

 Brent	Audit and Standards Advisory Committee 11 December 2018
	Report from the Director of Legal and HR Services
Quarterly Update on Standards (Gifts & Hospitality)	

Wards Affected:	All
Key or Non-Key Decision:	Not applicable
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	One: <ul style="list-style-type: none"> • Gifts and Hospitality Report (July-December 2018)
Background Papers:	None
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1.0 Purpose of the Report

1.1 The purpose of this report is to update the Audit and Standards Advisory Committee on gifts and hospitality registered by Members and a recent case involving the Freedom of Information Act and Independent Persons.

2.0 Recommendation

2.1 That the Committee note the contents of the report.

3.0 Detail

Gifts and Hospitality

- 3.1 Members are required to register gifts and hospitality received in an official capacity worth an estimated value of at least £50. This includes a series of gifts and hospitality from the same person that add up to an estimated value of at least £50 in a municipal year.
- 3.2 Gifts and hospitality received by Members are published on the Council's website and open to inspection at Brent Civic Centre. A list of gifts and hospitality registered by Members from July 2018 to 3 December 2018 (the publication of this report) is attached at Appendix 1.
- 3.3 Hospitality accepted by the Mayor in his civic role are recorded separately and published on the Council's website.

Cyril Bennis v Information Commissioner & Stratford- on- Avon District Council (EA/2107/0220)

- 3.4 Bennis (the appellant) made an unsuccessful complaint of misconduct against a Councillor in relation to their handling of a planning matter.
- 3.5 The appellant then submitted a Freedom of Information Act 2000 (FOIA) request to the Council for disclosure of all correspondence relating to his complaint, including the advice it had received from one of its Independent Persons (IPs).
- 3.6 The Council provided all relevant information but withheld disclosure of the IP's advice relying on s.36 (36(2)(b)(i) - inhibition of free and frank advice and 36(2)(c) prejudice to the effective conduct of public affairs) and s40 (2) (personal data) of the FOIA 2000.
- 3.7 The appellant complained to the Information Commissioner's Office. The Information Commissioner part upheld the Council's refusal, finding that the circumstances of this case caused the balance of public interest to lie in maintaining the s. 36 exemptions.
"...with regard to s. 36(2)(b)(i), it is reasonable to consider that IPs would be constrained by the knowledge that their views in respect of allegations could be made public, which in turn would be likely to prejudice the free and frank provision of advice. With regard to s. 36 (2) (c), this may refer to an adverse effect on a public authority's ability to offer an effective public service or to meet its wider objectives or purpose. In the Council's view, it is reasonable to consider that the disclosure of the IP's views may lead to a number of outcomes, including IPs being less willing to engage frankly with the process, and including possible prejudice in the event of a further complaint being made to the LGO."
- 3.8 The appellant complained to the First Tier Tribunal (FTT). The FTT held, allowing the Council's appeal, that that the Decision Notice was wrong in its assessment of the public interest test as it related to both of the exemptions relied on by the Council under s. 36 FOIA.
- 3.9 The FTT said:

“the Decision Notice thus attributed considerable weight to the argument that the IPs would be inhibited in giving robust advice if they knew that their views were to be made public, and that this would in turn prejudice the effective conduct of public affairs. However....., the Decision Notice failed when assessing the public interest balance to take into account the fact that the IP’s views would in any event have become public if a hearing had been directed.”

- 3.10 The FTT said the failure to consider this point was a material one in weighing the undoubted public interest. Further, it stated that details of unsubstantiated complaints against Councillors should not generally to be disclosed to the world at large under the provisions of the FOIA. The proper approach to such information was to consider the rights of the Councillor concerned as a data subject. Here, the Council could not disclose the Councillor’s personal data (consisting of their name and opinions expressed about them) without breaching the data protection principles and so s.40 (2) FOIA was therefore engaged. However, “s.40 (2) FOIA could not also be applied to the personal data of the IPs, as their names were already in the public domain, they occupied senior public roles, and their views might be disclosed if there was a public hearing”.
- 3.11 The outcome of this judgement raises two points:
- a) the ICO’s decision notice was wrong in its assessment of the public interest test in relation to the s36 exemption. Namely, not enough weight was placed on the fact the IPs opinion would have been made public if there was to be a hearing.
 - b) for unsubstantiated complaints against Councillors the Council was correct to rely on s40 (2).

General information

- 3.12 The Committee on Standards in Public Life is undertaking a review of local government ethical standards. Following increased criticism that the sanctions in the current regime are not enough, the review is looking at implementing robust standards arrangements to safeguard local democracy, maintain high standards of conduct, and protect ethical practice in local government. The consultation closed on the 18.05.18 with 317 responses which included Brent’s submission following a discussion with Members. The Committee on Standards in Public Life is aiming to publish its report by the end of 2018.

4.0 Financial Implications

- 4.1 There are no financial implications arising out of this report.

5.0 Legal Implications

- 5.1 There are no legal implications arising out of this report.

6.0 Equality Implications

- 6.1 There are no equality implications arising out of this report.

7.0 Consultation with Ward Members and Stakeholders

- 7.1 Not applicable.

Report sign off:

DEBRA NORMAN

Strategic Director of Legal and HR Services