



Department for
Communities and
Local Government

Local Government Transparency Code 2014

Frequently Asked Questions

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Introduction

1. The Government believes that in principle all data held and managed by local authorities should be made available to local people unless there are specific sensitivities to doing so (eg. protecting vulnerable people or commercial and operational considerations).
2. Transparency about how local authorities spend money and deliver services, and how decisions are made within authorities, gives local people the information they need to hold their local authority to account and participate in local democratic processes. The availability of data can also help secure more efficient and effective local services and open new markets for local business, the voluntary and community sectors, and social enterprises to run services or manage public assets.
3. The Local Government Transparency Code 2014¹ (the Code) is a tool to embed transparency in local authorities and sets out the minimum data that local authorities should be publishing, the frequency it should be published and how it should be published.
4. In December 2013 the Government set out its policy on transparency² in local government and published a draft transparency Code. The Government invited comments on the draft Code to ensure that it properly gave effect to the policy the Government had set out and to ensure that the obligations, definitions and timings contained in the draft Code were clear and understood by local authorities.
5. 58 responses were received. The Department for Communities and Local Government also ran three workshops, attended by 63 organisations, to discuss the draft Code.
6. The majority of responses received highlighted areas and points where technical clarification was needed. This document seeks to provide answers to the questions raised by respondents, together with answers to questions that have been raised since the Code was first issued on 1 May 2014. It is hoped that these “Frequently Asked Questions” will help local authorities effectively implement the Code.
7. The Department for Communities and Local Government will work with local government bodies to refine and keep this document up to date.

¹ <https://www.gov.uk/government/publications/local-government-transparency-code-2014>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266815/Transparency_Code_Government_Response.pdf

General questions

8. This section addresses strategic questions which are not directly related to the publication of specific data sets and covers:

- the requirements being placed on local authorities
- data that is included or excluded from the Code
- generic definitions
- the fit with the Freedom of Information Act and enforcement
- best practice, and
- new burdens.

The requirements being placed on local authorities

Q 1: Why has the Government decided to introduce a new transparency Code and make part of it mandatory on local authorities?

The Government wants to put more control over local services and assets in the hands of local people and make it easier for them to participate in local democratic processes and decision making. Therefore, it is vital that local people are able to understand more about how their local authority spends its money and how local services are delivered. Evidence shows that whilst local authorities have made progress in publishing key datasets, there is still a way to go to ensure that local authorities publish all the data they hold.

Q 2: When do the mandatory requirements of the Code come into force?

Part 2 of the Code will be mandatory when regulations, made under section 3 of the Local Government, Planning and Land Act 1980, come into force. Ministers will imminently make and lay the regulations for Part 2 of the Code to become mandatory. Subject to Parliamentary processes, the Code should become mandatory by 7 November 2014.

Q 3: When does my local authority first have to meet its legal obligations under the Code?

Quarterly data must first be published no later than 31 December 2014 and thereafter not less than quarterly, with the data being published no later than one month after the quarter to which it relates. After the Code is issued, local authorities will be expected to publish two sets of quarterly data in 2014-15.

The first set of annual data must be published no later than 2 February 2015 and thereafter not less than annually, with the data being published no later than one month after the year to which it relates.

Within these timescales, an authority may choose to publish at any point. However, local people have a right to see timely data about how their local authority spends money and delivers services. The Government encourages local authorities to publish data in a timely manner and is providing funding to enable local authorities to do this.

Q 4: What about small public authorities not captured by this Code?

The Government recently consulted on a draft transparency Code for parish councils with an annual turnover below £25,000 which will act as a substitute from routine external audit. The Government published its response to the consultation on 6 August and intends to lay regulations to make the Code mandatory later on this year³.

Q 5: How does the Code apply to Local Enterprise Partnerships?

Local Enterprise Partnerships are not legal entities, nor are they local authorities. As such, the Code does not apply to them. Local authorities need to publish data about spending transactions and so will need to publish data about monies they pass to or spend on behalf of a Local Enterprise Partnership.

Q 6: Why have you re-issued the Code? And why have you added three new datasets to the mandatory section?

The Government believes that in principle all data held and managed by local authorities should be made available to local people. The Government believes that local people are interested in how their authority delivers waste services, use the parking revenue it collects and tackles fraud. The three additional mandatory requirements do not represent an onerous burden for authorities and any necessary work to publish these will be funded through new burdens procedures.

Q 7: What status does the Code issued on 1 May 2014 now have?

None. The Code issued on 3 October 2014 supersedes all previous local government transparency codes.

Q 8: What if my authority does not have responsibility for certain functions and, therefore, does not hold the relevant data-sets?

Some authorities will not have responsibility for particular functions and so will not have to publish data for any of those functions specified in the Code. For example, Fire and Rescue authorities do not have any parking functions and so do not have to publish data relating to any parking functions specified in the Code.

Q 9: What is the relevant legislation that makes the code mandatory?

The Local Government (Transparency) (Descriptions of Information) (England) Order 2014 allows the Secretary of State to require information on all expenditure, all legally enforceable agreements entered into by an authority and invitations to tender to be published more frequently than annually. The Local Government (Transparency Requirements) (England) Regulations 2014 will make it a legal requirement for local authorities to publish the data specified in Part 2 of the Local Government Transparency Code issued on 3 October 2014.

Q 10: Where can I find the legislation that makes Part 2 of the Code a legal requirement on local authorities?

The relevant legislation can be found on the legislation.gov.uk website.

³ <https://www.gov.uk/government/consultations/draft-transparency-code-for-parish-councils>

Data that is included or excluded from the Code

Q 11: Is it right that the Code does not require data on councillor allowances to be published?

There is already a mechanism in place to report councillor allowances. The Local Authorities (Members' Allowances) (England) Regulations 2003 require certain local authorities to make a scheme of allowances for their members and to establish an independent remuneration panel to make recommendations to the authority about the scheme and the amounts to be paid. All such local authorities must publish their members' allowance scheme setting out the allowances members are entitled to receive and what expenses they are able to claim and, at the end of each year, the local authority must publish in a newspaper the total amounts paid to each councillor.

Q 12: Is it right that the Code does not require data on policies, performance and inspections to be published?

This Government has abolished performance-management such as Comprehensive Area Assessment. The Code is not a tool for central government to collect data on the performance of local authorities. The aim of the Code's is to ensure that local people have enough key information to enable them to hold their authorities to account. This, in turn, will enable people to contribute to the local decision making process and help shape public services. In any event, local authorities already have to publish some key information, for example, external audit under existing Accounts and Audit Regulations⁴.

Q 13: Does the Code apply to schools and do local authorities have to include information from schools when preparing data to be published under the Code?

Any expenditure incurred by the local authority on schools or on behalf of schools is within the scope of the Code. However, expenditure incurred directly by schools themselves is not.

Q 14: What advice are you giving to prevent fraud?

The transparency Code can help combat fraud - fraud can thrive where decisions are not open to scrutiny and details of spending, contracts and service provision are hidden from view. Greater transparency helps combat this. Local authorities should ensure they establish strong internal control mechanisms to reduce their risk of payment fraud - Annex B of the Code provides local authorities with useful sources of information to help them manage these risks.

Q 15: Are you going to update this Code again? Are you going to make more "recommended" data sets mandatory?

Currently, we have no plans to add any more data sets to the mandatory part of the Code. We are in regular discussions with local authorities and the Local Government Association about implementation of the Code and other transparency and open data issues. The Government is aiming to review how implementation of the Code has gone, in the early part of the next Parliament.

⁴ These will be replaced with Regulations under the Local Accountability and Audit Act 2014.

Q 16: What happened to the value for money profiles maintained by the Audit Commission?

Responsibility for this tool will transfer to a transitional body – a new organisation to be established by the Local Government Association – following closure of the Commission in 2015. The transitional body will maintain the profiles in parallel with its core function of managing the Commission’s existing audit contracts until their expiration. The Local Government Association has also developed its own tool, LG Inform, which tells local people about their local authority’s performance and allows comparisons between authorities.

Generic definitions

Q 17: Is there a preferred standard categorisation for suppliers which should be used when publishing data covered by the Code?

The Code is not prescriptive about the categorisation of suppliers. This could be the descriptor that local authorities use in their own accounting system, providing it gives a clear sense of why the expenditure was incurred or what it purchased or secured for the local authority. Local authorities may wish to refer to guidance and categorisations developed by bodies such as the Chartered Institute of Public Finance and Accountancy. And, the Department for Communities and Local Government will be working with the Local Government Association and others to prepare advice for local authorities on how to meet their obligations under the Code.

Q 18: How are the voluntary and community sectors defined in the Code and is the same definition used throughout the Code?

This is defined in the Code as non-governmental organisations that are value-driven and which principally reinvest their surpluses to further social, environmental or cultural objectives. This is the definition used throughout the Code. The Code also requires that the relevant registration must be provided (e.g. charity registration number) where the supplier is a voluntary or community sector organisation to help users of published data fully understand which organisations are in receipt of public funds.

Q 19: How is a social enterprise defined in the Code and is the same definition used throughout the Code?

This is defined⁵ throughout the Code as a business that trades for a social and/or environmental purpose and is a business which:

- aims to generate its income by selling goods and services, rather than through grants and donations;
- is set up to specifically make a difference;
- reinvests the profits it makes for the purposes of its social mission.

Q 20: Can data from different categories included in the Code be combined and published as one list?

The Code simply sets out what data is required to be published, how frequently it should be published and the method of publication. How it is presented is a matter for individual local authorities, although local authorities should ensure that data is accessible and can be easily understood by local people.

⁵ <https://www.gov.uk/set-up-a-social-enterprise>

The fit with the Freedom of Information Act and enforcement

Q 21: How does the Code fit with the Information Commissioner's model publication scheme and guidance?

Local authorities have a duty under the Freedom of Information Act to maintain a publication scheme listing the classes of information they routinely make available. The Code does not replace these existing arrangements. The Code focusses on a small but key sub-set of information. The Department for Communities and Local Government and the Information Commissioner's Office will work together to ensure the Code and publication scheme definition document and guidance is aligned as far as possible.

Q 22: How does the Code fit with the Freedom of Information Act?

The revised and strengthened Code does not replace or override existing Freedom of Information principles or obligations. The Information Commissioner's Office has made available comprehensive guidance for practitioners⁶.

Q 23: How will the Code be enforced?

The Information Commissioner's Office will not monitor compliance with the Code: it will react to complaints from the public under existing frameworks – the Freedom of Information Act and the Environmental Information Regulations⁷. In order to ensure that authorities fulfil their obligations:

- anyone can make a complaint to the Monitoring Officer of a local authority and remind them of their duty;
- the public can use the local authority's complaints procedures;
- it may be possible to make a complaint to the Local Government Ombudsman where other local authority complaints procedures have been exhausted;
- the authority could become subject to judicial review;
- the public can make a Freedom of Information Act request. Where the local authority does not respond positively to the Freedom of Information request, members of the public can complain to the Information Commissioner's Office under the existing Freedom of Information framework. As well as any issues related to a request, the Information Commissioner's Office will consider whether the matter under the Code aligns with Freedom of Information obligations.

⁶ http://ico.org.uk/for_organisations/freedom_of_information/guide

⁷ http://ico.org.uk/for_organisations/freedom_of_information/guide/publication_scheme

Best practice

Q 24: How long should published data remain available to the public?

There is no requirement to retain information indefinitely online. An authority should follow its own records management policy. The Effective Service Delivery Toolkit (sponsored by the Local Government Association) has carried out a project with Kent County Council to identify records retention periods for all services in the standard Effective Service Delivery list of local authority services at <http://retention.esd.org.uk/>.

The Information Commissioner's Office definition document⁸ for principal local authorities, which provides guidance on meeting their model publication scheme commitments under the Freedom of Information Act, states the following (in summary):

- Any information about decision-making and records of decisions should be made available for the current financial year, plus the previous three financial years;
- Any information about financial records (e.g. from parking income, to salary information) should be made available for the current financial year, plus the previous two financial years;
- Any other substantive information (e.g. constitution) should be up to date.

Q 25: Is there any best practice or guidance about how to prepare and publish some of the datasets listed in the Code e.g. producing an organisation chart?

The Department for Communities and Local Government will be working with the Local Government Association and others to prepare advice for local authorities on how to meet their obligations under the Code. We expect the sector will lead this process by producing updated versions of existing Local Government Association guidance, prepared for the Code of Recommended Practice for Local Authorities on Data Transparency 2011. Local authorities may also want to participate in the Local Open Data Community⁹ which is a forum for practitioners to share best practice, hold conversations on how authorities publish their data and identify innovative ideas around making better use of data. And, the Local e-Government Standards Body¹⁰ - a sector-led body promoting eStandards that support efficiency, transformation and transparency of local public services - will be happy to offer support.

Q 26: How will you raise awareness and stimulate public demand for the data in the Code?

The 2011 Code has put transparency at the heart of local democracy. The revised Code will ensure that more data about how local authorities spend their money and deliver services is published. As local people become increasingly familiar with this data and are able to compare the performance of their local authority with others, we expect demand will grow for local authorities to publish more of their data.

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http://ico.org.uk/for_organisations/freedom_of_information/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/definition_document_local_authorities.pdf

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https://knowledgehub.local.gov.uk/signin?p_p_id=58&p_p_lifecycle=0&_58_redirect=%2Fgroup%2Flocalopencommunity%2Factivity

¹⁰ <http://legsb.i-network.org.uk/>

Q 27: Will the Code be dynamic and regularly updated to keep pace with the new and increasing information demands of local people?

The Department for Communities and Local Government will keep under review the need to extend the Code to meet the demand from local people for more data to be published by local authorities. However, stability is also important to ensure that local authorities can effectively and consistently meet the requirements of the Code and local people understand what data they can expect their local authorities to publish. The Government currently has no plans to extend the scope of the Code.

New burdens

Q 28: The Code places new obligations on local authorities, is the Government meeting the costs of these?

The Government has published an Impact Assessment¹² alongside the Code. The government has already paid £1 million to help councils with the set up costs of publishing land and asset data. And, it has agreed new burdens funding to meet the ongoing annual costs of meeting the mandatory requirements in the Code

Q 29: How is the level of new burdens the Government is committed to meeting calculated?

Alongside the Code, the Government has published an Impact Assessment¹² which sets out how the impact of the mandatory elements of the Code has been assessed.

Q 30: How much new burdens money will be paid?

The Government expects to pay about £2.6 million in 2014-15 and £4.0 million in 2015-16.

Q 31: How will new burdens money be paid?

New burdens money will be paid to eligible authorities by grant under section 31 of the Local Government Act 2003, as soon as possible after the Code becomes mandatory.

Q 32: How much funding will each authority receive? Does this differ by types of authority?

We are working with the Local Government Association to develop a simple low burden approach to distributing the money. This is likely to focus on one rate of funding for top-tier authorities and another rate for lower-tier authorities.

Q 33: Why are you not paying the full annual amount of new burdens funding for 2014-15?

The Code will become mandatory half way through 2014-15, subject to Parliamentary processes. Therefore, local authorities will only need to publish two rounds of quarterly data in 2014-15. Local authorities will receive the full level of new burdens funding in 2015-16 (£4.0 million) and the Government has already paid £1 million to help local authorities with the set up costs of publishing land and asset data.

Q 34: What if, in the process of implementing the Code, my authority's costs are higher than new burdens funding?

We have published an Impact Assessment¹¹. New burdens estimates were developed in consultation with local authorities and the Local Government Association. The Government believes it has fairly and openly assessed the reasonable costs that will be incurred by local authorities in implementing the Code. We will review our cost assessment with further data from local authorities after policy implementation and consider whether the correct level of new burdens funding is being provided.

¹¹ <https://www.gov.uk/government/publications/local-government-transparency-code-2014-impact-assessment>

Questions related to expenditure data

9. This section covers questions about local authority expenditure i.e. information to be published by local authorities about expenditure transactions exceeding £500 (covered by paragraphs 23, 24 and 48 of the Code), Government Procurement Card transactions (covered by paragraphs 25 and 48 of the Code) and grants to the voluntary and community sectors and social enterprises (covered by paragraphs 32, 33, 56 and 57 of the Code).

Q 35: Why do all Government Procurement Card transactions have to be published, instead of just transactions above £500 as for core expenditure?

Local people have a right to see how local authorities spend their money and local authorities should look to publish as much information as possible for local people. Management information for Government Procurement Cards should readily be available as part of the Government Procurement Card framework agreement and so the additional burden of publishing details of all transactions is minimal.

Q 36: Why isn't the threshold for grants to voluntary and community sectors the same as for spending transactions £500?

Grants to the voluntary and community sector can often be small. The Government wants local people to be able to see if grants to these sectors are being disproportionately cut so it is important that local people can see the details of all grants made to the sectors.

Q 37: Does publication of expenditure transactions exceeding £500 include all individual salary transactions?

Salary payments to staff normally employed by the local authority should not be included. However, local authorities should strongly consider publishing details of payments to individual contractors (e.g. individuals from consultancy firms, employment agencies, direct personal contracts etc) either here or under contract information. Furthermore, there is a separate set of requirements to publish details of senior salaries in paragraphs 38 and 39 of the Code. And, we think it is important that local people are aware of how much, in total, is being spent on salaries: the Code recommends that this information is published at least quarterly.

Q 38: Why are authorities required to publish the merchant category for each item of expenditure? Is this not duplicating other data?

Merchant category, such as IT equipment, is routinely provided in a contract that includes the regular provision of those goods. It is important to provide a 'like for like' or 'unit cost' for each item to demonstrate value for money.

Q 39: What if the Government Procurement Card transactions do not include description of goods and services (referred to in the Code as "purpose of expenditure")?

Local authorities should add a description that they think helpfully describes for local people what good or service was purchased. Local authorities can also refer to Chartered Institute of Public Finance and Accountancy guidance.

Q 40: Should Value Added Tax be included and highlighted in all published expenditure transactions including Government Procurement Card transactions?

Where local authorities can fully recover Value Added Tax, they should publish the net value of the transaction or contract, excluding the recoverable Value Added Tax. Where Value Added Tax cannot be recovered or can only partially be recovered, local authorities should publish the total value of the transaction or contract paid by the authority and publish alongside this the amount of Value Added Tax actually paid.

Q 41: Does the £500 threshold for publishing expenditure transactions include or exclude Value Added Tax? Is it a net or gross figure?

The £500 threshold should be the net amount excluding fully or partially recoverable Value Added Tax. Where Value Added Tax cannot be recovered – or the source of the data being used cannot separate out recoverable Value Added Tax – then the gross amount should be used instead. If you cannot publish amounts net of Value Added Tax, we suggest that you state this on one of the following:

- the web page where you publish the data;
- the accompanying metadata text file;
- the narrative, if this applies to single transactions only.

Q 42: Should the beneficiary registration number be published with details of grants to the voluntary and community sector and social enterprise organisations?

Yes. Occasionally organisations can have the same or similar names. Providing the beneficiary registration number can help clarify which organisation has received a grant from the local authority.

Q 43: What is meant by a Government Procurement Card?

The use of the Government Procurement Card refers to cards issued under a procurement framework owned by the Crown Commercial Service. The Government Procurement Card is used by Government as a payment card, not a credit card, and is a secure and controlled method of purchasing and paying for low value goods or services where it is used alongside other purchasing tools and processes. The mandatory element of the Code (Part 2) relates to the use of the Government Procurement Card only. However, the Government encourages authorities to go further by publishing all transactions on all corporate credit cards and charge cards, including those that are not a Government Procurement Card as set out in the recommended part of the Code.

Q 44: What is exactly meant by ‘expense payment’?

Payment to an employee to cover their business expenses¹² i.e. an expense which an employee has to incur in carrying out his employment and does not represent any such personal benefit or gain, so does not constitute earnings¹³.

¹² <http://www.hmrc.gov.uk/payerti/exb/a-z/e/expenses.htm>

¹³ <http://www.hmrc.gov.uk/manuals/nimmanual/nim05020.htm>

Questions related to procurement data

10. This section covers questions about local authority procurement i.e. information to be published by local authorities about invitations to tender (covered by paragraphs 26, 49 and 50 of the Code) and any legally enforceable agreement entered into by the authority (covered by paragraphs 27 and 50 of the Code).

Q 45: Why is the threshold for procurement data £5,000, it should be £10,000?

The Government wants to open up local markets and increase the competition for contracts, particularly for small and medium sized enterprises. Many such organisations may be competing for small contracts. The Government thinks that a lower threshold will increase opportunities to small and medium sized enterprises.

Q 46: Why does the Code require publication of purchase orders? This requirement is burdensome and duplicates data published under expenditure transactions exceeding £500.

Local people should be able to see the details of all legally enforceable agreements entered into by local authorities. How this information is published is a matter for individual local authorities. Local authorities can publish details of contracts, and hence purchase orders, as part of other datasets as long as all of the relevant information about the contracts (as set out in paragraph 27 of the Code) is published in a clear, accessible and understandable way for local people.

Q 47: How can my authority publish details of contracts given they are commercially sensitive?

Where local authorities are disclosing information, they must ensure that they comply with all existing legislation. However, the Government has not yet seen any evidence that publishing the details specified in the Code about contracts entered into by local authorities, breaches any obligations to maintain commercial confidentiality. Local authorities should make potential contractors aware that details of any contract will be made public under the Code to avoid any problems.

Q 48: How should Arm's Length Management Organisations, trusts, shared services etc be treated within the Code?

This will depend on the specifics of each individual organisation, trust, shared service etc. The Code seeks to ensure that key information is published about services which the local authority is responsible for delivering or commissioning. Authorities must ensure that the information they publish gives local taxpayers a clear and accurate picture of how public money is spent. The Code is not prescriptive about which organisations should be included in the reporting requirements and it is for each authority to decide locally whether to include expenditure on such organisations and ventures. However, where such organisations can be considered to be directly delivering services on behalf of the local authority then we would encourage the authority to actively consider including them within the data it publishes.

Q 49: Should Value Added Tax be included and highlighted amongst contract details to be published?

Where Value Added Tax cannot be recovered or can only partially be recovered, local authorities should publish the value of the transaction or contract paid by the authority and publish alongside this the amount of Value Added Tax actually paid. Where local authorities can fully recover Value Added Tax, they should publish the net value of the transaction or contract, excluding the recoverable Value Added Tax.

Q 50: Should the published price of a contract be based on the total over the period of the contract or an annual one, estimated where necessary?

The Code applies to all contracts with a total value over £5,000 over the length of the contract. However, in terms of what is published, a local authority can decide whether it is more helpful to local people to publish the total value of a contract, or the estimated annual spending or budget for the contract.

Q 51: Does the definition of a contract include ‘contracts for work’?

The Code requires details to be published of contracts entered into by the local authority for the provision of any good or service. This includes the provision of building works, IT services, facilities management etc. It does not include contracts for full-time paid employment.

Q 52: Should details of invitations to quote be published if there has been no formal invitation to tender issued?

Local authorities should look to be as helpful as possible to local people and publish as much information as possible. Therefore, local authorities may want to consider publishing details of invitations to quote. However, there will be no mandatory requirement to publish such details where there has not been a formal invitation to tender issued.

Q 53: Is it only details of invitations to tender that have to be published, not other forms of invitation such as an invitation to quote?

Yes. However, local authorities should look to be as helpful as possible to local people and publish as much information as possible. Therefore, local authorities may want to consider publishing details of invitations to quote.

Q 54: Is the quarterly publication of details of invitations to tender backward or forward looking?

Local authorities should look to be as helpful as possible to local people and publish as much information as possible. Therefore, as well as publishing details of all invitations to tender that have been issued, the Government would also encourage local authorities to publish details of all invitations to tender that they expect to issue in the next three months.

Q 55: Are local authorities expected to change their procurement thresholds (e.g. when they pursue a formal invitation to tender) to match thresholds in the Code?

No. The Code simply sets out the data that the Government expects to see published.

Q 56: Why doesn't the Code require that contracts over £5,000 are published in an open format?

There are many business benefits to be achieved from providing data in fully open, accessible and re-usable formats. The Code states that public data should be published in a format and under a licence that allows open re-use, including for commercial and research activities, in order to maximise value to the public. However, the Government recognises that, at this stage, authorities may have varying degrees of capacity and expertise and so has sought to not be overly prescriptive about a publication format for specific data sets. The Code endorses the five-star journey and the Department for Communities and Local Government will work with the Local Government Association and the Local eGovernment Standards Body to help local authorities share data in a more open and reusable way

Q 57: Isn't there a risk that the requirement to publish contractual information might deter suppliers from bidding for contracts?

The Government has not seen any evidence to suggest that this is the case. Whilst the point was made during consultation, no evidence was presented to demonstrate that suppliers will be deterred from bidding for contracts. And, local authorities must continue to abide by all data protection and privacy requirements.

Q 58: How will local authorities identify which contracts go to small and medium sized enterprises and the voluntary and community sector?

The Code provides definitions for what constitutes a "small and medium sized enterprise" and a "voluntary or community sector organisation". A local authority might wish to ask their contractors whether they fall in these categories in order to tag this information to the rest of the procurement-related data they publish. And, the Code requires registration numbers to be published for relevant transactions/contracts.

Q 59: How often do I have to publish information about waste collection contracts?

This is a one-off requirement relating to present contracts. Information around any future waste management contracts will be published under regular Code requirements (i.e. under paragraph 27 of the Code).

Q 60: My authority does not have a waste collection contract?

You only need to publish details of waste collection contracts where your authority has one in place.

Q 61: Existing waste management contracts are commercially sensitive – I cannot disclose any information.

Where local authorities are disclosing information, they must ensure that they comply with all existing legislation. However, the Government has not yet seen any evidence that publishing details about contracts breaches any obligations about commercial sensitivities. It is important that authorities provide local tax payers with key financial information on how their money is used so that local people can hold decision makers to account. Local authorities should, therefore, think carefully before withholding data on commercial grounds and balance the needs and rights of local people with those of contractors.

Q 62: Should local authorities include tenders for framework contracts in their list of tenders to be published?

Yes. By their nature, framework contracts/agreements may have no initial value. But, subsequent contracts made under the framework could have significant value and so local authorities should include tenders for framework contracts.

Questions related to land and assets data

11. This section covers questions about information to be published about local authority land and assets (covered by paragraphs 30, 31, 51 and 52 of the Code).

Q 63: Rental income is commercially sensitive and so should not be published?

The consultation exercise carried out in 2013 by the Department for Communities and Local Government did not find any evidence to support the claim.

Q 64: Publishing land and asset data is duplication since it is already available through the Land registry?

This goes against the spirit of the Code - local people should be able to easily find out what land and assets are held by their authorities by going to one easily accessible place. This is a key piece of information for local people.

Q 65: Is vacant property exempt from publication under the Code, in line with Freedom of Information tribunal decisions?

We understand that the tribunal's decision was that those properties owned by anyone other than individuals should be disclosed together with details of ownership. In July 2006, the Information Commissioner ruled that Bexley Council had to disclose the details of all empty properties in its area, together with the reasons why the properties were empty, and who owned them. The Information Tribunal ruled¹⁴ that those properties owned by anyone other than individuals should be disclosed together with details of ownership. Therefore, under the Code and in line with Freedom of Information principles, only details about properties owned by private individuals are exempted from publication. However, for vacant properties owned by local authorities, full address details should not be published, only the first part of the postcode.

Q 66: Is there a minimum size of site or asset for which information should be published?

No, there is no de minimis for the size of site or asset on which information should be published. Small tracks of land can be high value assets because, for example, they provide access to larger developable land.

Q 67: Under what conditions can local authorities publish data where the intellectual property rights belong to Ordnance Survey?

Local Authorities can use Ordnance Survey information if they have a Public Sector Mapping Agreement member's licence. These licenses are paid for by the Department for Business, Innovation and Skills and are free for local authorities who can apply for a license by emailing businessenquiries@ordnancesurvey.co.uk. Any data published must include a disclaimer to the effect that whoever reuses it must not do so for commercial gain.

Q 68: Are details of agricultural tenancies exempt from publication?

No, they would not be exempt, unless the property is tenanted by individuals or is social housing.

¹⁴ Mr C P England and London Borough of Bexley v Information Commissioner (10 May 2007).

Q 69: What constitutes an asset of national security?

A local authority asset that is defined as a National Security Asset will be one that, if lost or compromised, will have a major detrimental impact on the availability or integrity of essential services, leading to severe economic or social consequences or to loss of life. The Centre for the Protection of National Infrastructure use a 'Criticality Scale' that includes three impact dimensions¹⁵: impact on delivery of the nation's essential services; economic impact (arising from loss of essential service) and impact on life (arising from loss of essential service). More details of the Criticality Scale can be found in Cabinet Office's Strategic Framework and Policy Statement¹⁶.

Q 70: Will local authorities be able to identify and verify rights of way information?

This is for the local authority to decide whether they are in a position to verify this data. If they feel they are prohibited from doing so then a narrative will need to be included explaining why they are unable to identify and verify the information.

Q 71: Should details of all assets on the asset register be published?

Yes unless they are exempted as per paragraph 30 of the Code.

Q 72: Should local authorities publish the addresses of houses that they own?

Local authorities do not have to publish any information on social housing. All other properties must be included even if they are part of larger estate (for instance, a school carer's property on the site of a school, or a residential property on the site of a farm).

Q 73: Should local authorities publish the value of properties they own and if so, is this the balance sheet value?

No. Local authorities do not need to publish the value of properties they own. However, the Government is considering responses to its consultation¹⁷ on whether to require local authorities to publish details of their social housing stock valuations.

Q 74: Should gypsy and traveller sites be regarded as residential? Should they be listed if they are council land assets?

The Code does not require detail of individual tenanted properties to be disclosed (please see paragraph 30 of the Code), but a plot of land in its entirety which is used for a gypsy and traveller site should be included. Planning permission for such sites is usually needed and so the sites are already publicly known.

Q 75: Should communal land surrounding residential tower blocks be regarded as residential? Should they be listed if they are council land assets?

The Code states that all assets must be included even if they are part of a larger estate as long as they are not tenanted by individuals or is social housing. So any non-tenanted, non-social-housing land should be included.

¹⁵ <http://www.cpni.gov.uk/about/cni/>

¹⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62504/strategic-framework.pdf

¹⁷ <https://www.gov.uk/government/consultations/transparency-in-social-housing-assets-value>

Q 76: Does the Government intend to include social housing stock valuations in the Code?

No, the Code does not require this. The Government is considering its response to its recent consultation about how to make stock valuations transparent.

Questions related to data on organisation structure, salaries and decision making

12. This section covers questions about information to be published about the local authority's organisational structure (covered by paragraphs 34 and 55 of the Code), senior salaries (covered by paragraphs 38 and 39 of the Code), the pay multiple (covered by paragraphs 41 and 42 of the Code), trade union activity (covered by paragraph 35 of the Code) and the constitution (covered by paragraph 40 of the Code).

Q 77: Publication of the pay multiple does not add any value given that Pay Policy Statements are already published?

In response to the Hutton Review, the Government committed to ensuring that public sector organisations publish their pay multiples. In line with the Localism Act 2011, when preparing their pay policy statements authorities are encouraged but not required to publish the pay multiple in their organisation as a means of illustrating their policy on how the pay of senior staff relates to that of the rest of the organisation. The Code will ensure that all authorities publish this information.

Q 78: Can salary information in organisation charts be published in grade ranges rather than £5,000 salary bands?

Grade nomenclature and the salary attached to each grade vary across the country and across authorities of different types and sizes. Also, grade titles may have little meaning to those outside the public sector. Presenting this type of information in £5,000 salary bands provides the public with clear and comparable information, and is in line with current reporting requirements set out in the Accounts and Audit (England) Regulations 2011.

Q 79: How can organograms be meaningful and comparable if there isn't a single national classification of roles and grades?

The Code only asks for an organisation chart covering staff in the top three levels of the organisation. The grades involved may differ from one authority to another (e.g. depending on the authority's type and size) but it is important that the public are able to see and compare the roles of the highest three tiers in their local authority with those in neighbouring or similar type of authorities.

Q 80: Is the threshold of £50,000 for senior salaries too low?

When preparing their annual Statement of Accounts, local authorities are already required to publish information for senior employees earning £50,000 or more. It makes sense that the same reporting criteria are used for the purposes of the Code.

Q 81: Should contractors employed by the local authority be included in organisation charts, published senior salary details etc?

The Code does not prescribe whether contractors' should be included. Authorities must ensure that the information they publish gives local taxpayers a clear and accurate picture of the way their workforce is organised and how public money is spent on senior pay and reward. Within that context, it is for each authority to strongly consider whether to include contractors.

Q 82: When should salary be used in published data and when should remuneration be used?

The Code requires that organisation charts should include salary details in brackets of £5,000. This requirement seeks to ensure that the public has a clear understanding of the relationship between salaries and seniority in an authority. The Code requires that authorities publish or provide a link to information about remuneration for the most senior staff. This is consistent with that already published in annual Statement of Accounts, with the addition of lists of responsibilities for all senior staff and inclusion of bonus details for all senior employees whose salary exceeds £50,000^{18,19}.

Q 83: Should activities or duties be used for preparing details of trade union facility time?

The Government wants to ensure that local people understand how much money is being paid to employees who devote at least 50 per cent of their time to union duties (see paragraph 35 of the Code). Publishing details of this is a mandatory requirement under the Code. However, local authorities can decide to go further than required under the Code and publish details of any use of Trade Union Facility Time that has been paid for by the local authority, not just details of those employees spending the majority of their time undertaking union duties. Guidance²⁰ published by the Advisory, Conciliation and Arbitration Service provides the necessary definitions.

Q 84: The requirement to publish details about trade union facility time does not acknowledge the value of this work.

The Code simply wants to ensure that authorities provide local tax payers with all the information they need to understand how public money is used. It is up to local people to decide whether any use of public money represents good value.

Q 85: Why does the Code require local authorities to publish the names of Trade Union members?

It doesn't. The Code requires the names of trade unions to be published where their activities are subsidised by an authority. It does not require the names of individuals to be published.

Q 86: Are local authorities required to maintain timesheets for staff connected to a union to estimate the money spent on unions, this is burdensome?

No. The Government wants local people to be able to see how much money is spent on authority staff who spend the majority of their time undertaking union duties. This should be a relatively small number of staff and local authorities should already have a good idea what proportion of the staff's time is spent undertaking union duties. So, it should be straightforward estimate the salary costs that can be attributed to union duties.

¹⁸ Remuneration is defined as "all taxable earnings for the given year, including base salary, variable pay, bonuses, allowances and the cash value of any benefits-in-kind".

¹⁹ A threshold linked to salary rather than remuneration seeks to prevent junior staff from being caught by the publication requirements.

²⁰ www.acas.org.uk/CHttpHandler.ashx?id=274

Q 87: How much detail is needed when describing the responsibilities of senior staff?

Authorities should take a local view on what they think best explains the roles and responsibilities of their senior staff and other staff roles within the organisation chart. Where this is done comprehensively, it will greatly help the public to have a rounded picture of how the authority works.

Q 88: Which level of the organisation chart should highlight job responsibilities, each level up is just an amalgamation of responsibilities from the level below?

Authorities should take a local view on what information best explains the roles and responsibilities of its senior staff and other staff roles within the organisation chart. Where this is done comprehensively, it will greatly help the public to have a rounded picture of how the authority works.

Q 89: Can the pay multiple be calculated using the lowest average full time equivalent figure rather than the median?

The Hutton Report recommended that, in calculating a pay multiple, organisations should use the ratio between the highest paid employee and the median pay across an organisation as this provided the fairest picture. The Government accepted this and this approach applies to those parts of the public sector covered by the Financial Reporting Manual, including central departments. It is for each authority to determine the most appropriate way to calculate their pay multiple. However, a consistent approach using the median would give the public greater scope to compare between organisations and over time. Authorities should explain which methodology they have chosen and why.

Q 90: Why are fire authorities not required to publish details of their democratic processes (e.g. minutes from committee meetings)?

Under provisions of Part 5A of the Local Government Act 1972, authorities are required to make minutes of their meetings available to members of the public. This applies to fire authorities.

Q 91: Reporting the number of employees whose remuneration in the year was at least £50,000 means that the Code may capture junior employees who are well below this in terms of salary, but benefit from shift allowances (e.g. fire-fighters).

On reporting of senior salaries, the requirements in the Code mirror those in the Account and Audit Regulations 2011 (annual statement of accounts). Senior salaries information could capture more junior staff. It is for each authority to be satisfied that they are meeting the legal requirements of the Code as well as Account and Audit regulations when preparing this information.

Q 92: Is there any guidance on how authorities should redact data so that their reporting stays in line with Data Protection good practice?

We expect authorities to comply with existing data protection requirements. The Information Commissioner's Office has published guidance on this²¹. The Information Commissioner's Office also publishes a Code of practice on managing data protection risk²² and their website also has practical advice and examples to help authorities remove personal information from spreadsheets²³.

Q 93: How will authorities ensure that publishing officers' personal information will not make them targets for marketing/malicious spam?

We expect authorities to comply with existing data protection legislation. The Information Commissioner's Office has published guidance in relation to data protection²⁴.

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http://ico.org.uk/for_organisations/guidance_index/data_protection_and_privacy_and_electronic_communications

²² Anonymisation: managing data protection risk Code of practice

http://ico.org.uk/for_organisations/data_protection/topic_guides/anonymisation

²³ <http://ico.org.uk/news/blog/2013/the-risk-of-revealing-too-much>

²⁴

http://ico.org.uk/for_organisations/guidance_index/data_protection_and_privacy_and_electronic_communications

Questions related to parking data

13. This section covers questions about local authority parking i.e. information to be published by local authorities about their parking account (covered by paragraph 36 of the Code) and parking spaces (covered by paragraphs 37, 53 and 54 of the Code).

Q 94: Do resident parking places provided by local authorities need to be included?

A resident's parking space designated by an order need to be included, but not general undesignated parking (e.g. where parking is undesignated on housing estates or highways).

Q 95: Does revenue (e.g. from permits) from car parking facilities on housing estates have to be published if they are not parking places designated under the Road Traffic Regulation Act 1984?

Department for Transport legislation and statutory guidance does not cover or require the reporting on general (i.e. non-penalty) income from non-designated local authority off-street parking places.

Q 96: What is the definition of a parking place?

This means an on-street parking place designated by an order made under section 6, 9 or 45 of the Road Traffic Regulation Act 1984, or an off-street parking place provided under section 32(1)(a) of that Act.

Q 97: What information on local authority parking should be included in reports?

The Department for Transport's statutory guidance²⁵ states the parking information that local authorities should report on (see page 22). Further information on reporting is also in the DfT's "Operational Guidance to Local Authorities: Parking Policy and Enforcement" (sections 4.15 – 4.31). The new Transparency Code does not require a break-down of Penalty Charge Notices by type, only a single figure showing the total number.

Q 98: What are the additional data requirements around parking in the September 2014 Code?

The Code requires local authorities to publish data on income and expenditure on their parking account, together with data about how any surplus on their parking account has been used.

Q 99: My local authority does not have a surplus on its parking account – what do I need to report?

If a local authority does not have a surplus in its parking account, then it only needs to publish data about the income and expenditure in its parking account.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212559/parkingenforcepolicy.pdf

Q 100: What categories should I use for use for setting out how my local authority has used any parking account surpluses?

Section 55 of the Road Traffic Regulation Act 1984²⁶ specifies the areas on which local authorities may use any surpluses from their parking account. The Department for Transport has also made available Operational Guidance²⁷ to enable authorities to communicate information about parking policies and their enforcement to the public. Local authorities are strongly encouraged to follow this guidance.

²⁶ <http://www.legislation.gov.uk/ukpga/1984/27/section/55>

²⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212559/parkingenfocpolicy.pdf

Questions related to fraud

14. This section covers questions about fraud i.e. information to be published by local authorities about details of their counter fraud work (covered by paragraphs 43 and 58 of the Code).

Q 101: The Code requires that we publish the number of counter fraud staff employed by the authority. Does this mean Full Time Equivalent?

It requires both the absolute and full time equivalent numbers to be published.

Q 102: In what circumstances can authorities use powers under The Prevention of Social Housing Fraud (Power to Require Information) (England) Regulations 2014?

These powers allow a local authority to compel certain prescribed bodies to supply it with information in the pursuit of investigating social housing fraud. The Government wants local authorities to publish, annually, the number of times they use these powers.

Q 103: What do you mean by “similar powers” in relation to counter fraud work (paragraph 43 of the Code, first bullet point)?

Local authorities now have the power to compel certain prescribed bodies to supply it with information in the pursuit of investigating social housing fraud. Similar powers exist to support investigations into council tax fraud (i.e. the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013) and housing benefit fraud. Local authorities should also set out how often they use these powers too.

Further information

15. Department for Communities and Local Government Contacts:

- TransparencyCode@communities.gsi.gov.uk;
- General enquiries: 030 3444 0000;
- Address: Fry Building, 2 Marsham Street, London SW1P 4DF.

16. Sector contacts and guidance:

- The Local Government Association is the national voice of local government. They work with councils to support, promote and improve local government and can be found at: <http://www.local.gov.uk/>
- The Local e-Government Standards Body's mission is to promote eStandards that support Efficiency, Transformation, and Transparency of Local Public Services and can be found at: <http://legsb.i-network.org.uk/>

17. Useful pages from the Information Commissioner's Office include:

- Public authorities have a legal obligation to provide information through an approved publication scheme and in response to requests. You can find out what they need to do under the Freedom of Information Act 2000 at: http://ico.org.uk/for_organisations/freedom_of_information?hidecookiesbanner=true
- If you handle personal information about individuals, you have a number of legal obligations to protect that information under the Data Protection Act 1998. You can find more information at: http://ico.org.uk/for_organisations/data_protection?hidecookiesbanner=true