



National Audit Office

The UK's independent public spending  
watchdog

Switchboard +44 (0)207 798 7000  
Direct Line +44 (0)207 798 7264  
Email [FOI@nao.org.uk](mailto:FOI@nao.org.uk)

Reference FOI-1555  
Date 16 November 2022

## NAO AUDITORS' GUIDANCE NOTE & LOCAL AUDIT AND ACCOUNTABILITY ACT 2014

Thank you for your Freedom of Information request of 19 October 2022 where you asked us to confirm whether the NAO has issued any guidance on paragraph 52 of AGN04 ("paragraph 52").

Your request was considered in accordance with the terms of the Freedom of Information Act 2000 (FOIA), and it has been reproduced at Annex A for your reference.

We can confirm that the NAO has not issued any further guidance on paragraph 52. We previously provided you with a link to where you can view paragraph 52. Nevertheless, for ease of reference, paragraph 52 reads:

*"52. The auditor must record the reasons for the decision and must also inform the objector or their representative, involved parties, and the council of the reasons for the decision. Common law may require in certain circumstances that reasons for a decision are given to those affected by it."*

Subsequently, you also asked whether Schedule 11 of the Local Audit and Accountability Act 2011 applies to a letter sent to an objector informing them of the external auditor's decision. We explained previously whether Schedule 11 applies to such correspondence will depend on the circumstances and whether the relevant information satisfies the conditions of Schedule 11. We cannot, therefore, provide the confirmation you seek.

The Freedom of Information Act 2000 requires public authorities to provide the information which they hold at the time of a request where it is applicable, and lawful and is not exempt. It does not impose an obligation on public authorities to create information or to respond to questions about the interpretation of the law or guidance. I appreciate that you seek a full explanation of the interpretation of paragraph 52, but your request is outside the scope of the Freedom of Information Act 2000, or we do not hold the information you request. However, I thought it might be helpful to provide some further explanation about paragraph 52.

Paragraph 52 requires auditors to tell the objector and Council the reasons for their decision on an objection to the Council's statement of accounts in all cases. Those reasons necessarily must be communicated in some way to both the objector and the Council. Paragraph 52 is, however, concerned with the outcome (i.e., the provision of reasons) and not the process (i.e., the means by which those reasons are communicated).

Paragraph 52 is silent on the question of how the auditor should communicate the reasons for their decision to the objector and the Council; the only requirement is that the reasons are communicated. It is therefore for the auditor to decide how they communicate the reasons for their decision to the objector and Council. Paragraph 52 does not prohibit the auditor from sending their decision letter to the objector and copying it to the Council and we are aware that this is common practice.



The NAO has the power (delegated to it by the Comptroller and Auditor General) to issue statutory guidance on the way in which auditors should carry out their functions under the Local Audit and Accountability Act 2014. The NAO has no power to police whether auditors comply with AGN04 or to direct auditors to take remedial action to secure compliance with the guidance. Put simply, once the statutory guidance has been issued, the NAO's role is limited to reviewing the guidance and issuing updated guidance as and when we consider it to be necessary to do so. The NAO cannot, as you suggest, do anything to remedy what you say is a breach of paragraph 52 in your case. Furthermore, given the NAO's role, it would be inappropriate for us to express a view on whether a particular action taken by an auditor complied with our statutory guidance.

The Local Audit and Accountability Act 2014 requires auditors to have regard to the guidance that the NAO issues (section 20(6)). The question of whether an auditor has failed to have proper regard to the NAO's guidance is a matter of law enforceable only by the Courts

In light of the above, if you are unhappy with the way the auditor has acted in your particular circumstances, you would need to seek your own independent legal advice on the options you may have available to you.

To conclude, and for the avoidance of doubt, the NAO has no power to take any action against a Council. The NAO's statutory guidance applies only to auditors. We cannot comment on or do anything to remedy any action taken by the Council. This sets out the NAO's comprehensive response to your enquiries. We have nothing further to add. If you wish to pursue your complaint, we suggest that you seek legal advice on the options available to you.

Annex B sets out the steps you may wish to take if you are not satisfied with the way we have handled your request.

We hope you find this response helpful.

Yours sincerely,

**NAO FOI Team**

## **Annex A**

### **Request for NAO Auditors Guidance Note & Local Audit and Accountability Act 2014**

*Your request in italics)*

*“The contents of your letter are quite detailed, but does not provide a response in plain English covering my original FOIA. Based on the last paragraph of your letter that the NAO has not issued further statutory guidance in respect of item 52 you appear to be confirming the contents of my previous emails.*

*I refer you back to my email of 06 October 2022 NAO Auditor Guidance Note 4 Item 52 is crystal clear it does not authorise any external auditor to provide any local authorities with a copy of a letter sent to the objector informing them of its decision nor does it authorise the public authority to publish said correspondence*

*In your response you have reference professional judgment of the external auditor and a six week period for an objector to ask questions. In respect of my FOI I accepted the decision of the external auditors not to pursue the matter on the basis of the additional cost of the external audit. I contacted the external auditor within the 6 week period to object to a copy of the objectors notification letter, been sent to the local authority and published on the authority’s website. This matter would of been resolved at that time had the external auditor followed statutory guidance and instructed the remove the objectors notification letter from it website*

*It is somewhat presumptive of you to assume that my primary concern relates to the actions taken by the council when it relates to the failings of an external auditor to comply with NAO Auditor Guidance Note 4 Item 52 when a breach of this guidance is brought to the attention of the external auditor with the six week period,*

*The point I have highlighted to the NAO is that the external auditors in this case cited non-existent NAO statutory guidance in item 52 that instructed external auditor to provide the local authority with a copy of correspondences sent to myself to justify the external auditors actions. This puts these matter squarely within the remit of the NAO.*

*Please provide a response to my FOI in plain English that clearly answers the specific questions above in respect of statutory guidance.”*

## **Annex B**

### **Statement of Policy**

Our policy is to respond to requests made under the Freedom of Information Act 2000 as helpfully and promptly as possible, having regard to the principles set out in the Act. I therefore hope you are happy with the way we have handled your request. If you are not, then you should take the following steps.

In the first instance, within 40 working days, write to the National Audit Office Freedom of Information (FOI) Team at [FOI.requests@nao.org.uk](mailto:FOI.requests@nao.org.uk) or by post to:

FOI Team, Green 2, National Audit Office, 157-197 Buckingham Palace Road, London, SW1W 9SP

The Manager of FOI will arrange a review, which will be conducted by a senior member of staff who was not involved in decisions relating to your original request. Once the review has been completed, we will write informing you of the outcome.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

<https://ico.org.uk/> or Information Commissioner’s Office Wycliffe House Water Lane Wilmslow Cheshire SK9 5AF