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Case No: CO/7514/2009

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 01/10/2009

**Before :**

**MR JUSTICE CRANSTON**  
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**Between:**

**VEOLIA ES NOTTINGHAMSHIRE LTD**

**Claimant**

**- and -**

**NOTTINGHAMSHIRE COUNTY COUNCIL**

**Defendant**

**-and-**

**(1) SHLOMO DOWEN**

**First**  
**Interested**

**Party**

**(2) AUDIT COMMISSION FOR LOCAL  
AUTHORITIES**

**Second**  
**Interested**

**AND THE NATIONAL HEALTH SERVICE IN  
ENGLAND**

**Party**

**Philip Coppel QC** (instructed by **Reynolds Porter Chamberlain**) for the Claimant  
**Michael Supperstone QC** and **Ian Rogers** (instructed by **Nottinghamshire County Council**)  
for the Defendant

**Timothy Pitt-Payne** (instructed by **Friends of the Earth Rights and Justice Centre**) for the  
**First Interested Party**

**Peter Oldham** (instructed by **Audit Commission In-house solicitors**) for the **Second**  
**Interested Party**

Hearing date: 25 August 2009  
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**Approved Judgment**

**Mr Justice Cranston:**

INTRODUCTION

1. Mr Downen, the First Interested Party, has applied to inspect and make copies of certain documents which relate to a waste management contract between the claimant, Veolia ES Nottinghamshire Ltd (“Veolia”), and Nottinghamshire County Council (“the Council”). Having taken legal advice, the Council considers that it must allow him access to the documents. Veolia have instituted these proceedings to compel the Council to keep the documents confidential. The issue before me is whether these documents, in their entirety, fall within the statutory right of inspection and copying under section 15(1) of the Audit Commission Act 1998 (“the 1998 Act”). In particular do they fall within the category of “books, deeds, contracts, bills, vouchers and receipts” “relating to” “the accounts to be audited” of the Council for the purposes of that section? The issue which arises in this case has not been the subject of previous case-law.

BACKGROUND

The parties

2. Veolia is a waste management company. It holds a contract with the Council for waste management (“the Contract”). The Contract was made on 26 June 2006. Veolia submits monthly invoices to the Council for work done under the Contract. The First Interested Party, Mr Downen, is a local elector in the area of the Council. The Second Interested Party, the Audit Commission for Local Authorities and the National Health Service in England (“the Audit Commission”), is constituted under the 1998 Act. Its functions include regulating the proper control of the public finances of local authorities through audit.

Mr Downen’s application and Veolia’s challenge

3. The Council prepared a statement of accounts for the year ended 31 March 2009. By notice in various local newspapers, the Council notified the public that the accounts “together with all books, deeds, contracts, bills, vouchers and receipts relating to them” were to be open for public inspection at the County Hall from 29 June to 24 July 2009. The notification also advised that from 27 July 2009, until the auditor completed auditing the accounts, a local elector could ask the auditor questions about the accounts and could make objections to anything about which the auditor could take action or make a report under the relevant legislation. On 29 June 2009 Mr Downen applied to the Council to inspect and take copies of documents open to inspection, including all books, deeds, contracts, bills, vouchers and receipts relating to waste management in the area of the Council.
4. On 2<sup>nd</sup> July 2009 Veolia wrote to the Council, asking the Council to take detailed legal advice and to liaise closely with it before disclosing any documents relating to the Contract, other than documents already disclosed with Veolia’s consent in response to freedom of information requests. On 3<sup>rd</sup> July 2009 the Council wrote to Veolia informing it that it proposed to make the disputed documents available for inspection. It is the decision in the 3 July 2009 letter which Veolia challenges by

these proceedings. It seeks to prevent the Council from disclosing the disputed documents, save in heavily redacted form.

5. The disputed documents comprise schedules 6A, 6B, 6C and 7 to the Contract; monthly invoices submitted by the claimant to the Council in respect of work carried out under the Contract; and schedules to the invoices which particularise the sums payable. Schedule 6A sets out the various formulae, some with many variables, according to which payments under the Contract are made. Schedule 6B provides for deductions in amounts payable in the event of default by Veolia. Schedule 6C is, in effect, a performance scorecard. As for Schedule 7, it is integral to the calculation of those deductions in setting out the key performance indicators by reference to which some deductions are made. The invoices include schedules which set out the individual items under the Contract for which payment is to be made, the rate for each such item, the quantity of that item claimed for that month and the resultant total for that item.
6. Veolia contends that these documents constitute valuable information which it supplied to the Council on a confidential basis. It does not want information disclosed to Mr Downen or otherwise to enter the public domain. It contends that the information is valuable to commercial competitors and to its sub-contractors under the Contract. Were any of that information to enter the public domain it would damage its ability to compete on bids with other local authorities and it would impair its ability to hold down sub-contract prices on the Contract.

#### The Contract

7. The Contract between Veolia and the Council is entitled “Waste Management PFI. Project Agreement. Contract A”. Part of it has been disclosed on the Council’s website as a result of freedom of information requests. The decision to publish was taken by the public interest panel of the Council, following input from Veolia.
8. The recitals to the Contract record that local authorities have targets for recycling and landfill obligations; that the Council wishes to procure the services of a private sector contractor to provide waste management functions to enable it to meet its targets and fulfil its obligations; that the Council tendered the contract in accordance with the Public Services Contracts Regulations 1993 and selected Veolia “as the most economically advantageous tenderer to provide the services”; and that the parties consent to the contract being certified under the Local Government (Contracts) Act 1997.
9. The Public Services Contracts Regulations 1993, SI 1993 No 3228, to which the recitals refer, implement Council Directive 92/50/EEC (OJ NO L209, 24.7.92, p.1) relating to the coordination of procedures for the award of public services contracts. In essence, for what are called Part A services contracts, the regulations require that the process be open and the intention to seek offers be published in the Official Journal of the European Union. Part A services contracts must be awarded on the basis either of the offer which delivers the lowest price or the one which is the most economically advantageous. Among the purposes of the Local Government (Contracts) Act 1997 is to enable councils to certify long-term service contracts, giving a safe harbour from legal challenge except by judicial review or audit review.

10. Part One of the Contract, Preliminary, includes a definition of indexation, which is in accordance with the mechanism set out in schedule 6A to the Contract. Clause 7 is the substantive clause for certification of the contract under the Local Government (Contracts) Act 1997. Part Two of the Contract, Design and Works, covers Veolia's responsibilities regarding the construction of works under the Contract. Part Three addresses the services which Veolia is to provide in terms of recycling and waste management. Its performance is to be monitored by the Council (clause 61).
11. "Payment Provisions" is Part Four of the Contract. In brief the Council pays the unitary charge in respect of each payment period calculated in accordance with schedule 6. Subject to the provisions of schedule 6A the Council must pay the amount of any invoice submitted within 28 days of receipt. By clause 78 Veolia acknowledges that the Council is subject to a best value duty and that the clause is designed to assist the Council fulfil that duty. Thus under clauses 78.2 and 78.3, Veolia must make arrangements to secure continuous improvement in the way in which the services are provided, having regard to a combination of economy, efficiency and effectiveness. Veolia undertakes, or will refrain from undertaking, actions which the Council might reasonably request to enable it to comply with that best value duty. Veolia also agrees to permit a best value inspector to have access to sites and facilities, to documents and data, and to subcontractors, agents or employees (clause 78.3.4). At its own cost Veolia must provide an annual services report to address best value and must promptly prepare such written evidence and other supporting information as the Council may reasonably require to verify and audit the material in the Annual Services Report.
12. Under Part Six of the Contract, Performance and Change, the parties undertake to use their reasonable endeavours to operate on an "open book" basis and to provide access to information as is required to fulfil their respective obligations. Part Eight contains an obligation on Veolia's part to cooperate fully and in a timely manner with any reasonable request of any internal or external auditor of the Council (clause 114). The confidentiality obligation is contained in clause 123, coupled with Schedule 45. It provides that certain parts of the Contract and ancillary documents are to be kept confidentially for designated periods. It is not in issue that the Schedules 6A, 6B and 7 are captured by the confidential provisions of the Contract. As for invoices, a cursory examination reveals that, armed with the amount claimed for an item and its quantity, the rate could readily be deduced.

#### The Council's statement of accounts

13. The Council's statement of accounts for 2008/09 was approved by the full Council in the ordinary way on 25 June 2009. Eventually the Council's statement of accounts is made available on the Council's website. The statement of accounts includes what is described as the Council's accounts and certain Pension Fund Accounts. In the Council's statement of accounts there is an Explanatory Foreword, an overview of the year, including a reference under Capital Expenditure and Financing to "waste recycling and energy recovery facilities". Further details of all PFI contracts, it is said, are set out in Note 29 to the Accounts. There is then a blank space for the Auditor's Report.
14. Following the Explanatory Foreword are various statements, including a Statement of Responsibilities for the Statement of Accounts by the Service Director (Finance), an

annual governance statement where the leader of the Council and the chief executive set out the Council's approach to sound financial control, and a statement of accounting policies. Then there is the Income and Expenditure Account, on one page, showing figures for eleven council services, including "environmental services". It includes all day-to-day expenses and related income on an accruals basis, as well as transactions measuring the value of fixed assets consumed. A Statement of Movement on the General Fund compares the Council's spending against the council tax raised for the year, taking into account reserves. The Statement of Total Recognised Gains and Losses brings together all the gains and losses of the Council for the year and shows the aggregate increase in net worth. The Balance Sheet sets out the assets and liabilities of the Council. The Cash Flow Statement is self explanatory. Since certain activities of the Council are run as trading undertakings, the Summary Revenue Accounts of Trading Undertakings shows the turnover and the surplus or deficit of each. Included here is a line for contracting services.

15. There then follow the notes to the statements of accounts, over many pages. These give more detailed information about the Council's financial activities. Included in note 29 is the following:

"Waste Recycling

The Authority has received Government support for a Nottinghamshire Waste PFI scheme which involves the commissioning of Materials Recycling Facilities and an Energy Recovery Facility. A PFI credit of £38.3 million has been allocated. The contract was signed on 26 June 2006 and the main facilities are expected to become operational over the next five years. The charge to the County Council in 2008/09 was £21.2 million (£19.5 million in 2007/08). The first main new facility became operational in January 2009, the Materials Recycling Facility (MRF). The MRF site is subject to a rental agreement with NCC, 50 years, which is then recharged to Veolia at the same rates. The residual value of the facility as at 31/03/2033 is assessed at £6.87m."

The note to the statement of accounts on Revenue Reserves, note 36, has entries for contracting services, landfill reserve, and waste PFI reserve. Note 36 continues:

"Contracting Services and Other Trading Services reserves comprise accumulated revenue surpluses plus or minus any transfer between those reserves and the General Fund.

...

Landfill Allowance Trading Scheme (LATS) Reserve is the value of allowances which have not been utilised or sold by the Authority. Each year the Government sets the number of tonnes of landfill which the Authority should not exceed. This target reduces each year. From 2010 any landfill in excess of the cumulative targets will require the Authority to pay a penalty to the Government of £150 per tonne. Where the

Authority uses less landfill than the target, the excess allowances are held in a reserve. The market value for these allowances has been set at nil as at 31<sup>st</sup> March 2009.

...

Bassetlaw, East Leake, Tram and Waste PFI reserves are surplus funding amounts set aside during the early years of the PFI contracts. These contributions from central Government and the County Council will be required in later years to finance the unitary charge.”

### LEGAL FRAMEWORK

16. Central to the resolution of this case is section 15(1) of the Audit Commission Act 1998 (“the 1998 Act”).

“15(1) At each audit under this Act, other than an audit of accounts of a health service body, any persons interested may –

(a) inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them, and

(b) make copies of all or any part of the accounts and those other documents.”

The issue to be addressed is whether what I have called the disputed documents – Schedules 6A, 6B, 6C and 7 to the Contract, the invoices and the schedules to the latter – can be said to be related to the accounts so they are open to inspection and copying by Mr Downen. Before focusing on section 15(1) itself, it is necessary to examine its legislative history and contemporary statutory context.

#### Legislative history of section 15(1)

17. In his Local Government Audit Law 2<sup>nd</sup> edition (London, HMSO, 1985) Reginald Jones notes that from its inception an important feature of the district audit system was the existence of public rights of inspection of, and objection to, the accounts (at p 235). The right conferred by section 15(1) of the Audit Commission Act 1998 originated in the Poor Law Act 1844 (7 to 8 Vic. c.101), which dealt with the financial accountability of parishes. Section 33 of that Act 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. These rights reflected the “19<sup>th</sup> century concept that an audit was a public proceeding which any local government elector could attend”: Lloyd v McMahan [1987] 1 AC 625, 641C, per Lawton LJ. The auditor had the right:

“...to require any Person holding or accountable for any Money, Books, Deeds, Papers, Goods or Chattels, relating to the Poor’s Rate or the Relief of the Poor, to produce to such Auditor his accounts and Vouchers...”

At this stage those paying rates had no right to inspect the documents produced to the auditor.

18. The Public Health Act 1848 (11 to 12 Vic. C.63) established local boards of health. It introduced the concept of “persons interested”. Section 122 of that Act provided that prior to the audit, the accounts should be made available for examination during office hours for inspection by “persons interested”. There was no definition of “persons interested.” As with the Poor Law Act 1844, the right was to examine and copy the accounts. Persons interested had no right to inspect any other documents but the auditor had a power to “...require the Production before him of all Books, Deeds, Contracts, Accounts, Vouchers, and all other Documents and Papers which they or he may deem necessary...”
19. The Public Health Act 1875 (38 to 39 Vic. C.55) consolidated and amended the earlier Acts, imposing similar accounting obligations on urban authorities which were not town councils. Section 247(4) extended the ratepayers’ right of access beyond the accounts themselves. It is this section from which s.15(1) of the 1998 Act is derived:

“A copy of the accounts duly made up and balanced, together with all rate books account books deeds contracts accounts vouchers and receipts mentioned or referred to in such accounts, shall be deposited in the office of such authority, and be open, during office hours thereat, to the inspection of all persons interested for seven clear days before the audit, and all such persons shall be at liberty to take copies of or extracts from the same, without fee or reward.”

That provision was reproduced in similar, but not identical, terms in section 224(1) of the Local Government Act 1933:

“A copy of every account which is subject to audit by a district auditor, duly made up and balanced, and all rate books, account books, deeds, contracts, accounts, vouchers and receipts relating to the accounts, shall be deposited in the appropriate office of the authority, and shall for seven clear days before the audit be open at all reasonable hours to the inspection of all persons interested, and any such person shall be at liberty to make copies of or extracts from the deposited documents, without payment.”

Section 226 conferred a right upon a local government elector for the area to make objection to the accounts. As can be seen, section 224(1) replaced “mentioned or referred to” which had been used in s.247(4) of the Public Health Act 1875 with “relating to.” That same pattern was found in sections 159(1) and (3) of the Local Government Act 1972, with sub-section (2) incorporating the right for a local government elector to question the auditor. Section 159, with minor modifications, was carried through into section 17 of the Local Government and Finance Act 1982, which in turn was replaced by the provisions in the Audit Commission Act 1998.

20. There is case law on some of these earlier provisions. Thus R v Bedwellty UDC, ex p Price [1934] 1 KB 333 held that an accountant, as an agent of a local government

elector, could inspect the accounts as well as the elector. The mandamus ordered by the Divisional Court was to order inspection of the accounts, together with all account books, deeds, contracts, accounts, vouchers and receipts mentioned or referred to in such accounts of the council for the year ended March 31, 1933. R v Monmouthshire County Council ex p Smith (1935) 51 TLR 435 held that certain forms of application for grants to the Council were not among the documents which were open to inspection. In R v Glamorganshire County Council ex p Collier [1936] 2 All ER a mandamus was ordered so that an agent of an elector could inspect the minutes involving accounts and finance. I return to the case law later in the judgment.

### Audit Commission Act 1998

21. The Audit Commission Act 1998 (“the 1998 Act”) is a consolidation Act, consolidating principally the provisions of Part III of the Local Government Finance Act 1982, as well as various other enactments relating to the Audit Commission. Part I continues the Audit Commission; I have referred to its functions, which are set out in detail in Schedule 1. Part II of the 1998 Act is concerned with the accounts and audit of public bodies, including local authorities. The accounts to which it applies are listed in Schedule 2. It includes all accounts of local authorities. By section 2(1)(a), the accounts of a local authority, and the accounts of the other bodies listed in Schedule 2, must be made up each year to 31 March, or such other date as the Secretary of State may direct. Section 2(1)(b) requires those accounts to be audited in accordance with the Act by an auditor appointed by the Audit Commission.
22. So far as the audit of a local authority is concerned, section 5 provides that the task of the auditor is to audit the accounts. In doing that the auditor is to be satisfied, by examination of the accounts and otherwise, that they have been prepared in accordance with the Accounts and Audit Regulations 2003, to which I return, that they comply with all other statutory provisions applicable to the accounts, that proper practices have been observed in their compilation and that the body whose accounts are being audited has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. This last requirement, in section 5(1)(e) of the 1998 Act, that the auditor satisfy himself that the authority “has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources”, is the statutory basis for what is often called the value for money aspect of the audit. Auditors are required to carry out their functions under the 1998 Act in accordance with a code of audit practice prepared by the Audit Commission: ss.4 and 5(2). “Value for money” is an aspect of the code, as will be described later.
23. Section 6(1) confers on the auditor a right of access to every document relating to a body subject to audit which appears to him necessary for the purposes of his functions under the 1998 Act. Section 6 also confers on the auditor a power to interrogate individuals for that same purpose:
  - “(2) An auditor may—
    - (a) require a person holding or accountable for any such document to give him such information and explanation as he thinks necessary for the purposes of his functions under this Act; and

(b) if he thinks it necessary, require the person to attend before him in person to give the information or explanation or to produce the document.

Other sub-sections elaborate on the auditor's rights in this regard. Finally, section 6(5) provides a general residual power:

“Without prejudice to subsections (1) to (4C), every body subject to audit shall provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under this Act.”

24. Sections 8-13A deal with auditors' reports and recommendations. Two sorts of report are contemplated. The first is a general report which the auditor must prepare after he has concluded his audit of the accounts, entering on the statement of accounts his opinion on the statement and a certificate that he has completed the audit: section 9(1). Secondly, under section 8(a) an auditor may report on “any matter coming to his notice in the course of the audit, in order for it to be considered by the body concerned or brought to the attention of the public.” The auditor must consider whether the public interest requires any such matter to be made the subject of an immediate report rather than a report to be made at the conclusion of the audit (section 8(b)). Section 8 reports are required to be given special consideration by the audited body: sections 10, 11. When being considered by the audited body, they are open to public consideration (sections 10(5)-(6)) and the public must be specially notified of meetings held to consider them (section 12).
25. Sections 14-17 address public inspection of certain documents and action by the auditor. There are two discrete rights of access to information. The first is conferred by section 14, which confers a right on every local government elector for the area subject to audit to inspect and to make copies of any statement of accounts prepared under the Accounts and Audit Regulations 2003 and of any auditor's report, other than an immediate report. Unlike the right in section 15, the section 14 access right is not time-limited. However, it is confined in two respects: it is given only to local government electors for the area of a body subject to audit, and it is only attaches to the statement of accounts and to reports, other than an immediate report made to the body by an auditor. Section 14 does not carry a right to inspect documents relating to the statement of accounts.
26. This case turns on section 15(1), already quoted. It confers a separate right on persons interested to inspect and make copies of the accounts to be audited as well as all books, deeds, contracts, bills, vouchers and receipts relating to the accounts to be audited. Section 15(2) provides that at the request of a local government elector the auditor must give the elector, or any representative, an opportunity to question him about the accounts. Section 15(3) contains a confidentiality protection first introduced by section 11 of the Local Government and Housing Act 1989.

“(3) Nothing in this section entitles a person—

(a) to inspect so much of any accounts or other document as contains personal information within the meaning of subsection (3A) or (4); or

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

(3A) Information is personal information if –

(a) it identifies a particular individual or enables a particular individual to be identified; and

(b) the auditor considers that it should not be inspected or disclosed.

(4) Information is personal information if it is information about a member of the staff of the body whose accounts are being audited which relates specifically to a particular individual and is available to the body for reasons connected with the fact—

(a) that that individual holds or has held an office or employment under that body; or

(b) that payments or other benefits in respect of an office or employment under any other person are or have been made or provided to that individual by that body.”

27. Section 16 deals with a local authority elector’s right to make objection in relation to the accounts:

“(1) At each audit of accounts under this Act, other than an audit of accounts of a health service body, a local government elector for an area to which the accounts relate may make objections to the auditor—

(a) as to any matter in respect of which the auditor could take action under section 17; or

(b) as to any other matter in respect of which the auditor could make a report under section 8.

Since February 2005, appointed auditors have determined 38 objections under section 16, excluding what were likely to be a few cases where a section 8 public interest report was made, and some purported objections which in the auditor’s view did not satisfy the requirements of the 1998 Act to allow them to be treated as such.

28. Section 17 provides that where it appears to the auditor that an item of account is contrary to law the auditor may apply to the court for a declaration to that effect. The court may make the declaration: it may also order rectification of the accounts. A person who has made an objection under section 16(1)(a) and is aggrieved by a decision of an auditor not to apply for a declaration may require the auditor to state in writing the reasons for his decision, and appeal against the decision to the court. Under section 24(1) the auditor may apply for judicial review against any decision or omission of an audited body “which it is reasonable to believe would have an effect

on the accounts of that body”. This is a wider power than under section 17 in relation to an item of account. Its exercise could be prompted by an interested party.

29. The regulation making power is contained in section 27 and covers matters such as the keeping of accounts; the form, preparation and certification of accounts and of the statement of accounts; and the publication of information relating to accounts and of the statement of accounts. Other provisions in the 1998 Act relate to the acquisition and disclosure of information. Section 48 confers on the Audit Commission a right to information held by a body subject to audit where it is required for the discharge of the Commission’s functions. Generally speaking, neither the Audit Commission nor an auditor may disseminate the information acquired in the performance of their functions except with the consent of the body or person to whom the information relates, or for the purposes of the Commission’s or auditor’s functions, or where the disclosure would not prejudice the effective performance of those functions: sections 49(1) and 49(2A)(b).

#### Local Government Act 1972

30. One surviving aspect of the Local Government Act 1972 addresses the funds and accounts of county councils. Section 148(2) obliges the council of each county to keep a fund to be known as the county fund. All receipts of a county council must be carried to the county fund, and all liabilities falling to be discharged by that council shall be discharged out of that fund: section 148(3). Section 148(5) provides:

“(5) Accounts shall be kept of receipts carried to, and payments made out of,

(a) the county fund, in the case of a county ...”

#### The 2003 Regulations

31. The 2003 Regulations were made under section 27 of the 1998 Act. Regulation 4 imposes an obligation on an audited body like the Council to establish sound financial management systems. Regulation 5(1)(a) obliges a body’s responsible financial officer – appointed in the Council’s case under section 151 of the Local Government Act 1972 – to determine its “accounting records, including the form of accounts and supporting accounting records”. There is no definition of these terms but it is clear from this that accounting records include the accounts themselves and materials which support the accounts. Regulation 5(2) provides:

“5(2) The accounting records determined by the responsible financial officer on behalf of a relevant body in accordance with paragraph (1)(a) shall be sufficient to show the body’s transactions and to enable the responsible financial officer to ensure that any statement of accounts, income and expenditure account, statement of balances or record of receipts and payments and additional information to be provided by way of notes to the accounts, as the case may be, which are prepared under these Regulations, comply with these Regulations.”

Under regulation 5(3), the accounting records must in particular contain entries from day to day of all sums of money received and expended by the body and the matters to which they relate.

32. Regulation 6 imposes on an audited body the duty of maintaining a system of internal audit. Regulation 7 is entitled “Statement of Accounts”. Regulation 7(1) provides:

“(1) A relevant body which is not a smaller relevant body shall prepare, in accordance with proper practices in relation to accounts, a statement of accounts for each year, which shall include such of the following accounting statements as are relevant to the functions of the relevant body –

...

(d) any other statements relating to each and every other fund in relation to which the body is required by any statutory provision to keep a separate account.”

Under regulation 10 it is the duty of the relevant body to prepare the statement of accounts in accordance with regulation 7 and of the responsible financial officer to certify it in terms set out in regulation 10(2). Regulation 11 obliges the publication of the statement of accounts.

33. Under regulation 13 the auditor must appoint a date for the purpose of the exercise of rights under sections 15 and 16 of the 1998 Act. Regulation 14 provides that after the auditor’s notification of the date, what has to be made available for public inspection for 20 working days are the accounts and other documents mentioned in section 15. In relation to the accounts, typically this is done in electronic form. Notification of these public rights must be given under regulation 16. Regulation 17 provides that any written notice of objection under section 16(2) of the 1998 Act

“shall state the facts on which the local government elector proposes to rely, and contain, so far as possible -

(a) particulars of any item of account which is alleged to be contrary to law, and

(b) particulars of any matter in respect of which it is proposed that the auditor could make a report under section 8 of that Act.”

At the conclusion of the audit, notice by advertisement must be given of that fact and that “the statement of accounts” is available for inspection by local government electors: r. 18.

#### Code of Audit Practice

34. The Code of Audit Practice 2008, prepared pursuant to the 1998 Act, has been laid before Parliament. Under “General Principles” the code notes that, because of the special accountabilities attached to public money and the conduct of public business,

the scope of external audit in local government covers not only the audit of the financial statements but also the audited body's arrangements for securing economy, efficiency and effectiveness in its use of resources. The auditor's objectives are to review and report on the audited body's financial statements and its statement on internal control, and whether the audited body has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. Auditors do not act as a substitute for an audited body's own responsibilities. They are not expected to review or perform detailed tests of all the financial and other systems and processes or of all the accounting procedures and transactions.

35. The Code recognises that local government in the modern age enters into arrangements with the private sector. With that in mind, the code explains that auditors should consider whether they need to follow public money into and across such arrangements. Auditors are expected to discuss with the audited body the need for timely and effective production of working papers and other information required for audit so that the process can be carried out as efficiently and effectively as possible. As to confidentiality, the Code provides that auditors should take all reasonable steps to ensure that they and their staff comply with relevant statutory and other requirements relating to the holding and disclosure of information received or obtained during the audit.
36. Part 2 of the code sets out how auditors fulfil their statutory functions under the 1998 Act in auditing the financial statements. The auditor's work in auditing financial statements is set out in paragraph 18. "Financial statements" is later defined as "the annual financial statements in the prescribed form, or the books of account for those audited bodies that are not required to produce statements." Section 3 covers auditors' responsibilities in relation to the use of resources, in other words, their need to be satisfied that proper arrangements have been made for securing economy, efficiency and effectiveness in the use of resources. The upshot of auditors' work is dealt with in Section 4, reporting. This includes an audit planning document; reports or memoranda to officers and, if appropriate, to members of the local authority; a report to those charged with governance; and the audit report, including the auditor's opinion on the financial statements and a conclusion on whether the audited body has put in place proper arrangements for securing economy, efficiency and effectiveness in its use of resources; and a certificate that the audit has been completed in accordance with statutory requirements.
37. Section 5 refers to the specific powers, such as where there are representations or information relevant to the audit. Auditors must apply a balanced and proportionate approach.

#### Information rights legislation

38. Brief mention should be made of contemporary information rights law. Best known is the Freedom of Information Act 2000, the main purpose of which is to confer a right of access to recorded information held by public authorities like the Council: section 1. Under Part 1 of the Act a number of conditions must be fulfilled before a public authority is obliged to comply with a request: section 8. A public body must state the reasons for refusing a request: section 17. Appeals can be taken to the Information Commissioner and Information Tribunal. Among the exceptions from the duty to disclose information in Part II of the Act is that for confidential information contained

in section 41. Section 42 protects legal professional privilege and section 43, commercial interests. In particular section 43(2) means that information is exempt if it would “prejudice the commercial interests of any person ...”. The exemptions in sections 42 and 43(2) are subject to a public interest test so that, even if it falls within the scope of the exemption, the information must be disclosed, unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

39. The Environmental Information Regulations 2004, 2004 SI No 3391 (the “Environmental Information Regulations”) were made pursuant to the EU Directive on Public Access to Environmental Information 2003/4/EC. In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the “Act”) are imported into the Regulations. Broadly stated regulation 12(5)(d)(e) allows a public authority to refuse to disclose information to the extent that disclosure would adversely affect confidential and commercial information. The exemption in regulation 12(5)(d)(e) is subject to a public interest test.
40. Finally there is the Data Protection Act 1998. In brief the Act requires anyone who handles personal information to comply with a number of important principles. It also gives individuals rights over their personal information, including access, and to prevent processing.

#### The jurisprudence

41. None of the authorities address directly the issue presently before me. Some, however, cast light on relevant aspects.
42. As with earlier decisions such as R v Bedwellty UDC, ex p Price [1934] 1 KB 333, the issue in R (on the application of HTV Ltd) v Bristol City Council [2004] 1 WLR 2717 (Admin) was whether the claimant, a television company, was a “person interested” within the meaning of section 15(1) of the 1998 Act. It wanted information about the relationship between the Council and one of the Council’s contractors, who provided accommodation and care services for the vulnerable. In the course of his judgment Elias J said that the major, though not the only, purpose of section 15(1) of the 1998 Act was to “facilitate the right to ask questions under section 15(2)” and “to assist the local government elector who may wish to raise issues in the auditing process” (paras [18] and [19]). He noted that “... the documents which can be scrutinised are limited to those needed to verify the accuracy and integrity of the accounts”: [18] The principal purpose of section 15(1) was to assist in the auditing process: [38]. Elias J recognised the unattractiveness of obliging a local authority to give access to documents under section 15 in circumstances where the interests of third parties in maintaining the confidentiality of that information are not properly protected ([45]-[46]). He concluded that a person who inspects documents under section 15(1) may use the information in them for any purpose (at [56], [60]). At paragraph [65] Elias J said this:

“65. I recognise that this will sometimes mean that information which is confidential may be revealed which the authority would prefer to keep hidden, not out of self regard but for good and worthy motives. I accept that the council does have genuine concerns about personal information about individuals being revealed and perhaps used in ways which could prejudice

the interests of such persons. But the fact that this legislation has not framed a set of exceptions such as are found in other areas, is not, in my opinion, a justification for adopting a narrow construction to the concept of “persons interested.”

43. Hillingdon London Borough Council v Paulssen [1977] JPL 518 was a decision of HH Judge McDonnell sitting in the Crown Court. The magistrates had convicted the Council of refusing to provide certain information under section 159(1) of the Local Government Act 1972. The judge found that the local government elector was entitled to interim certificates issued under a building contract but that:

“...although an auditor might be entitled to make enquiries of an architect [who issued the certificates] and to ask for documents submitted to him and considered by him when granting the certificate there is no such right [on a local government elector] under s.159” (519, col.2).

Whether the parties had provided that certain information was to be treated as confidential was quite irrelevant to any consideration as to whether the local authority was obliged to disclose it (520, col. 2). The judge found that the schedule of rates formed part of the building contract and so ought to have been disclosed by the local authority.

44. R v Monmouthshire County Council, ex p Smith (1935) 51 TLR 435, 33 LGR 279 (Div Ct) was touched on earlier. It involved an application calling on the County Council to show cause why a writ of mandamus should not issue commanding them to permit Mr Smith to inspect the application forms for the grant of bursaries for the higher education of students submitted to the council, on the basis that they were “vouchers” relating to the council’s accounts within the meaning of section 224(1) of the Local Government Act 1933. Under the applicable regulations, the council was only entitled to provide bursaries to students in need of assistance. Smith sought to inspect the application forms to ensure that the council had only given bursaries to such persons. The application form contained a statement of parental income. The Lord Chief Justice discharged the rule nisi, observing:

“It is perfectly obvious...that the field of inquiry which is open to the district auditor under s.225(1)[ similar terms to section 6 of the Audit Commission Act 1998] is far larger than the field of inquiry which is open under section 224(1) to those who are described as ‘persons interested.’ The enumeration of terms is similar until one gets to the word ‘receipts’, but in section 224(1) the remaining words are only the words ‘relating to the accounts’ while in section 225(1) the words go on: ‘and other documents which he’ — that is, the district auditor — ‘may deem necessary for the purpose of the audit.’ Those words and the words which follow them show that the district auditor is clothed with far ampler powers than the powers or opportunities which are offered to ‘persons interested.’” (436, col.1)

The Lord Chief Justice observed that “it would be difficult to imagine anything more offensive than the widespread distribution of such information among neighbours,

and, it may be, trade competitors” (436, col. 2). The court held that the documents were not vouchers.

45. Finally, there is Oliver v Northampton BC, [1987] 151 JP 44. That case came to the Divisional Court by means of a case stated from magistrates. The council had refused Mr Oliver access, who had sought access to inspect the wages book or its computerised equivalent for the staff at one of the council’s entertainment centres. He was not content with the summary given. The case stated raised the issue of confidentiality directly and the court held that it was not material to the council’s duty to allow access. Mann J said:

“The statutory language seems to me quite compulsive upon the point. It may be said that the result is unfortunate in that employees’ private affairs are thereby likely to be revealed and revealed to persons who are under no obligation to respect confidentiality. That, if it be the case, is a matter for Parliamentary consideration. But confronted with the phrase “the accounts to be audited and all books ... relating to them”, I am quite unable to say that a summary extract such as was here proffered in order to protect employee’s private affairs is a compliance with the section” (at 7 of the Transcript).

Watkins LJ agreed and added:

“Here we have been obliged to find that the statute does not prohibit such disclosure. It is, in my judgment, unfortunate that it gives the opportunity to an elector, allowed to look at the books of the council, to use the information thereby gained for an improper purpose” (at 9 of the Transcript).

The upshot of Oliver was that section 17 of the Local Government Finance Act 1982 was amended by the introduction as described earlier of a confidentiality provision, which is now section 15(3).

#### WHAT ARE THE “ACCOUNTS” IN SECTION 15(1)?

46. The terms of section 15 of the 1998 Act were quoted earlier in the judgment. It will be seen that the media to which the access right attaches are “books, deeds, contracts, bills, vouchers and receipts,” as well as the accounts themselves. It is not contested that what I have called the disputed documents are recorded on one or other of these media. Schedules 6A, 6B and 7 are part of a “contract” and the invoices and supporting materials are “bills” or “vouchers”. The right is conferred on “persons interested.” Again it is not in dispute that this covers a local government elector for an area to which the accounts relate, of which Mr Downen is one. As was seen earlier the information must not be personal information within the meaning of sections 15(3A) or 15 (4). None of the information in dispute is personal information as defined in these sub-sections.
47. The dispute in this case is whether the disputed documents constitute information relating to the accounts of the Council which are to be audited. In particular, what is in issue is first, what is meant by the accounts of the Council to be audited and,

secondly, the character of the connection between the disputed information and the accounts required in order for it to be “relating to” those accounts.

48. There is no definition of “accounts to be audited” (“accounts”) as used in section 15 of the 1998 Act. At least two meanings of the phrase emerged during the course of the hearing. The first was the narrow definition contended for by Mr Coppel QC for Veolia. That would include, for example, the lines of the account in the Income and Expenditure Account, and possibly in the Summary Revenue Accounts of Trading Undertakings therein contained. But on this approach not all that is in the statement of accounts constitutes the Council’s accounts. The statement of accounts includes space for the auditor’s report, and the auditor’s report is certainly not part of the accounts. Nor do the accounts include other parts of the statement of accounts, such as the explanatory foreword and the various statements. Mr Coppel QC submitted further that the Notes to the Statement of Accounts are precisely that, they are notes, not part of the accounts.
49. The second meaning of accounts, as advanced by the Audit Commission, lies at the other end of the spectrum. Accounts under this approach are the general ledger and any account feeding into it. Thus the accounts show all the financial movements or items of account in the Council’s funds. The Council and Mr Downen agree with this approach.
50. In my view the approach of the Audit Commission to the meaning of accounts is more in accord with the 1998 Act and 2003 Regulations and is to be preferred. Mr Coppel QC is correct to say that the term accounts does not encompass the accounting records. Although there is no definition of accounting records, the term as used in regulation 5(1) of the 2003 Regulations comprehends the accounts and the materials which support them. As can be seen from regulation 5(3), the accounting records must in particular contain entries from day to day of all sums of money received and expended by the body and the matters to which they relate. Section 148(5) of the Local Government Act 1972 similarly requires accounts, not accounting records, to be kept of receipts carried to and payments out of the county fund, which is the council’s general fund. In my view this lends weight to the view that the term accounting records is a general term which encompasses both the accounts and supporting records.
51. Moreover, Mr Coppel QC is right to draw a distinction between the accounts and the statement of accounts. Section 9(1) of the Act juxtaposes the concepts of accounts and statement of accounts. Having considered the accounts, the auditor certifies and gives an opinion on the statement of accounts, the statutory summary statement of those accounts. As used in section 14 the term statement of accounts refers to the summary of the accounts which the Council is required to prepare, certify, approve and publish. Section 27 of the Act makes clear that accounts and the statement of accounts are distinct. Regulation 7 treats the statement of accounts as a construct: it is an annual statement in relation to accounts. Regulation 7(1)(d) requires the Council, in accordance with proper practices in relation to accounts, to prepare a statement of accounts relating to a fund which by statute has to be kept as a separate account. This is the link to section 148 of the Local Government Act 1972 which, as described earlier, requires a general fund to be kept. Regulation 11 then provides for the publication of the statement of accounts prepared in accordance with regulation 7 by 30<sup>th</sup> September immediately following the end of a year. Thus the statement of

accounts is what is published. Regulation 11 is also suggestive of the distinction, in dealing with the publication of a statement of accounts at the conclusion of the audit.

52. But if the term accounts does not encompass the accounting records, and if there is a distinction between the accounts and the statement of accounts, the legislative materials support a much broader approach to the meaning of accounts than that advanced by Mr Coppel QC. By section 2(1)(a) of the 1998 Act accounts are made up annually and by section 27(1)(a) are to be kept. These references strongly suggest that the accounts are not simply documents to be drawn up after the financial year. Rather, they are a running record which is kept of financial activity which never ends, although they are made up from time to time. Moreover, in referring to accounts, section 148(5) of the 1972 Act makes it clear that every receipt and payment must be entered in the accounts, “accounts shall be kept of receipts carried to, and payments made out of, the county fund”. This is consistent with the meaning of accounts as being a record of financial movements, in other words along the lines of the Audit Commission’s approach.
53. In my view, the broader approach to the accounts is also to be preferred because, not to put too fine a point on it, Mr Coppel QC’s narrow interpretation would lead to absurdity. Take this example. Section 15(1) contains a right to inspect the accounts and the right to inspect the books, deeds, contracts, bills, vouchers and receipts relating to them. The term “the accounts” must bear the same meaning in relation to both rights of inspection contained within the subsection. If Mr Coppel QC’s argument is correct, it must follow that persons interested who wish to exercise their right to inspect the accounts are not empowered by s.15(1) to inspect all parts of the statement of accounts, since in his submission these do not represent the accounts. The Council could exclude from inspection the explanatory foreword and the notes to the statement of accounts. The ability of persons interested to understand the lines of the account would be very greatly restricted if they could not inspect the explanatory foreword or notes to the statement of accounts. The absurdity is compounded when considered in the light of regulation 11 of the 2003 Regulations, which requires the entire statement of accounts to be published.
54. On Mr Coppel QC’s approach, section 15 would give no right to inspect a contract unless, say, a line in the Income and Expenditure Account happened specifically to name it; or if the line happened to comprise the cost of a single contract, in which case that single contract would be identifiable by the expenditure sum. Of course this would not apply to monthly invoices under that contract, as they would never specifically be mentioned. The upshot would be that a minuscule number of contracts, if any, entered into by an authority would be subject to inspection. There would be an entirely fortuitous distinction between when documents would and would not be available for inspection. As regards those very few, presumably often extremely large and therefore commercially valuable, contracts in respect of which documents might be inspected, because they might be specifically mentioned, the concerns about confidentiality which form such a large part of Mr Coppel QC’s submissions would be overridden. In any event a corollary of his submission is that it rules out any hope of inspection of documents bearing on the vast proportion of expenditure such as social services payments made pursuant to statute or funding of schools by delegation of individual education budgets to governing bodies from the overall schools budget. Omissions from the accounts, which might be a matter of

very considerable concern, as in the case of fraud, would also be wholly outside the scope of section 15(1).

55. Quite apart from the attraction of the wider view of the phrase the “accounts to be audited”, it seems to me quite wrong to suppose that as set out in the statement of accounts the explanatory foreword and notes do not constitute part of the accounts. Just as the notes (or footnotes) in a book are part of the book, the same applies to the notes to the statement of accounts. The proposition is without authority and contrary to common sense. Information is contained in the explanatory foreword and notes to the statement of accounts for presentational reasons. They allow the person drawing up the statement of accounts to set out figures in a convenient table form and to provide explanations to accompany the figures. The explanatory foreword and notes must be read with the figures to be understood. All three are a summary of the accounts – the figures and the text in the explanatory foreword and notes. Since a statement of accounts is a summary of the accounts they evidence entries in, and form part of, the accounts.

#### WHAT DOCUMENTS ARE RELATING TO THE ACCOUNTS?

56. There is no doubt that the phrase “relating to” is flexible in its meaning. In Tooheys Ltd v Commissioner of Stamp Duties (NSW) (1961) 105 CLR 602, Kitto J reviewed a number of English authorities which considered the phrase “relating to”. Some adopted a narrow, others a wider view, each approach dictated by the purpose of the provision (at 617-8). Taylor J referred to the contract in which the phrase was used, and in the context there before the Court, it was clear that “relating to” was not the equivalent to “referring to”; the relationship had to be based on some more substantial ground (at 620). “[T]he vital question is whether the instrument “relates” and not whether it may be “related” by an examination of extraneous circumstances” (at 622).

##### (a) Veolia’s submissions

57. Building on the analysis of Taylor J in Tooheys, and with his characteristic intellectual rigour, Mr Coppel QC submitted that by requiring a book, deed, contract, bill, voucher or receipt to be “relating to” the accounts to be audited, section 15(1) looks to a link between that item and those accounts. It is the book, deed, contract, bill, voucher or receipt that is required to be “relating to” those accounts. That linkage cannot be supplied through another source. Thus he submitted that a book, deed, contract, bill, voucher or receipt will be one “relating to” those accounts where the relationship between the two is borne out by the item itself (i.e. the book, deed, contract, bill, voucher or receipt) or by the accounts themselves. The link between the item and the accounts must be apparent from the item, from the accounts that are to be audited, or from both. It is the item that must be relating to those accounts; it is not enough that that link can be established once the item is read in conjunction with various other documents. Where a contract is specifically identified in a line of the accounts that are to be audited, section 15(1) confers a right on a person interested to inspect that contract. Where a contract is not specifically identified in a line of those accounts, section 15(1) does not give that person a right to inspect that contract.
58. Quite apart from being an interpretation which is consistent with the words used in section 15(1), Mr Coppel QC contended that this interpretation secured the object of the legislation without creating results which unnecessarily cut across existing legal

rights or otherwise create harsh results. It was the only interpretation which does not generate a substantial mischief, the widespread disclosure of confidential information held by the Council.

59. As to the object of section 15(1) Mr Coppel QC suggested that it is to facilitate a local government elector's right to make objections to the accounts to be audited. It is not to provide a general, free-standing right of access to information held by an authority subject to audit, which is obvious from the temporal restriction on the right imposed by the 2003 Regulations. The temporal limitation is only reconcilable with an intention that the section 15(1) access right serves the purpose of facilitating a local government elector in his questioning the auditor about the accounts under section 15(2) and in making objections under section 16. The lines of those accounts will set out items of expenditure, revenue and capital, giving a figure against each of them. It is the lines of those accounts to which a local government elector's questions and objections must be directed. Sections 15(2) and 16 are not intended to give a local government elector that right to question an auditor about every single item of expenditure, however small, which has been taken into account in reaching the figure shown in a line of the accounts. To give every local government elector the right would be unworkable. The code obliges auditors to limit abuse. Properly understood, the rights given to every local government elector concentrate on the heads of expenditure, income and capital reflected in the lines of the accounts. The local government elector's rights are concerned with the overall financial picture as expressed in the lines of the accounts which are to be audited: they are not concerned with vouching the accounting records or other material from which they are derived.
60. Mr Coppel QC submitted that this approach accords with the object of other parts of the 1998 Act. Thus in order to object under section 16 it is not necessary for a local government elector to have access to every document for which it is possible to conceive a connection with an item which is the subject of a line of an account. Inspection of such documents will not make good a claim that an item of account is contrary to law. It is the auditor who, armed with more extensive powers to obtain information, provides the bulwark against misconduct. It is not the function of a local government elector in section 16 to gainsay or duplicate the functions of the auditor. The auditor is performing quasi judicial duties which are designed to protect the local authority, as well as the local elector: West Wiltshire DC v Garland [1995] Ch 297, 308F, 310B.
61. Further, there is no good reason to read section 15(1) so as to equate a local government elector's right of access with that of the auditor under section 6. That section confers on the auditor a right of access to every document relating to a body subject to audit which appears to him necessary for the purposes of his functions under the Act. As with section 15(1), the right of access is limited by a required nexus with the documents to which the right attaches. The nexus in section 6(1) is documents relating to the body subject to audit, which is wider than the nexus in section 15(1). This distinction is real and should be respected. The auditor undoubtedly does have an access right to the confidential information. That is because the confidential information relates to the Council, even though it does not relate to the accounts of the Council.
62. In Mr Coppel QC's submission his interpretation does not create a mischief. All the bodies subject to audit under the 1998 Act are already subject to general, free-

standing rights of access under the Freedom of Information Act 2000 and the Environmental Information Regulations and the Data Protection Act 1998. That legislation has sophisticated exemptions which carefully balance the competing interests of those seeking information held by public authorities, of third parties who stand to be affected by the disclosure of that information, of public authorities in performing their functions, as well of the general public interest both for and against disclosure. The 1998 Act does not contain any such suite of provisions protecting those other interests. Limited protection to just one such interest, personal information, is provided by section 15(3). A careful balance has been struck by Parliament in the other legislation. Irremediable harm would be caused by any interpretation other than his interpretation of section 15(1). A wider interpretation would potentially enable access to be obtained in relation to individual prosecutions, material protected by legal professional privilege and other matters. Where a word or phrase admits of a variety of meanings, a meaning that creates a mischief should not be preferred over a meaning which does not cause a mischief.

63. Finally, Mr Coppel QC contended that this interpretation is supported by the legislative history: the right to inspect and take copies of public accounts and related documents has been associated with a right to question the auditor of these accounts. The evolution of the provision from the 19<sup>th</sup> century reveals a consistency of intention, albeit expressed through changing legislative drafting styles, that the local government elector's right of access is confined to the lines in the accounts to be audited, with documents mentioned or referred to in those lines in the accounts.
64. En passant, Mr Coppel QC noted that his interpretation does not prevent a council from voluntarily making its contracts available to a person interested even if it is not obliged to do so. Only where there is a constraint on disclosure, such as where the contract contains confidential information, should the Council not breach the confidentiality by volunteering the information. Similarly, a person might gain access to a council contract pursuant to some other right of access, such as section 1 of the Freedom of Information Act 2000 or pursuant to the Environmental Information Regulations.
65. Applying his interpretation of section 15(1), Mr Coppel QC submitted that the upshot is that the Council's decision to make the disputed documents available to Mr Downen is unlawful. The Council's statement of accounts contains only two lines which might allude to the Contract or associated invoice: in the Income and Expenditure Account, the line "Environmental Services", and in the Summary Revenue Accounts of Trading Undertakings, the line "Contracting Services". But on Mr Coppel QC's analysis, it cannot be said that either the Contract or an invoice under it constitutes a document relating to either of those lines in the accounts. In neither line is there any mention of or reference to the Contract by name, by date, by amount or by any other attribute. Underlying those two lines of the accounts is more than just the Contract and the payments under it. Whilst the Contract and the payments under it may be referred to in the Council's accounting records, the accounting records are not the accounts. Nor is the statement of accounts the accounts. There are entries in the statement of accounts which might be said to allude to the Contract or the invoices. But Note 29 is not part of the accounts. As to Note 36, under the heading "revenue reserves", this refers back to the balance sheet. Even if they were part of the accounts neither

entry causes the Contract or the invoices under it to constitute a document relating to the accounts.

(b) The documents relate to the accounts

66. It is clear that section 15(1) of the 1998 Act does not confer an unqualified right of access to books, deeds, contracts, bills, vouchers and receipts held by a body to be audited. That the Council holds a book, deed, contract, bill, voucher or receipt does not necessarily make it a book, deed, contract, bill, voucher or receipt relating to the accounts of the Council. Nor is it enough that a book, deed, contract, bill, voucher or receipt be one relating to the accounting records of the Council: the legislation recognises the distinction between the accounts and the accounting records. Still less is it enough that a book, deed, contract, bill, voucher or receipt be one relating to the Council. The touchstone of the right in section 15(1) is that the book, deed, contract, bill, voucher or receipt be one relating to the accounts of the Council. There must be a nexus between the accounts of the Council to be audited and the book, deed, contract, bill, voucher or receipt.
67. In my view, for the reasons I give shortly, Parliament's intention in using the words "relating to" in section 15(1) was simply that there should be an enquiry as to the factual connection between the limited category of documents mentioned on the one hand and the accounts to be audited on the other. There is no support for Mr Coppel QC's approach that a document only relates to the accounts if the link with the item of account is apparent from the document itself. The only authority in support is Taylor J's dictum in the Toohey case. None of the other judges of the court, including Sir Owen Dixon CJ, adopted this analysis. All preferred to address the intention lying behind use of the concept "relating to". Once the term accounts is interpreted to mean what I have held it to be, a factual connection between the disputed documents and the Council's accounts is obvious. The Contract relates to the accounts and each payment made by the Council to Veolia during any financial year constitutes an item within the Council's accounts for that year.
68. It is true that the accounts in the sense I have held them to be were not in evidence before the court. However, the statement of accounts is a summary of the accounts. It is not disputed that the statement of accounts is a correct summary of the accounts. Any item in the statement of accounts, including the explanatory foreword and the notes, represents an entry in "the accounts to be audited" for the relevant period. If a contract or bill relates to an item or note anywhere in the statement of accounts, it therefore relates to the accounts to be audited. The explanatory foreword and Note 29 to the statement of accounts ("waste recycling") identifies the Contract through the date on which it was signed, the amount charged to the Council and the contracting party, Veolia. Thus the Contract itself, and any invoice paid under it, relates to the accounts.

(c) Interpreting "relating to" in section 15(1)

69. The words "relating to" in section 15(1) are open to more than one interpretation. As with any issue of statutory construction, the Court's task is to give a meaning to the words in their statutory context, adopting the one which is as faithful as can be to Parliament's purpose. That may entail a comparison with the phraseology used in other similar provisions in the legislation, an examination of its legislative history, a

consideration of the wider statutory context and any relevant authorities. To the extent that a number of interpretations of the words are open, the court “ought to discard the more natural meaning if it leads to an unreasonable result, and adopt the interpretation which leads to a reasonably practicable result”: Gill v Donald Humberstone & Co Ltd [1963] 1 WLR 929, 933, per Lord Reid. See also Bennion on Statutory Interpretation, 5th ed, 2008, 1006-1007

70. Take, first, the statutory context of section 15(1). One aspect is the power to make reports under section 8. That extends to questions of value for money, those being matters that the auditor is required to consider under section 5(1)(e). A local government elector’s right to make objections extends at least to any matter that could be the subject of a section 8 report: section 16(1)(a). Hence an elector could both raise questions relating to economy, efficiency and effectiveness under section 15(2) and make objections in relation to such issues under section 16(1). An elector like Mr Downen may properly be concerned, not simply with whether any sums paid by the council are properly due from it under the Contract, but also with whether the Council is obtaining value for money in respect of its expenditure. That suggests a wider access to documents than suggested by Veolia.
71. A wider access is also consistent with the auditor’s statutory responsibility to respond as to whether the Council’s items of account are lawful, given the statutory power to apply to the Court for a declaration that they are not: section 17(1)(a). A local government elector may make objection in relation to matters to which section 17 applies: section 16(1). The local government elector would have to know the amounts actually spent, and the basis of their calculation, to be able to ask informed questions of the auditor about the lawfulness of an item of account relating to expenditure under the Contract. Then there is section 24, which gives the auditor the power to apply for judicial review of an authority’s decision which may affect its accounts. To the extent that this action may be prompted by an objector under section 16, this strongly suggests that the objector would have been entitled to such information.
72. The purpose of section 15(1) cannot be confined to assisting local government electors in questioning the auditor and making objections to the accounts. That is because the right to inspect and copy under section 15(1) is conferred on persons interested, which is a wider group than local government electors and could include local businesses and community groups. It seems to me that the Parliamentary purpose is to enable those with a real and close interest in a council’s activity to scrutinise its accounts in the audit process. As I have indicated, the statutory scheme envisages that local government electors and other interested persons may wish to consider questions such as whether sums purportedly paid under a contract are properly due under that contract; whether payments made by the body under audit are lawful; and whether in incurring any liability for expenditure the body under audit has made proper arrangements for securing value for money.
73. In my view there is also support for the interpretation I have adopted given the factual context. An audit is necessarily selective. A local government elector may ask the auditor a question about a matter in the accounts not specifically considered in the audit. It may very well be that a local government elector raises a point which the auditor has not considered. Auditors cannot and do not review or check every transaction or every element of the authority’s arrangements for securing economy, efficiency and effectiveness. In seeking to obtain reasonable assurance that matters

have not been materially misstated, auditing standards allow for auditors to employ sampling techniques to test the details of transactions and the effectiveness of the operation of financial controls. In the context of the value for money conclusion, the Code of Audit Practice provides that in planning their work auditors assess significant business risks, which is a matter of professional judgment, reflecting both quantitative and qualitative aspects. None of this detracts from the fact that the primary statutory burden is placed on the auditor. Nonetheless, through the exercise of the rights under section 15(1) the interested person can act as a useful supplement to the audit process.

74. There is a contrast between the wider powers to access documents conferred on the auditor under section 6 and those of a person interested under section 15(1). In giving a right of access to certain information, section 6(1) employs a different formula which gives the auditor access to documents relating to the body subject to audit, rather than just to documents relating to the accounts of the body subject to audit. But this simply demonstrates that the auditor has a more wide-ranging right of access to documents, an access geared to the auditing task. It is no support for stultifying the access to documents for persons interested under section 15(1).
75. Consideration of the 2003 Regulations supports the analysis. Under regulation 4 the audited body has the duty to maintain sound financial management and under regulation 6 it must maintain a system of internal audit. These imply that an audit is, necessarily, selective. Under regulation 14, after the auditor's notification of the date, what has to be made available by the authority are the accounts and other documents mentioned in section 15. At the conclusion of the audit there is under regulation 11 the publication of the statement of accounts and the right of inspection under section 14 of the Act in respect of it. Thus there is an express difference between the rights of inspection of the statement of accounts and rights of inspection of the accounts and the documents identified in section 15(1). This is suggestive that the inspection rights conferred by section 15(1) are far wider than to documents where the link with, say, a line of the Income and Expenditure Account is patent in the way Mr Coppel QC suggests. Finally, regulation 17 requires the objector, so far as possible, to give both facts on which he relies and particulars of any item of account. On Veolia's approach, that would rarely be possible in practice.
76. Veolia is correct in its contention that there are other mechanisms of scrutiny and accountability. In this case there are the provisions of the Contract – a sophisticated long-term contract – which oblige Veolia to account to the Council and which empower the Council to inspect sites and records. There was the tendering process itself, under the public procurement regime to guarantee the best price. There are also the arrangements any council must put in place under the 1998 Act and other legislative provisions to ensure its activities are lawful and proper and to meet goals such as value for money. Finally, there is the transparency and openness which mechanisms of local democracy further and to which legislation such as the Freedom of Information Act 2000 and the Environmental Information Regulations contribute. But as a matter of principle none of this has any bearing on the proper construction of section 15(1).
77. The obligation to pay local taxation through the rates was matched by the right given to rate-payers to an involvement in the process of ensuring the money was well spent. It was a mechanism of democratic accountability through involvement in the public process of audit. Assisting the audit process included an opportunity for local

government electors and other persons interested to inspect and copy the accounts and related documents. In my judgment it is entirely unsurprising that given its history the law should permit a local elector such as Mr. Downen sight of the disputed documents in this case. The historic role of interested persons such as local government electors in participating in the audit process would be severely diminished without such disclosure.

78. Veolia suggested that the consequence of a wide interpretation of section 15(1) would be to produce unreasonable results. One was that legally privileged documents could be required to be disclosed. In my view this suggestion is misconceived. The courts have made clear that it requires very clear language to trump legal professional privilege: R (Morgan Grenfell & Co Ltd) v Special Commissioner of Income Tax [2002] UKHL 21, [2003] 1 AC 563. Moreover, the category of documents to which section 15(1) gives access also provides the answer to the point – books, deeds, contracts, bills, vouchers and receipts are unlikely to raise issues of legal professional privilege. There was also the argument that a police authority would be required to disclose in unredacted form a contract with a surveillance company which might identify a person under surveillance. I am somewhat puzzled as to how the conclusion follows from the premise. In any event, it may be that such information would be prevented from being disclosed by the personal information exception in section 15(3). Other examples of adverse effects were, in my view, similarly without foundation. The very wide exemptions for personal information in section 15 would catch most of the documents to which Veolia referred, even if they did, unusually, fall within the type of documents set out in that section. Mr Coppel QC was unable to point to any example in case law supporting his floodgates argument in relation to a legislative provision which, after all, dates back to the first part of the 19<sup>th</sup> century.
79. The concern about commercial confidentiality I can well understand. Not only may Veolia suffer from its breach, but the Council could as well, through the demands of sub-contractors once they learn the basis of Veolia's models. But the plain fact is that there is no duty to keep commercial confidentiality in section 15. As was said in both the HTV [2004] EWHC 1219 (Admin) and Oliver [1987] 151 JP 44 cases, confidentiality is no bar to disclosure. If the section applies, the Council must disclose. It hardly needs stating that the section trumps the confidentiality obligations set out in the Contract. There is the duty of confidentiality in section 15(3) in relation to personal information. At one point in the proceedings the Council placed reliance on the expressio unius principle: the inclusion of this duty of confidentiality demonstrated that Parliament meant to exclude other types of confidentiality. At the hearing the Council rightly conceded that the expressio unius principle was an aid to construction, not a complete answer. In any event Veolia did not contend that there was any additional duty of confidentiality to that for personal information already contained in section 15. Its argument was that confidentiality needed to be taken into account as part of the interpretive exercise.
80. In my view the express provision for confidentiality in section 15(3) in the case of personal information suggests that commercial confidentiality is to be ignored in the interpretive exercise. The reality is that in recent times Parliament has addressed the issue of confidentiality in relation to section 15 and has not considered it necessary to extend it to commercial cases such as the present. First, there was the introduction of the original confidentiality provisions after the Oliver decision in the 1989 Act. More

recently Parliament amended the confidentiality provisions in section 15 through the Local Government and Public Involvement in Health Act 2007. The Explanatory Note to what became section 160 of the 2007 Act shows that Parliament expressly considered the Data Protection Act 1998 in further amending the exceptions to section 15(1). There are also the expressly imposed confidentiality obligations on auditors and the Audit Commission in section 49. Again these suggest that Parliament would have said so if it has intended there to be other duties of confidentiality. Indeed section 49(2A) is an amendment expressly referring to the Freedom of Information Act 2000. All this suggests that Parliament's intention is that a confidentiality qualification, as found in other information rights legislation, is presently unnecessary. Parliament cannot be taken to have been blind to the question of commercial confidentiality.

81. I concede that there is a striking contrast with the wider confidentiality provisions in the Freedom of Information Act 2000 and Environmental Information Regulations. It may also be that that is because the category of documents to which access may be given under section 15(1) is not as broad as under that other legislation. Parliament therefore determined that exceptions or qualifications should not be necessary to restrict disclosure. As the category of information which may be obtained under the 2000 Act is broader, more constraints are required. It may be that Parliament, in considering the relatively narrow range of documents to which the section 15(1) right to inspect may apply, has determined that the personal information exceptions within section 15(1) are a sufficient control mechanism. Whatever the reason, the fact is that in protecting personal information in section 15(3), Parliament was legislating as to the extent to which confidential information could be excluded from disclosure.

### CONCLUSION

82. Section 15(1) of the 1998 Act enables an interested party to inspect and copy certain documents related to the accounts of the Council. It does not create the type of general free-standing right of access to information as conferred by modern information rights legislation. Its history lies in democratic accountability, rather than the policy of transparency and openness behind the modern legislation. But in my view, as a matter of legal analysis, section 15(1) applies in this case, notwithstanding Veolia's contention that this will lead to a breach of commercial confidentiality. Accounts are not defined but the 1998 Act indicates that they are the record of the Council's financial activity over a period and of the financial position at a particular time. The statement of accounts is a summary of the accounts. In my view it is plain that each of the disputed documents relate to the Council's accounts as that phrase is to be construed in its statutory context. In the result Mr Downen is entitled to inspect and copy these documents.