation 14) (“the timetable gateway”).

#### Range of documents available for inspection

68. Once through the gateways the breadth and range of documents that may be inspected is potentially extensive, so long as the documents are accounts related. They include the accounting records and ‘all books, deeds, contracts, bills, vouchers and receipts and other documents relating to the accounts’. ‘Relating to’ is to be construed broadly (R(Veolia ES Nottinghamshire Ltd) v Nottinghamshire County Council [2010] EWCA Civ 1214 at [99]).

#### Exemptions

69. It was common ground that the potential exemptions from the right to inspect are more limited than those under freedom of information, data protection and local government legislation (Information Rights: Philip Coppel QC Fifth edition at [37-049]). The right is subject to two exemptions:
- a. First, the right does not entitle a person to inspect or copy any part of a document containing information protected by commercial confidentiality. Information is protected by commercial confidentiality if its disclosure would prejudice

commercial confidentiality and there is no overarching public interest in its disclosure (s26(4) & (5) LAAA).

- b. Secondly, the right does not entitle a person to inspect or copy any part of a document that contains personal information. This exemption is not qualified on public interest grounds (s26(6))

The right to refuse to process a request on grounds of ‘time to comply’

70. On the plain and ordinary meaning of the words in section 26 LAAA there is no provision for a relevant authority to refuse to process an inspection request on the grounds of the time it would take to do so. The section says nothing about the time or cost of compliance to a relevant authority. Rather to the contrary, the indications are that there will be an inevitable time and cost to compliance. The range of accounts-related documents eligible for inspection is potentially extensive (all books, deeds, contracts, bills, vouchers and receipts and other documents relating to the accounts). Regulation 14(3) of the 2015 Regulations stipulates that during the period for the exercise of the right the accounts related documents must be available for inspection ‘at all reasonable times’, on reasonable notice. The exemptions are more limited than those under modern information legislation.
71. Moreover, in the present context, the wording of section 27(4) of the Act is significant. Section 27 applies if a local government elector makes an objection to the auditor. If the objection is properly made, the auditor must decide whether to consider the objections. However, the auditor may decide not to consider the objection if he considers that the cost of considering the objection would be disproportionate to the sums to which the objection relates, unless the objection looks like it might disclose serious concerns about the authority’s financial management.
72. The presence of a proportionality based control mechanism in section 27(4) in relation to the auditor’s time must be contrasted with the corresponding absence of any such control mechanism in relation to the relevant authority in section 26. The contrast must be taken as an evident legislative intention that the right to scrutinise the financial dealings of a relevant authority is not to be curtailed by the time it will take the relevant authority to comply with the inspection request. There is an obvious rationale for this stance. It is not hard to see that any such control mechanism in the hands of a relevant authority could be used to impede proper public scrutiny of its expenditure. Conversely, the auditor’s time is protected but he is given the assistance of the ‘custodians of the custodian’ (in the words of Rix LJ in Veolia), armed with a broad inspection right under section 26.
73. Mr Bhose submitted that section 26 is to be read as providing an inspection right to a class of people (‘persons interested’) to inspect the relevant documents and not as a right for a particular individual within the class to inspect each and every relevant document. However, the starting point in statutory construction is the ordinary linguistic meaning of the words used. The stronger the claim of a particular meaning to be the clear grammatical meaning of the enactment the weightier will the factors arising from an opposing criteria need to be if it is to be displaced (Bennion on Statutory Construction) at [10.5]). On a plain and ordinary reading of section 26(1), anyone with sufficient interest benefits from the inspection right. Mr Bhose’s interpretation does not advance the purpose of the inspection right which is to provide assistance to the auditor. The depth of the Claimant’s analysis of the documents inspected is apparent from a review of his letter to the auditor. It demonstrates an assiduous trawl for, and review of, relevant documents on the Council’s housing spend. It is not clear how

disclosing fewer documents to a larger number of people assists either the auditor or the Council, unless the aim is to stymie the small number of electors prepared to undertake the sort of painstaking analysis conducted by the Claimant in this case. The auditor faces the prospect of a larger number of more superficial objections and the Council faces a potentially greater administrative burden in facilitating inspection by more people.

74. Mr Bhose emphasised the potential burden placed on relevant authorities by a broad inspection right in a digital age. The Claimant was, he said, seeking to inspect every single document going towards a £46 million spend during the course of that year i.e. ‘millions of pounds and thousands of documents’. He pointed to the Council’s evidence about the manpower and time required to process the request and explained that the annual expenditure of larger authorities could run into billions of pounds. Their accounting records will, he said, be extensive and bound to include a lot of personal and confidential information because local authorities provide services to people and habitually contract with companies. Parliament must be taken to have known of these factors and accordingly, he submitted, must be presumed to have intended there to be a proportionality filter in the exercise of the right.
75. There can be no dispute about the potential burden on relevant authorities. However the burden must be seen in context. Firstly; the section 26 inspection right is not a freestanding general right of access to information at any time, as under other information regimes like FOIA. It is only exercisable at the point at which the relevant authority has done the work of pulling together draft accounts. Secondly; section 3 of the LAAA requires a relevant authority to keep adequate accounting records. This means records that are sufficient to show and explain the relevant authority’s transactions and disclose the financial position with reasonable accuracy. Compliance with section 3 would seem likely to necessitate some sort of general housekeeping of accounts related documents. I accept Mr Bhose’s submission that section 3 does not expressly extend to documents underlying the accounts, like the supplier/consultant contracts. However, I also accept Ms Mannion’s submission that contracts imposing ongoing financial obligations on the Council are not obscure documents. In addition, they may be a good way for the Council to demonstrate compliance with the requirement in section 3(1)(a) of the Act ‘to show and explain the relevant authority’s transactions’. There may be some force in Ms Mannion’s suggestion that the Council’s difficulties in providing the contracts arose not from the scope of the Claimant’s request but from its internal document management system. In any event, it is clear that the quality of a relevant authority’s document management system cannot be allowed to define the extent of the section 26 inspection right. Thirdly; it is open to a relevant authority to seek to reduce the burden of an inspection request by providing assistance and advice to refine its scope. It is apparent from the correspondence in this case that this sort of advice and assistance was underway prior to the Council’s decision of 9 July. The Claimant had agreed to accept a sample of the invoices and indicated that he did not need to see the repair invoices. He explained to the Court that he would have been prepared to refine his request further if the Council had explained its difficulties to him.
76. In her evidence Ms Howard noted that the Claimant’s requests far exceeded the typical use of the rights under the LAAA that other local authorities receive both in volume and complexity. In my judgment, it must be presumed that Parliament would consider the burden undoubtedly placed on the Council in this case to be a necessary consequence of maintaining the long standing public right to scrutinise the accounts of a local authority.

### **Legitimate expectation as to the provision of contracts**

77. This ground does not arise given my conclusion on the interpretation of section 26 LAAA.

### **Inadequate reasons for the Council's decision to redact the invoices**

78. Where reasons are given they must be adequate and intelligible. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal controversial issues. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law (South Bucks District Council v Porter (No 2) [2004] 1 WLR 1953).

79. Ms Mannion's challenge to the adequacy of the reasons related to the Council's decision to redact the invoices. Responding to the Claimant's objections to the redactions, the Council explained that:

*"The information we redacted from the invoices are all confidential information, either personal or information that has been deemed commercially sensitive. This is in line with the requirements of the Act."*

80. The Claimant continued to object and put forward three reasons for a public interest in disclosure of the redacted information, namely that he would not be able to identify potential concerns to the auditor; local residents ought to be able to see the detail of the Council's payments to third parties; and the information would facilitate a public debate about the Council's spending decisions. Ms Mannion submitted that in light of these representations the Council was under a particular duty to explain why the public interest in disclosure did not outweigh the commercial confidence of the information.

81. On 9 July 2019, the Council explained further as follows:

*"The council has considered the public interest in redacting personal data and individual rates from invoices. The council considers that to disclose the personal data of individuals and their roles would be a breach of General Data Protection Regulations (GDPR). The council considers that to publish the breakdown of spend on invoices at the level you have requested would provide commercially confidential information of third parties. The council has sought to be open and transparent by providing you with the redacted invoices which show the supplier and total spend details for your review."*

82. On balance, I am satisfied that the Council's explanation was intelligible and adequate. The nature of the redacted information is said to be personal data and individual rates from invoices. There is a brief explanation that the breakdown of spend at the level of individual rates of suppliers/contractors is commercially confidential because it is information belonging to third parties. There is express reference to the public interest in the first sentence of the paragraph in question. Read together with the last sentence (The council has sought ...') it demonstrates the Council's recognition of the public interest in disclosure and the consequent need for a balancing exercise. The outcome of

that balancing exercise is that the Council decided to disclose the name of the supplier and the total spend but not individual rates. In my view, it was not necessary for the Council to expressly respond to the Claimant's representations on the public interest in favour of disclosure. The representations were largely generic in nature and the Council had conducted a more specific balancing exercise to arrive at the view that it would publish the name of the supplier and the total spend but not individual rates. Ms Mannion did not suggest that the redactions to each invoice had to be separately explained and she accepted, rightly, that reasons do not need to be extensive. I accept that the Council could have supplied further detail on why the individual rates needed to be kept confidential, along the lines of the information given in the later witness statement of Ms Howard (to protect supplier trust and competition). However it was not unlawful for the Council not to have done so, given the Claimant's objections in correspondence had been focussed on the public interest test.

### **Conclusion and relief**

83. For the reasons set out above, section 26 of the LAAA does not allow a relevant authority to refuse to process an inspection request on grounds of the time it will take to satisfy the request. The Council acted unlawfully in refusing the Claimant's request on this basis. The Council's reasons for its decision to redact the invoices were however adequate, intelligible and lawful and the Claimant's challenge fails on this ground. In light of my decision on the construction of section 26 LAAA, it is not necessary to address the Claimant's legitimate expectation challenge. I invite the parties to agree the form of an order. I will hear further submissions if necessary.