

GLA Oversight Committee – 18 July 2013

Transcript of Item 6: Transparency of the GLA Group

Tony Arbour (Chairman): All right. Thank you very much. The principal item on the agenda arises from John Biggs' report on the transparency of the Greater London Authority (GLA) Group.

We have four distinguished visitors. We have the Mayor's Chief of Staff, Sir Edward Lister. We have Tom Middleton, Head of Governance and Resilience. We have Howard Carter. We have Martin Hoscik and we are looking forward to hearing from Martin briefly. We have Steve Wood from the Information Commissioner's Office (ICO).

I will ask the first question, which is to you, Edward: Is there anything you have learned from the report?

Sir Edward Lister (Mayor's Chief of Staff): I am not sure about learned, but I first of all want to say thank you to the authors of the report because it does acknowledge that a lot of progress has been made. It is still a work in hand. I am not for one minute claiming that we have it all right, but the report does acknowledge that. We have gone a long way to moving ourselves and creating a lot more transparency and the report acknowledges this. That is the first couple of things and I can talk about some vast successes which again the report does pick up and I would like to thank everybody for that, but it is a work in progress and there are points there which we will need to follow through. We have further work to do.

Tony Arbour (Chairman): In general, are you pleased that such a report has been written?

Sir Edward Lister (Mayor's Chief of Staff): Yes, it is a very helpful report and I thank you for that.

John Biggs (AM): Praise indeed, perhaps. I think it is a matter of fact that I suspect every politician seeking elected office in the UK will commit themselves to the matter of transparency and to improving on their predecessors. Would you agree that that tends to be what happens?

Sir Edward Lister (Mayor's Chief of Staff): Yes, but can I go further and say there is a genuine desire by the Mayoralty to make things as transparent as we possibly can.

John Biggs (AM): OK, so maybe that was one of my traditionally long sentences in which there is a comma followed by "however". When they get into office, they find all sorts of reasons why it is more difficult to reveal things than perhaps from the outside it might have

appeared likely to have been. That requires some real “oomph” from the leadership. Would you agree with that?

Sir Edward Lister (Mayor’s Chief of Staff): Yes, I do. I am very conscious. Just little things like, as you have acknowledged, we are now publishing everything over £250 on the website. It took quite a lot to push that through the system because there were all sorts of concerns raised about that, but the reality is it is there. It is what it should be and it helps actually drive greater efficiency in the organisation.

John Biggs (AM): OK. Members will be quite excited about events yesterday which highlight the consequences of a failure of publication, but can you just tell us about what happens at high-level? I am more excited about this report than my colleagues are, actually, because we went into it in some detail and we had some fairly open recommendations which hopefully you will respond to in detail in due course. After five years are you satisfied with the progress you have made in getting information into the public domain?

Sir Edward Lister (Mayor’s Chief of Staff): It is a progressive process of doing it. There is an awful lot of data that has to be put out there, it is a cultural thing and it does take a while. A number of us – and I certainly count myself as one of those – think that everything actually comes out anyway. As soon as two people know about it, it is no longer a secret, so you might as well put it out there for all to see because it is out. One fools oneself if one thinks that it is not actually going to be public. We are on a journey. That is all I can say. We have some way to go but we have come a fair way.

John Biggs (AM): Would you agree, then, with the statement in the report which says as regards contracts – and this should apply to other bits of business as well – that the presumption should be that all GLA Group contracts should be published unless there are pressing reasons not to and this should only happen exceptionally? That is to say the pyramid is one way up. The presumption is publication unless there are very good reasons not to, rather than perhaps a culture which says, “We will let the public know what they need to know and we will determine what that is”.

Sir Edward Lister (Mayor’s Chief of Staff): Yes, totally. I have no hesitation in agreeing to that. Obviously there are bits of contracts which have to be redacted, but those are the commercial bits which sometimes have to be confidential. There should always be a test on that and we need to be as tough as we can be to make sure we only take out those bits which really are genuinely commercially confidential.

John Biggs (AM): You have mentioned the word “culture” and you are absolutely right on that. That is my fundamental conclusion: the culture of the organisation will help determine the position it takes in regard to publishing information and being open. The culture clearly needs to come from the top in terms of leadership, which is from you and the Mayor. You would accept that?

Sir Edward Lister (Mayor’s Chief of Staff): Yes.

John Biggs (AM): There are deficiencies highlighted in the report. You would accept that you are not perfect in this yet and more leadership and more input are required?

Sir Edward Lister (Mayor's Chief of Staff): Totally. Sorry, I keep on saying it, but I do think it is a journey. It takes time to work it through.

John Biggs (AM): I imagine the Committee Members would like it to be speeded up a bit. Can I just focus on one thing, then, which is about Mayoral Decisions (MD)? When I first came here I was led to believe that they were privileged information from the Mayor and that was the reason why they should not be published, but they are not actually, are they? In fact, they are no less amenable to publication and transparency than any other part of the decision-making.

Sir Edward Lister (Mayor's Chief of Staff): Prior to 2008 they were always treated as confidential and then at some point after that they became public. There is a second part to those Mayoral Decisions when there is something that is confidential and that is kept back. To be completely fair about that, I believe that where an Assembly Member has asked about it that information has been given to them, but it has been on the basis that it is commercially confidential. They tend only to be related to a payment to somebody or something which is very specific. We are very careful not to put anything in the second part of one of those MDs unless we have to. We are quite strict ourselves with making sure only the minimum goes in there.

John Biggs (AM): OK. There is one particular piece of advice which you will know I get hot and bothered about, the annual advice to the Mayor on fares, which has only ever been published once. That was when the opportunity arose for a newly-elected Mayor to publish the advice given to his predecessor. On no other occasion has it ever been published, which perhaps highlights an interesting bit of critical thinking within the organisation. Would you accept that that might be viewed as one of the benchmarks by which we judge the openness of the organisation? The fares decision is so pivotal to all the other financial decisions of Transport for London (TfL) that to not publish it makes a nonsense of a large part of the budget-making.

Sir Edward Lister (Mayor's Chief of Staff): It is also, if I may say, one of the most political decisions a Mayor will ever take. It is a highly political one. He needs to have a lot of freedom in making that decision and he needs to have a very open paper which looks at all sorts of options, some of which could be deemed to be quite extreme. That is his choice and it is part of TfL's role and the role of the transport team here to give him all the different options that are open to him. It is a little bit unfair on the Mayor to have all of that then published. That is the case where there is a political decision to be taken and he does need to have a lot of freedom.

John Biggs (AM): I hope that the transcript of this will be recorded because that statement is worthy of some serious technical analysis. This is rather hard ground we are on. Thankfully, we have someone from the Information Commissioner's Office here today and we will be in correspondence with them about this because it is in the interests of transparency and accountability that we get to the bottom of whether there really is a good legal reason why this information why should not be published.

Sir Edward Lister (Mayor's Chief of Staff): Could I add to my last comment just one line? When we are dealing with the fares, there are two negotiations taking place. There is a decision as far as the fare-payer is concerned and there is a tactical decision which has to be taken with regard to negotiations with the Department for Transport, with the Treasury and with other places. That is why it is so sensitive. It is part of quite a big negotiation which takes place and that is why there are a lot of options there. You would be very much restricting the Mayor's ability to negotiate both ends of that.

John Biggs (AM): Clearly, there may be a distinction between a piece of advice that says to the Mayor, "George Osborne [Chancellor of the Exchequer] has told us that he is going to take away £1 billion of our grant if we put up the fares by 3.8% and therefore we cannot do that", and a piece of advice which says, "There are four options for putting up fares and the financial consequences are this, this and this". At present, we do not even see the latter, which is a fundamental bit of the information that helps people to understand how London's biggest cash organisation, TfL, operates.

Tom Middleton (Head of Governance and Resilience): I might just place on the public record that it is not because it is advice to the Mayor that we have withheld one of the briefing documents. One of them has been released, which is obviously advice to the Mayor as well, so one has been released and one has been withheld. It is not because it is advice to the Mayor. It is for the reasons Edward has just set out around confidential options being put forward. We are not excluding things because they are advice to the Mayor because that would exclude a lot of things, as you say, around Mayoral Decisions. It is withheld because of the confidential options being put forward.

John Biggs (AM): Could I just come back one last time, then? Both Sir Edward and I have been members of local councils and in a local council you have people who are troublesome opposition members and they have access to the same papers as the leadership of the council, by and large, the Part 1s and Part 2s. In the council I was a member of, there were pink papers which were restricted and there were white papers which were the open agenda. Although occasionally members do leak things and that is a part of the democratic process and arguably is a constructive part of democracy, as long as people are not reckless with that, most members, even the most scabrous opposition members, can be trusted with that information. Do you not accept that there is a fundamental cultural problem here if we have a custom and practice in which members cannot be trusted with information?

Sir Edward Lister (Mayor's Chief of Staff): I am saying that something which is as obviously politically sensitive as this is one where the Mayor of the day has to have a lot of freedom of movement. This will be about restricting his movement. It is an extreme one. It is perhaps one of the most difficult ones, which is why I am sure you picked on it, but it is one that is a little bit different. I am sure, even in a local authority, if they had something of that level, they would wish to keep that very much as a confidential discussion document.

Darren Johnson (AM): On the advice about decisions on fares, would you not make a distinction? I understand what you are saying. You have a concern that all sorts of fares would be set running if the advice was published and the various rather radical options were in the

public domain. There would be all sorts of reaction to that and so it would all be highly politicised. I can understand where you are coming from on that.

If you take that on board, is there not even a case for publishing advice retrospectively once the Mayor has made his decision, rejected options A, B, C and D and gone for option E and there is no longer the same political momentum behind the opposition to the other options? Do you not see a fundamental distinction between publishing advice before a decision and publishing advice after a decision?

Sir Edward Lister (Mayor's Chief of Staff): The trouble with something like fares is it never actually ends. It is an ongoing process because as soon as you have made one decision on fares you are almost straight into the next round of negotiations with central Government. With the different budget review periods, it is an ongoing process. Quite honestly, a lot of the material there actually is fairly prejudicial to the next year's decision. I am sorry.

Darren Johnson (AM): You are saying the only thing that could ever be done is to publish the advice of the previous Mayor, whoever that is?

Sir Edward Lister (Mayor's Chief of Staff): I was not here when that decision was taken.

John Biggs (AM): The present Mayor was.

Valerie Shawcross CBE (AM): Yes. I am sorry that John is not more enthusiastic about his report. I have to say that most of the Assembly Members I have spoken to are really enthusiastic about it. I would beg a personal position to say that mostly the ones who have been involved with relationships with TfL feel very enthusiastic about this report.

John Biggs (AM): I am enthusiastic but I want to be cold-bloodedly ruthless in pursuing it rather than just getting wound up about particular instances.

Valerie Shawcross CBE (AM): You do the intellect and I will do the emotion. Martin, you have been very assiduous in seeking to get information from TfL. Do you want to talk to us about your experience of seeking information? How did it play out?

Martin Hoscik (MayorWatch): It is highly inconsistent. Last year, for example, I was asking around last August for the money that Barclays had paid for the Cycle Hire Scheme. I was told it was commercially sensitive and it could not be provided. The world would come to an end and the sky would fall in. In December the exact same information was provided without any difficulty. I asked for the duration of the cable car [Emirates Air Line] payments and was told again it would not be provided and then a year later, as an aside in a freedom of information request (FOI) about a completely different issue, they provided the same information. Again, now the whole contract is out.

The claims of exemption do not seem to last the passage of time. You look back at things that have been refused and then they are provided. TfL does not seem to believe that it is incapable of achieving best value now, which was the excuse that was given in August. It really just seems

to be dependent on who is dealing with the case or whether the officer who owns the information inside TfL wants to be co-operative or difficult.

Valerie Shawcross CBE (AM): You are saying the approach from TfL is inconsistent or is there a general reluctance to give up information?

Martin Hoscik (MayorWatch): Absolutely. I hear what Sir Edward says about culture, but the only way the Mayor is going to deliver his transparency agenda - certainly with TfL - is if FOI requests are taken from the functional bodies and brought here to City Hall where a team that works under the Mayor can go back and challenge claims for exemption. You can bring a single consistent approach so people will have confidence and know their FOI requests are going to be dealt with even-handedly. Actually, it seems to me that the people who are dealing with the public inquiries are probably not in a position to go back and challenge the views of people who are senior to them in the organisation. If you take that outside, they would be more of a champion for the Mayor's agenda of transparency and they can push back against the closed nature of some of these organisations.

Valerie Shawcross CBE (AM): One of the things that strikes me as difficult about some of the presumptions that TfL seems to be making here - and Edward said that Assembly Members get information if they ask for it - is that of course there are some obvious bits of information that you can go looking for because you know it exists, for example contracts, but very often there is analysis, data and information within TfL that you do not know is there to ask for in the first place.

Do you think there is a problem with a presumption that information should be on a request/demand basis?

Martin Hoscik (MayorWatch): Also, the other problem with TfL is that they are very quick to claim that the cost of looking for information exceeds the £450 limit. If you are not very precise in what information you want, if you are not a very informed commentator or Assembly Member, if you are a member of the public who wants to know about something but does not know enough to draw that down to a date and a department, then the chances are you are just going to come back and be told, "It is too expensive for us to trawl the archives and provide that information".

Even when TfL was only dealing with three councils for money for the Cycle Hire Scheme, they told me it would cost more than £450 to provide the correspondence they had with councils. They were only dealing with three councils. How difficult can it be to provide the copies of the letters?

Valerie Shawcross CBE (AM): How does your experience of getting information from TfL compare with your contacts with the other members of the GLA Group or indeed other organisations in London?

Martin Hoscik (MayorWatch): Of the rest of the GLA Group, they are the worst by far. If you look at City Hall and the Mayor's press office and the Assembly's press office, they have

always been very useful resources for journalists and other stakeholders. If you go along to the Mayor's press office and you ask for a piece of information, even if it is not information they possess, they will go along and they will either find it out for you or they will come back and tell you who in the organisation owns that piece of information, always with the backstop that you can go back to the Mayor's press office and get their help if you have not been able to get the information from the organisation.

Obviously, it is different with the Assembly press office. They are not trying to guard anyone's reputation and all the information to keep people at arms' length. Again, if there is a piece of information you need, whether it is a line from a report or if it is go to back and check facts, then that information is always available. The same is true of the [London] Fire Brigade's press office. It is a very much more proactive and helpful organisation.

The TfL press office is increasingly aggressive and increasingly difficult and journalists will get in some cases abusive, swearing phone calls in response to articles that TfL simply does not like. I have been on the receiving end of three of those myself. I will now only deal with them by email or if they initiate a phone call.

Tony Arbour (Chairman): Give us some examples of this.

Martin Hoscik (MayorWatch): I received a swear word-laden response from the TfL press office when I reported Assembly concerns that the East London line was opening during the purdah of the previous general election, a call that went on for about ten minutes from a senior TfL press officer that descended into a string of personal abuse. That was the beginning of a very frosty period in the relationship with TfL's press office. They now no longer invite me to photo opportunities or to media events. There was one I went to last week. I invited myself because I was told by somebody else where and when it was taking place. It was taking place on the street, so I invited myself. Their answer was, "It was only for broadcast media". There was broadcast media present, the well-known TV stations the *South London Press* and the *Southwark News*.

They simply do not like people who report stories that go against their official line and a lot of their press officers would prefer that everything looked like those fantastic documentaries on BBC Two and everybody simply took their word unquestioned. Unfortunately, that is not the job of journalists.

Tony Arbour (Chairman): Can I probe that just a tiny bit further, Martin? You said people they do not like, so it is not just you?

Martin Hoscik (MayorWatch): I hear stories from other journalists who have waited sometimes three or four days from responses from TfL. The widespread presumption - and obviously these are presumptions that nobody can prove - is that they believe, certainly with what you call more established or traditional media, that if there is not a response from TfL the story will not run, particularly if you are looking at an outfit like the BBC or the [*London Evening*] *Standard* where people need to show balance, and that if they do not respond in a timely fashion eventually the story will disappear without ever running.

Personally, I do not feel constrained by that. I actually have a new policy which is that I do not bother asking them for a response because it is quicker to publish a story and then wait for them to come running after you than it is to go back to them and ask them for the comment first.

Valerie Shawcross CBE (AM): I would just note that I have also had journalists complain to me - not formally, but moan - about dealing with the TfL press office. We had an instance in our office when I put out a press release which related to the fares issue when one of our press officers was told in a very assertive way that this was poisonous. There is a common understanding, I think, amongst Assembly Members - I do not know if they would agree - that this happens.

Tony Arbour (Chairman): I do not think we get abuse.

Valerie Shawcross CBE (AM): No, I am not saying that, but complaints about obstructionism, I would say. I wonder if Howard would like to respond to some of these comments.

Darren Johnson (AM): Not with abuse!

Valerie Shawcross CBE (AM): What is being spoken of, really, is a culture of a desire to obstruct what would seem to us to be legitimate requests for information. Howard, what is your view on this?

Howard Carter (General Counsel, TfL): You have limited my vocabulary before I start.

Valerie Shawcross CBE (AM): We can get the bleeper out for you.

Howard Carter (General Counsel, TfL): Can I say a couple of general things and then I will deal with the specific issue that has just been raised, if I may?

I would just like really to add to the welcoming of the Assembly's work on this because we do. Having the comparative analysis across the organisation and, frankly, having the impetus to help us to drive our own transparency initiatives is very helpful in relation to that. We have noted the report. We have noted the issues that you have raised. We are going to accept all of the recommendations. We have some, I hope, quite positive responses to some of those things which, when the Mayor replies fully or perhaps if you want to ask me some more questions in a minute, we could go through. We do want to respond very positively to this piece of work.

We are committed as an organisation to being transparent and we do try to communicate in as open a manner as we possibly can. We have a huge range of customers and stakeholders so that is a complex exercise. We do make a very extensive range of information public. The volume of data that we are putting out there is very large. That is operational information, it is financial information and it is performance information in relation to our projects. There is a huge range of it and our focus, obviously, is on making sure that we are providing customers with the information that helps them, giving the information that our stakeholders are asking us

for and increasingly making sure that we are putting out the kind of corporate, good governance and corporate health information that we ought to be doing in order to be able to demonstrate that we are doing the right things.

Having said all of that, we do recognise that we do not always get this right. We recognise that we have had a lot of requests from Martin over the last year or two where we have not been as quick to provide that information as we should have done. We accept that. To be fair, in almost all of the cases where Martin has asked us for information, we have provided that information. There have been only one or two examples where we have applied FOI exemptions.

Valerie Shawcross CBE (AM): Have you provided it before the Information Commissioner has found against you?

Martin Hoscik (MayorWatch): There are a few here I can give Howard the details of. The answers all should have come on 4 July and turned up yesterday two hours after the operational note for this meeting went out.

Howard Carter (General Counsel, TfL): We also accept that we do not always meet the timelines, but we do respond. TfL gets in the region of 2,000 to 2,500 FOI requests a year. We respond to between 85% and 90% of those requests within the statutory timescale. We can always do more to improve that and we should. We keep a very close eye on our performance in relation to that. We will always struggle to improve it, but that is a decent performance in terms of other large organisations receiving large volumes of FOI requests. We also reply to 75% of those FOI requests by providing all of the information immediately. If you look at the statistics for other large recipients of FOI requests, it is actually a very good performance. I am not saying for a second that we always get this right.

I also think that in some of the areas that Martin is talking about there are some difficult issues. The kind of information that he is asking for often are things that we should have readily to hand and they are things that we should be proactive in publishing so that people do not have to turn to us and ask us for that under FOI or through Mayor's Questions.

We have been looking recently at some of the themes that are coming out of the FOI requests to see if we can identify some patterns and to use that to prioritise the proactive publication of corporate information. That is the right way to do that. We have been more proactive recently about publishing information about gifts and hospitality and information about expenses and we have more work to do in that area.

Martin Hoscik (MayorWatch): I hear what Howard says but I am afraid the reality just does not hold up to that. As I say, you sent through eight FOI responses yesterday that you should have answered a fortnight ago that all turned up in the same batch of emails within a five-minute space and all two hours after the option notes for this meeting went out. I purposely did not chase those because I wanted to see if they would turn up before today. I suspect that if we were not all sitting here together I would be waiting another week from now.

I waited six months and I had to go to Isabel Dedring [Deputy Mayor for Transport] in the end for her to intervene for you to tell me how many staff you had employed at what pay grade over a period of time. That information is information you must have available to you and yet for six months it sat unanswered. More recently, one senior TfL manager - who I am not going to name today but it is probably obvious to a number of people - had direct personal knowledge of an FOI request I had made that related to them and then tackled me about the fact that I had made it out there in the public domain.

I do not mind that too much but it seems to me that some of your senior staff have a veto or the ability to slow and delay the responses. I am not sure your FOI team actually is in a position to go back and say, "Your claim of exemption does not hold up", or, "You need to provide this information on time". It seems to me that they are able to be overruled by staff who are more senior and more well-paid than they are and I do not think that is beginning to approach your responsibilities under the FOI Act.

Howard Carter (General Counsel, TfL): In the last year or two, there has been a sea change in everybody's understanding of how important the transparency agenda is and the fact that the presumption just has to be that information is placed out there in the public domain (proactively where possible) and certainly reactively when we are asked for it. As I have said before, we have some responses that we would like to make in due course to the recommendations in the report which we think will help with that. We have been having a hard think about how we can do some of that better.

I do come back to the fact, though, that the vast majority of the FOI requests that we get are replied to on time and usually we fully provide the information that we are asked for. Obviously there will always be individual cases where we have taken too long and, Martin, you are always free to raise those with me. Please drop me an email to say --

Martin Hoscik (MayorWatch): Howard, it is a statutory deadline. It is not an aspiration. Members of the public should not have to have your personal email address to get information which you are legally obliged to provide. If your team is not providing that information, they are not doing their job and you need to be bearing down on them. If your senior colleagues or your executive colleagues are holding back on information, then you need to be bearing down on them. First of all, I should not have to file an FOI request for information that your press office should be happy to provide. Secondly, if I do make an FOI request, I should not be having to come to you to say, "Your staff are not doing their job properly". It is a statutory deadline and I am not sure what difficulty you are having with the word "statutory". It seems to be the same difficulty TfL has had this week on joining up with trade embargoes against the State of Israel. You seem to have a problem with basic comprehension.

Tony Arbour (Chairman): I think that was rhetoric, really, although I have to say it does seem a bit of coincidence that you received all those replies yesterday.

Darren Johnson (AM): We will have to invite you more often, then.

Andrew Boff (AM): Mr Carter, do you have a monitoring system within TfL that shows you how many FOI requests you have or how many information requests you have? Is there an active monitoring system?

Howard Carter (General Counsel, TfL): Yes, we keep a tally of how many requests that we badge as FOI, as requests for service information are not treated as FOI requests. Anything that is clearly a substantive request for information we tag as a Freedom of Information request and we monitor how many of those we get. We monitor our performance in terms of replying to those within the statutory deadline. The Information Commissioner requires us to do that and we are very happy to make that information available. We also monitor when we are applying exemptions and in how many cases we are responding in full to the information or partly to the information.

Andrew Boff (AM): That monitoring data is publicly available?

Howard Carter (General Counsel, TfL): Yes, and we would be very happy to --

Andrew Boff (AM): Is that something we can look at on the website to see how many you have outstanding and your replies?

Howard Carter (General Counsel, TfL): Yes, I believe we have provided it. It is not minute-by-minute. We make the information available retrospectively, if you see what I mean, so there is not a clock ticking every second for everyone who comes in the door. It is published per period. Also, we provided some of that information as part of the review as well. I would be very happy to provide that and provide some analysis of that if it would be helpful.

Andrew Boff (AM): That would be helpful, but it would also be helpful if that were made available constantly. We can go to a webpage, we can look at how many information requests there have been, we can look at how long they have been waiting and we can possibly click on them and find out what those requests are. Freedom of Information requests are public information, so we should be able to see what they are. If you go onto whatdotheyknow.com, there is a great system there that tells you what they are. It needs a level of refinement, whatdotheyknow.com, but it is there and gives you that information. I think you can pick up that, as Assembly Members - and I rarely can speak for most Assembly Members - we are not happy with TfL responses, none of us.

Valerie Shawcross CBE (AM): Yes, we agree with you.

Tony Arbour (Chairman): Before you answer that, can I ask Mr Wood is Howard Carter right when he says the performance of TfL is pretty good in providing this information by providing 85% in a timely way?

Steve Wood (Head of Policy Delivery, Information Commissioner's Office): I am happy to comment now in general terms. Obviously Martin has made some quite specific claims about that --

Tony Arbour (Chairman): No, I am not asking about a specific thing but Howard inferred that actually TfL was pretty good.

Steve Wood (Head of Policy Delivery, Information Commissioner's Office): In terms of the data that Howard is citing and in terms of the timeliness and performance of TfL, it is in that range we do see from well-performing organisations in FOI in terms of that 80% mark. You can benchmark that against the figures for other central Government departments which are published by the Ministry of Justice. We do also have a monitoring system at the Information Commissioner's Office. When an organisation's performance drops and we start to get a lot of intelligence, then we do additional monitoring and TfL is not on that list at the moment. Obviously, if Martin does wish to bring those particular issues he has raised, we will consider that carefully.

Tony Arbour (Chairman): That is a matter for him, but I really wanted to test the assertion that was made that TfL was pretty good. Those who are sitting around the table are not so sure.

Steve Wood (Head of Policy Delivery, Information Commissioner's Office): Yes.

Darren Johnson (AM): Yes. This is looking at TfL on publishing contracts. At the moment, Howard, TfL has not been publishing contracts in full in line with the Government's transparency code of practice. Is that going to change, then?

Howard Carter (General Counsel, TfL): The first thing to say is that I do not think we are alone in large organisations in not complying fully with the Department for Communities and Local Government's (DCLG) Code in relation to contracts. The contractual part of that was amongst the most challenging. Everyone is on a bit of a journey, as Sir Edward has already said. This is something that is a challenge for all big organisations and we are improving .

We have previously looked at the number of contracts that that would involve for us. We started to publish routinely some high-value contracts. Also, one of the areas where I am very happy to accept that we have not been as good as we should have been is in relation to responding to requests for specific contracts. It has often taken far too long for us to publish them and we recognise that.

In response to the recommendations in the report, we have several thoughts. The first is that we are going to look very hard at the threshold that we have set in relation to publishing high-value contracts and our thought is that we would publish all contracts for procurement processes starting from September that are above the Official Journal of the European Union (OJEU) threshold.

Darren Johnson (AM): Which is?

Howard Carter (General Counsel, TfL): For services it is around £170,000 per contract. It is higher for capital contracts.

Darren Johnson (AM): You told us previously that the £150,000 threshold that was suggested would mean you were publishing 250 to 300 contracts a year and that would be too onerous and you could not cope with that. Is there some change in thinking there?

Howard Carter (General Counsel, TfL): Yes, that is true. It would be several hundred contracts. But we think that as long as we embed that in the process from the very start, make sure that everybody understands that the contracts are going to be published so there is not a big time lag while you are discussing that with a contractor, as long as we use the FOI clause that you have suggested in the report, and actually we have started to mirror that already but it takes a while for it to come through the system. As long as we are very clear about that and as long as we structure the contracts so that the very small amount of information where we still think there is something that is commercially sensitive - and I emphasise that should be a very small amount - we would put that together in one place so it is not an arduous task to go through and redact those contracts to prepare them for publication. That is sometimes one of the things that takes too long. As long as we "systematise" all of that, we think we can cope with that volume of contracts. Our response to that recommendation in the Assembly's report is to make that commitment from September.

Darren Johnson (AM): That is a welcome change in thinking because the evidence that you had told us previously is that it would harm your commercial interests if you were to publish contracts in full but now you can see that you can place the commercially sensitive information in one part of the contract and in those few cases where that information can be available.

Howard Carter (General Counsel, TfL): There are two other parts to the answer as well, if I may. You have already heard in a separate scrutiny hearing from Graeme Craig [Director of Commercial Development, TfL] around the actions that we are taking around sponsorship, to have a sponsorship policy and also to proactively publish our sponsorship arrangements. Again, we stand by that and we would like to get on the front foot in terms of doing that.

The third issue is that we really do feel that it is not good reputationally to be in a position where you are always being asked for these things retrospectively. We do not have anything to hide apart from the small amount of genuinely commercial information that there sometimes is in these contracts. In terms of improving the process, the thought that we have is that we would like to get to the point where whenever we make a press release about the award of a major contract or the extension of a contract we publish the contract at the same time so there is no need for a request. Again, we are looking at a timescale for that but I am hopeful that relatively soon we will get to the position where regardless of the threshold, regardless of the OJEU limit, although generally if we are making a press announcements they will be contracts above the OJEU limit because they are the big ticket items that we are announcing, there will be an immediate link to the contract so you can read it at the same time that the award is announced.

Darren Johnson (AM): We will see this from September onwards, you are saying?

Howard Carter (General Counsel, TfL): Yes.

Darren Johnson (AM): That is very welcome. Can I just ask quickly as well about the decision-making process leading up to the letting of a contract? Obviously I have never sat on the TfL Board but I have sat on the London Fire and Emergency Planning Authority for a number of years. There we have a clear Part 1 and Part 2 process in terms of Authority papers on decision-making around contracts. The Part 1 paper will have all the information that can be put in the public domain, the criteria leading up to a contract, how many bids they were and those sorts of issues. The purely commercially sensitive information about the competing contract bids is then put in Part 2 papers.

Can we see TfL taking that approach to Board papers rather than everything being exempt so that at least there is transparency about the decision-making criteria and process leading up to a contract as well as the publication of the contract that is actually being met?

Howard Carter (General Counsel, TfL): The process that you are talking about is the standard Local Government Act requirements for decision-making by local authorities. Those statutory arrangements historically did not apply to TfL --

Darren Johnson (AM): They do now.

Howard Carter (General Counsel, TfL): -- but as of 1 April last year, following the Localism Act, the local government provisions apply to TfL in exactly the same way as they apply to the rest of local government. It was quite a transformation for TfL to move to that system because it was different to how we were operating before, but from 1 April last year we have completely embraced that legislation and we have been following it. We have transitioned all of the Committees to that process and we have been publishing Part 1 papers. Part 1 and Part 2 is what they are referred to under the legislation. We publish the Part 1 papers for those decisions and the Part 2 will then usually be a much shorter paper which just contains that aspect of the advice that is commercially confidential or there is some other appropriate exemption, but in relation to contracts it is usually commercially confidential information.

Darren Johnson (AM): I do not know whether Martin or Steve has anything to comment on that. Are you happy with the amount of information that is put in the Part 1 section or do you feel too much is being held back on these papers in terms of transparency?

Martin Hoscik (MayorWatch): In general, I am happy with the balance. I am interested in what Howard said about attaching the contracts or publishing the contracts the same day as the press release. That would be a change only in the last couple of months when TfL picked a single line of the cable car satisfaction survey and then their press office and FOI department refused to release the full document and then slapped it up two months later without any announcement. That would be a sudden but welcome conversion.

Darren Johnson (AM): Steve, have you any comment?

Steve Wood (Head of Policy Delivery, Information Commissioner's Office): In our experience of these types of processes - and it has come up today - it is very important they are applied consistently so people have to have the trust and the confidence in the process. Clearly,

there is a need for a process sometimes where different papers will be categorised in different ways, but the process about transparency needs to be very clear and transparent so someone coming to the website and looking to see what is going to be made available can easily follow that. That is where trust, we generally find with FOI and publication, builds over time, really, when the processes are consistently applied. That seems to be what is happening here. That is when it is going to work best.

John Biggs (AM): Were you surprised to understand that Assembly Members, who are trusted members of the community and elected people, do not have access to information?

Steve Wood (Head of Policy Delivery, Information Commissioner's Office): It is a difficult question for us to comment on as the regulator because our role is disclosure of information to the public rather than disclosure of information to you specifically as Assembly Members. Our focus is always more on the general public interest. Therefore, as a regulator, that is not a factor we can take specifically into account when considering disclosure. We have had this issue on Parliamentary questions (PQs) as well with the House of Commons. We had them quite early on FOI about the overlap between the two. Actually, at University College London, the Constitution Unit there did quite an interesting study where they did look at Members of Parliament's (MPs) experience in making PQs and then following them up with FOI requests and why they were using FOI requests. We certainly see that overlap and we do get cases with either MPs or Assembly Members often in Wales and Northern Ireland using the legislation, so it does happen, but we cannot specifically factor in an individual committee members' need or an Assembly Members' need to get the information, unfortunately, from our perspective. They are down to your own procedural issues here, really.

Valerie Shawcross CBE (AM): Can I come in with a point I was going to raise later about the Localism Act? Howard will know that when the Localism Act went through, I gaily skipped along to a Finance Panel in Palestra House with the naive expectation that TfL would let me - I think I was the Chair of the Transport Committee at the time - sit in and watch the meeting because a slender version of the papers had been published. He was personally dispatched in his velvet gloves to remove me from the building and we had quite a contretemps at the time because I said my mandate of 70,000 votes was a lot larger than that of anybody else who was on that Finance Panel and that I would be willing to sign any kind of confidentiality undertaking.

It seemed to me then and it seems now that what TfL was doing under the Localism Act was abiding strictly with the words of the law and not to the spirit of public accountability and was using the Act in fact to limit democratic access to the decision-making processes around the spending of public money. Do you regret that the Finance Panel is not open at least to Assembly Members to observe?

Howard Carter (General Counsel, TfL): I think it was the Surface Transport Panel that you came to.

Valerie Shawcross CBE (AM): Yes, you are correct. It was the Surface Transport Panel. That is right. Why was I not allowed into that?

Howard Carter (General Counsel, TfL): TfL's structure is that we have a Board and the Board has a number of committees. The Localism Act and the Local Government Act, as they do in local authorities, apply to decision-making bodies and to committees of the organisation. The Localism Act is being complied with to the letter.

Valerie Shawcross CBE (AM): I think you have just reiterated what I have put to you, Howard. The question is really about the spirit of it.

Howard Carter (General Counsel, TfL): The history of the panels is that they originated as informal discussions between senior staff and board members to discuss operational information and also to discuss performance information and to discuss ideas for the development of the business at a very formative stage. That is why they are not decision-making. No financial decisions are taken in those meetings. No final decisions to do anything are taken in those meetings. It is a very formative stage where issues are discussed and there is also a discussion about performance information and trends in relation to that. Those meetings have always been the opportunity, as Sir Edward was talking about earlier, for board members and senior staff to have thinking space and to be able to discuss ideas without the immediate pressure of things being in the public domain and a point that people can discuss things and can bounce ideas around and then work out a general approach before final decisions are taken.

I completely take the point that this issue has been with us for a while and we completely take the point that there is an issue particularly perhaps about the operational information that is in those panels. First of all, we do publish those reports. They are always available prior to the meeting in the same way that papers are published under the Local Government Act for the committees. We have a board effectiveness review which the Deputy Mayor for Transport is leading in the autumn and our thinking is to put this issue to the Board and to ask them whether they think it would be appropriate to treat the panels as committees, even though they are not. We are happy to have a look at that issue again.

Jennette Arnold OBE (AM): The London Borough of Redbridge, Sir Edward, is one of the only bodies to publish all of its contracts in full and it does that because it says it clearly increases accountability but that there is an opportunity there to increase competition, resulting in lower prices. Have you thought along those lines? You are talking about this journey and about transparency and what-have-you. Do you ever see us being able to get to that point where we are able to publish all our contracts in full?

Sir Edward Lister (Mayor's Chief of Staff): As far as the GLA is concerned and also the London Legacy Development Corporation and the Mayor's Office for Policing and Crime (MOPAC), we are publishing all of our contracts.¹ We have obviously a section that has any commercially confidential items taken out and I do not know if Redbridge is publishing even the

¹ Subsequent to the meeting, Sir Edward Lister clarified that he had intended to say: "As far as the GLA is concerned and also the London Legacy Development Corporation and the Mayor's Office for Policing and Crime (MOPAC), we *intend* to publish all of our contracts¹. We *shall* have a section that has any commercially confidential items taken out..."

commercially confidential items. I would be surprised if they are doing that because commercially confidential items are not always about price. They can be about other things. They can be about individuals. They can be about all sorts of things. There are always going to be bits of contracts which we have just to hold back.

I think of what I said at the beginning. We do try to minimise that. Indeed, for all the GLA papers which go through the Investment & Performance Board (IPB), one of the things we do regularly is actually as we review draft Director Decisions (DD) and MDs we move parts of papers back into the open part of the MD. That is something that regularly happens because we take a view that it is not necessary to make it confidential. It is a process but I do think we publish everything we can.

Jennette Arnold OBE (AM): Thank you for that because you have said parts of the contract would be held back. If I can turn to Howard, can you help us with the part of the contract for the sponsorship with the Emirates regarding the discriminatory clause in it? What is your title?

Howard Carter (General Counsel, TfL): General Counsel.

Jennette Arnold OBE (AM): That includes the legal services?

Howard Carter (General Counsel, TfL): Yes.

Jennette Arnold OBE (AM): Can you just tell us? I would love it and Joanne would love it. Last night I received a number of calls. We together represent one of the largest Jewish communities in London; Stamford Hill. The question I was being asked is: how is it possible for a TfL contract to include a clause that is in breach of domestic UK law, European law, the Equalities Act, the Competition Act, the Race Relations Act and several articles of the EU-Israel Association Agreement? How could such a clause get past you and your legal team? What do you expect me to say to my constituents when I meet them next week about this?

Howard Carter (General Counsel, TfL): Obviously, this was discussed with the Mayor yesterday. The intention behind that clause was simply that there was a request for the Emirates to have the ability to withdraw from the sponsorship contract in circumstances where there was a sale of the Cable Car and in circumstances where they were not happy to continue to be a sponsor of the project when they did not like the party to whom the Cable Car was being sold.

Jennette Arnold OBE (AM): We can cut past that. I am asking you as a lawyer. I would have thought you would be saying you knew nothing of it. If you knew of it, then you are condoning discriminatory practices. Did you or any of your legal officers pass this clause knowingly? You clearly did it unknowingly, so what is the process by which your legal officers are checking whether the contracts going through their department are in breach of discriminatory laws across the piece? Can you tell us that?

Howard Carter (General Counsel, TfL): That was the request. Obviously then some drafting was provided. The connotations of that drafting were not spotted and we are the first to accept --

Jennette Arnold OBE (AM): The connotation? The discriminatory practices.

Howard Carter (General Counsel, TfL): They were not spotted and I am the first to accept that that is not what should have happened. It should have been apparent and it should not have happened. It was not. It was dealt with as a routine negotiation between the commercial and legal teams and it was not spotted as a significant issue, which it should have been.

Just to reiterate what the Mayor said yesterday, as soon as that was drawn to our attention, we acted very quickly to discuss that with the Emirates and it has been agreed that the clause will be withdrawn. The Emirates do want to have a discussion about whether something else replaces it, but that clause has been withdrawn and we accept that it is not appropriate.

Jennette Arnold OBE (AM): I just want it on record. You talk about the connotation. Do you as a lawyer accept our challenge that this was a clause that discriminated against certain communities and particularly would have an impact on any Israeli-based company or Jewish-based company?

Howard Carter (General Counsel, TfL): The discrimination element would come if TfL was prevented by any contractual clause from --

Jennette Arnold OBE (AM): Which it did.

Howard Carter (General Counsel, TfL): The clause did not do that.

Jennette Arnold OBE (AM): It had the potential to do that.

Howard Carter (General Counsel, TfL): The clause gave the Emirates the right to withdraw from the contract, from their relationship with a new purchaser, if they wanted to do that. It did not restrict TfL in terms of its ability to deal with the Cable Car as it saw fit. That is where the discrimination element would come in as a legal principle. I am not, though, for a second, trying to justify the clause. I completely accept the description that you have given to it and I completely accept that it was inappropriate.

Jennette Arnold OBE (AM): It is going to run and run because it is this thing where we get to lawyers and then there are different opinions, but this has to be resolved because this is totally unacceptable practice.

Martin, we could have heard about this earlier. Can you just remind us when you tried to get some information from TfL?

Martin Hoscik (MayorWatch): I remember first asking for the contract to be released in October 2011, which was the same point the deal was first announced that was the time when I

first asked for confirmation of how many instalments the sponsorship money would be provided in. I asked the TfL press office for the contract then and was told I could not have it.

I am surprised by Howard's answer, actually, because the clause goes beyond saying "if there is a change of ownership". It specifically defines a conflicting person as "somebody or a company or an entity or an individual domiciled or majority trading in a country that the United Arab Emirates (UAE) does not recognise". As a Londoner, I would wonder why TfL is agreeing to subject itself to laws and foreign policies of a regime that many people in this country would consider to be socially backwards and abhorrent.

The Mayor was very good. The Mayor stepped in and he took action very quickly. Yesterday he stepped into the firing line for TfL at MQT, but I thought it was too generous. TfL owes Londoners an apology which they are yet to provide. They simply talk about simplifying the language as if this is a perception problem by everybody outside TfL. There is reality and there is TfL reality and in TfL's reality everybody else is at fault for reading the contract in the way that the words state. There has been no suggestion of an apology for the offence and international headlines.

Tony Arbour (Chairman): You have given them the opportunity now, Martin.

Jennette Arnold OBE (AM): If I can come back and just say to Sir Edward, is the Mayor's apology, given that he is Chair of TfL -- in fact, he did not give an apology yesterday.

Martin Hoscik (MayorWatch): I do not think it is for the Mayor or for the Chief of Staff to apologise. It was not their mistake.

Jennette Arnold OBE (AM): I was in the room, as you were, Martin, but I heard the Mayor challenge Andrew Dismore and accuse him in the first instance of peddling a conspiracy, so we can see all of that in the minutes. I just wanted to actually get on record what Sir Edward says because he is the Mayor's adviser. Would you see any statement coming out from the Mayor regarding this matter because he is the Chair of TfL, if you like, apologising for TfL?

Sir Edward Lister (Mayor's Chief of Staff): I think the Mayor actually did that yesterday; that is my understanding, that he did, and that he immediately entered into discussions with TfL and TfL corrected that clause and got it withdrawn. That was done yesterday. That was done instantly; he did not delay on it, as soon as he knew about it he did it.

Jennette Arnold OBE (AM): There was quite a bit of conversation about it and it is still yet not resolved because we are not yet clear whether or not there has been an investigation into TfL. Can I just go over to Howard and say, given what you know and what came out yesterday from MQT, are you in a position to confirm what investigations have been started in Transport for London to find out how this happened, and then to go through other contracts so that we, representing Londoners, can feel that there are no contracts that TfL have signed off that discriminate in any way; are you going to have that sort of investigation and, if not, why not?

Howard Carter (General Counsel, TfL): We certainly accept this, we are learning from this, we are looking to see how it came about and we are looking to just do a double check that there is no similar provision anywhere else. I do not believe there is, but we are double-checking that.

Caroline Pidgeon MBE (AM): I wanted to get back to the issue of contracts and publishing them in full. Perhaps, Steve Wood, whether you could say what practical steps public bodies can take to reduce this issue of commercial sensitivities and publish more contracts. Is there any guidance or recommendations from the Information Commissioner's Office?

Steve Wood (Head of Policy Delivery, Information Commissioner's Office): Yes, I did speak about that, and I said earlier as well actually, at the Information Commissioner's Office we very much welcome the report, the approach it has taken and the aims of the report, I think it is a commendable step forward.

In terms of the practical issues for public authorities in tackling the issues around commercial sensitivity with contracts, I think we have seen quite a change over the eight years FOI has been in force. If we look back to 2005 when the Act first came in, a lot of public authorities were doing blanket withholding of contracts. We have had a big move on from that. The early cases, which we established through our decision notices and the cases in the Information Tribunal, clearly put a much greater focus on genuine commercial sensitivity and genuine commercial confidentiality. The approach we have taken in our guidance and drawing on the judgments of the Information Tribunal really focuses on really specific harm, which must come from disclosing the contract. It cannot be a general concern; you have to demonstrate in some way that there is a causal link between disclosure of the contract and what will happen. Often it will be thinking about issues about the uniqueness of the information, are there any other ongoing related issues about negotiations when we are examining a case in terms of the issues we would be expecting a public authority to be thinking about.

I think one of the key things is planning ahead and, if you like, transparency by design and thinking about your processes is very important, because I think it is through that that you can change the culture, which has obviously been mentioned today. Obviously getting the idea of a presumption of disclosure is very important and so we welcome that. I think working with the contractors and getting them to work with you quickly on where the information can easily be placed into a confidential annex is obviously the easiest and most efficient way if you can do that up front, because obviously to have to redact a long and complex contract for millions and millions of pounds, the contract is going to be very complex, we recognise that is a time-consuming process for a public authority to go through, so we really set out that organisations should try to think about that up front.

I think it is one of the benefits of publishing the contracts rather than having them requested is greater trust builds from the public if they do not have to make the request. It does take a long time sometimes for trust to build up. You have to be in it for the long term; it cannot just be for Christmas, it has to be a sustained programme really and I think that sometimes you must not raise expectations too high too quickly, you have to have a sustainable programme and I think you have to be prepared sometimes for a few bumps and a few difficult issues along the way. I

think if we look at MP's expenses and what happened there as a classic example of trust. Initially trust fell when the expenses were published, when the information went out, but over time trust will hopefully build from the new system that follows from that. I think it is sort of learning from all of those experiences, but it has to be a long-term approach. But I think the report is taking that approach and that is commendable.

Caroline Pidgeon MBE (AM): Thank you. In terms of some commercial sensitivities, clearly they are, as it were, time-limited; they may die away. How do you think organisations can get that information into the public domain once the commercial issues have died away? Are there recommendations you have around that best practice?

Steve Wood (Head of Policy Delivery, Information Commissioner's Office): Because every contract in a commercial situation will often have its own particular context, it is very difficult for us to say, "After six months", "After three months", but I think a regular review period is probably important in going back and looking at issues, so it is built as part of the process. It may depend on, again, on the uniqueness, the issue, we would accept that there might be the interconnection between related and ongoing negotiations about similar contracts, etc, which are valid factors, which we have accepted in the past in favour of withholding, so there is no set rule we can say in terms of time limit. The parties should think ahead and try and have that built into the process, particularly, not just with the FOI officers who handle the requests, but the departments who deal with the procurement as well because they are the experts and they have to be involved in that process as well.

Caroline Pidgeon MBE (AM): So if you are able to design everything from the start, thinking about that transparency, and then building in a regular review period to review bits that have been kept --

Steve Wood (Head of Policy Delivery, Information Commissioner's Office): Yes.

Caroline Pidgeon MBE (AM): OK, that is very helpful. Is there an issue between the cost of transparency and getting the balance right between the cost of it and the ultimate aim?

Steve Wood (Head of Policy Delivery, Information Commissioner's Office): Yes, it is a question we are asked a lot and it comes up in the public sector at the moment and transparency is not about its cost. What we always urge is that people think about the benefits quite broadly there are a number of benefits I know you have identified in the report in terms of improving the asymmetry of information and thinking about what information is available to the marketplace. Can that actually improve the whole process, can it actually enable better accountability, which leads to better value for money in the contracts in terms of the negotiations, which people learn from previous accountability scenarios or in the delivery of the contract?

I think there is also the benefit of other areas, which are not financial, and I think they are harder to measure, but they are important. So sometimes people might scrutinise a contract for other reasons, it might be for environmental reasons, you want to know the reasons why that public authority has insisted on those environmental standards. You are not so interested in the

cost, but you want to know why they have insisted on them. Or it might be you want to know why the public authority entered into a particular contract about the security of personal information, you know, and those benefits can come as public benefits and are quite hard to measure.

We accept that FOI and transparency is just one tool in achieving true accountability. The role of scrutiny, of other parts of the process, in terms of Parliament, of Assembly Committees, all of these things are important and good audit, and really we always see FOI as a piece of the jigsaw; we never over-emphasise it, all the bits ought to work together to actually get the benefits we want in terms of better accountability.

Caroline Pidgeon MBE (AM): Could I just follow up with a question perhaps with Sir Edward and Howard; one of the concerns that we raised in the report is about Crossrail and that had been raised previously with the Mayor which is that their approach to publishing contracts and decision-making information is less transparent than TfL - and we have raised our serious concerns in some areas of TfL. Are you going to be able to make sure all their board papers are published, their meetings are held in public, and that we have this full publication that we require?

Howard Carter (General Counsel, TfL): Just a couple of things. On the general issue that we accept everything that Steve just said in terms of the approach to commercial contracts. The ICO does provide some very helpful advice on this. TfL is a large complex organisation and with the best will in the world there is genuinely a logistical issue in proactively publishing some of the things that we have been talking about today unless you really systematise that and get yourself really ready to do that. What we have been saying I think, what has come across today, is that we are taking some large strides in relation to that with particular arrangements for proactive publication of contracts.

In relation to the Crossrail issue, I will have to take that back, I had not appreciated that was a significant separate issue. I think that is partly a matter for the Crossrail board. I actually understood there were some quite positive things being said in the report about the transparency of Crossrail, particularly their contract information and their website. We have been looking at that and discussing that with them. In terms of TfL's own website, we have been looking to learn some lessons for that and to give transparency much greater prominence in our presentation of information to the public so things are more accessible. I will take the issue about Crossrail back and raise that with them.

On the broader sort of costs of all of this, I think it is true that it is a cost and a time issue. When you are trying to do some of this retrospectively it is much harder to go and find contracts to try and disentangle what is commercially sensitive and what is not. As long as we get our processes right up front we will be in a much better position to be able to do that.

In terms of Freedom of Information requests, the Information Commissioner polices very hard an authority's use of commercial exemptions and, although there have been one or two high-profile cases where this has been an issue, our use of the commercial exemption in the FOI legislation is very low. We only apply the commercial exemption in fewer than 2% of the FOI

cases that we get. I know that does not answer each individual case, but it is very low, just to counter any impression that we are being extremely secretive and withholding large pieces of information back on the back of the commercial exemption; that just is not the case.

There is a cost in this as well. For example, we looked recently at the cost of TfL's work in responding to the high volume of FOI requests that we get, and we believe that we are spending over £1 million in terms of responding to those FOI requests, which is not insignificant.

Caroline Pidgeon MBE (AM): Would you like to respond on Crossrail?

Sir Edward Lister (Mayor's Chief of Staff): Yes, I did read that section in the report. The Mayor has a regular meeting with the Chairman of Crossrail and, if Howard's exercise does not work, we will make sure that goes on to the agenda with the Mayor and the Chairman to resolve and come back to you. So, between us, we will come back to you on that.

Could I just pick up the publication of FOIs just to make the point, for commercial exemptions from City Hall, I think we have only - from our figures - cited commercial reasons nine times last year, for a reason not to provide that information. So it was not used that often. There were other exceptions for other reasons.

Jennette Arnold OBE (AM): I want to move us on to an area about rulings by the Information Commissioner, to you, Steve, and it is going to allow us to get I think an understanding of the thinking behind recent Commissioner's rulings, and if I can focus on TfL. This is dangerous territory, I will maybe never get any of my casework answered ever again, but there I go. I will bring it back to this Committee or this Chair if this happens. Can you share with us the key factors that the Information Commissioner considers when making a ruling in cases like the Serco and Barclays contracts. Just give us an insight.

Steve Wood (Head of Policy Delivery, Information Commissioner's Office): Again, I will talk more generally in terms of factors rather than trying to refer too much to specific cases, but I started to outline a few of them when I was answering the question earlier. We are very much focused on the specific information and the specific circumstances of the case, so any issues with the contract. We would not accept blanket arguments just to say, "Commercial harm will fall from disclosing the whole contract". We are expecting the public authority to look at the contract at least in some detail - sometimes it might not actually be completely line by line, but it is at least section by section. We are expecting the public authority to be able to demonstrate to us that they are relying on an exemption, evidence of the prejudice to the commercial interests of either the public authority itself, so that might be the prejudice to their ability to be able to negotiate the best value to the taxpayer, or prejudice to the third party, to the contractor involved.

The test in the Freedom of Information Act is whether it would be likely to prejudice and that is a reasonably high test so it cannot just be a remote possibility, it has to be a real and significant risk of that prejudice occurring and we are expecting the public authority, although we cannot get them to actually prove it will happen, we cannot set them too high a hurdle. We expect

them to be able to plausibly extrapolate, if this bit of information goes in the public domain, from our experience, drawing in these sorts of factors, from our experience at the moment this is what we think will happen. We will then consider that and consider whether that is enough to satisfy that the exemption is what we call engaged, and we will then actually, after that process of saying it falls within that exemption, we have still then got to balance the public interest in maintaining that exemption against the public interest in disclosing. So there are sort of two parts to the process.

When we are considering the public interest in disclosure, we have some factors we always use, which are the amount of money, how significant the issue is in terms of perhaps taxpayers' interest, also thinking about the issues that the contract actually affected, how many people did it actually affect, the significance of the contract. For example, if it was a contract from the National Health Service to change the way a service was provided, what was the impact of that contract, so there might be a range of factors we will actually look at in doing that balancing out and if we have to move on to the public interest test.

Jennette Arnold OBE (AM): OK. I think you are saying you are not willing to talk about any specific contract, but I do have a question in terms of the Information Commissioner ruling in favour of TfL when it declined to publish its contract with CBS Outdoor, even though that contract was not about to be retendered. What was the detriment then, because they were not going to enter into any further contract with that organisation?

Steve Wood (Head of Policy Delivery, Information Commissioner's Office): I was not personally involved in that case and a little bit nervous about talking about the specifics, but in those scenarios it is not always just about specifics of the contract, it is often about how the contracts can be connected with other issues and how those arguments build up. It really may be more, I do not know.

Jennette Arnold OBE (AM): OK, and just one more question for you, how should organisations strike the balance between (a) commercial considerations and efficiency and (b) the public interest when considering public information about how public money is spent. Do you have anything to say about that?

Steve Wood (Head of Policy Delivery, Information Commissioner's Office): It sort of leads to my answer to the previous question - it is not always a simple totting-up exercise, it is an element of judgment, of getting a feel and an understanding, and I think that is what we say to public authorities, "Do you understand the citizens or your users of the service, do you have a good feel for what the public interest is and what people know and really want?" and using that to balance public interest against other issues, which may be arguments in favour of not publishing information or not disclosing information. I think having a real understanding of the public interest is very important.

John Biggs (AM): I had a very specific one, an interest in non-disclosure clauses, and I suppose my primitive legal understanding would be that a clause in a contract cannot overrule an Act of Parliament, that is essentially where we come from, so the defence that is used that

said, "We entered into this contract with a non-disclosure clause, which stops us from publishing it", is not a really valid defence, is it?

Steve Wood (Head of Policy Delivery, Information Commissioner's Office): It has not proved to be just a very simple barrier to disclosure under FOI. More of the focus is actually on the confidentiality of the information really and the focus of the standard and test in law, therefore the fact that it has that marking on it or that in itself will not always automatically mean it is a barrier to disclosure.

John Biggs (AM): So a public authority that uses that defence is at best being lazy.

Steve Wood (Head of Policy Delivery, Information Commissioner's Office): I think what the best position is, is that the public authority and the contractor have a realistic and sensible conversation of understanding where the real commercial sensitivity lies, and I think that is happening more often.

Jennette Arnold OBE (AM): We have talked or have mentioned the Barclays contract and we talked about the Emirates contract, but when it comes to releasing details of some contracts like sponsorship with these organisations, is that not more about political consideration than commercial ones, why these contracts are held back? Is it not about the political flak or noise that is going to come?

Sir Edward Lister (Mayor's Chief of Staff): It could be, although I do not think we have ever used or cited that as a reason for not publishing a contract.

Jennette Arnold OBE (AM): I do not think you can cite that, but I was just thinking if you were just going to like go native with us and say yes. Political considerations are taken into account because, as you said, you were talking earlier about the Mayor being an elected Mayor needing room to move.

Sir Edward Lister (Mayor's Chief of Staff): When I was talking about that I was talking about the advice that is going to the Mayor, long before the contract is actually signed. I mean the contract is quite a way down the decision-making chain. I am talking about the early days of discussions when the Mayor may be deciding whether to go one way or the other on something, which I think is when he is bouncing ideas around and he is taking things into account. After that, we go out to tender - if it is some sponsorship, we identify somebody - along the way there will have been an MD or a DD, so all of that will have been exposed, those arguments, and then we will sign the contract with somebody, having gone through a procurement process. I would have thought all of that would be pretty public, after you have moved away from the first stage where it is more about bouncing ideas about.

Martin Hoscik (MayorWatch): I just want to add something in support of what Sir Edward said actually, because I think he could have gone on to say that actually when you look at the Mayoral Decisions there is a lot of information in there which could be politically embarrassing or can give a story that may be politically embarrassing, but it is always on there. I think the system is very robust. I do not get the impression that information is put into Part 2 because it

is embarrassing, I think that the system is being policed very well and I think that the whole system relies on the trust between the public and the Mayor's Office, which is that the information that can go in Part 1 will go in irrespective of what the consequences or whatever the headlines or reaction may be. It would be remiss of me not to say that I think actually they have been very honest and consistent in that.

John Biggs (AM): Just very briefly, in answer to Jennette's question about political considerations, on 17 April 2013 at the Transport Committee, Sir Peter Hendy [Commissioner, TfL], I appreciate this is not the Mayor's Office directly, said in answer to questions about transparency, he said, "You would like of course for us to show every failing in the organisation on a piece of paper where it could be triumphed by one or more people on the Assembly as an example of public sector ineptitude". So he was suggesting in his answer that he was very much circling the wagons because he was fed up with politicians exploiting information, and I suppose the reason it was worth reading that out and bringing it to the attention of the meeting is it does suggest a cultural issue at the top of the organisation.

Sir Edward Lister (Mayor's Chief of Staff): Perhaps I could reply to that. Could I say, I think we all perhaps express frustration at times about some of these things. I go back to my earlier comment, I think the Mayor has been consistent in the GLA and it is something he is encouraging all the GLA Group to do, is to publish as much as possible, because it always ends up out there in the public domain generally at some point, so you might as well get it out and just accept that. But, yes, there are frustrations because at times you do have to admit to mistakes in the organisation.

John Biggs (AM): Politics is like that, whether we like it or not, sometimes we win, sometimes we lose, but that is how it works.

Joanne McCartney (AM): Is it your view that, if something is sensitive and may be considered to be put into Part 2 that actually the first step should be to look at redaction so it can remain in Part 1 to start with, and how good is the organisation at actually doing that?

Sir Edward Lister (Mayor's Chief of Staff): As far as the DDs and MDs, in general, most of them we go through a process and at all levels of the process people do look quite hard, but certainly when they get to senior management people do look hard at the exemptions and the items that are put into a Part 2 and seek to minimise those as much as possible. We seek to remove a confidential tab on a paper or something as quickly as possible. We really do work quite hard in the management chain leading up to the signature to minimise that and I think that has proved to be I think fairly successful and we really only do leave stuff in Part 2 that we have to leave there. If I think about it, and about MDs and DDs, I think I would be right in saying that the Part 2 in most cases has been a land transaction or it has been a Compulsory Purchase Order settlement, so it has been something, with very clear financial reasons. I think the number of any Part 2s other than for those two reasons will be a handful, in fact I am struggling to think of any actually, I am sure there is one somewhere but I cannot think of it.

Joanne McCartney (AM): So the culture is always set at the top of the organisation and the culture that the Mayor and yourself set, as Chair of TfL as well, will have a great impact. John

just suggested that there should always be an open Part 1 published of every decision and it should appear on the agenda paper, so that at least there could be part information given. Do you agree with that recommendation, whether it is at GLA or whether it is at TfL?

Sir Edward Lister (Mayor's Chief of Staff): Yes.

Joanne McCartney (AM): Yes, is that something, Howard, that TfL will do?

Howard Carter (General Counsel, TfL): We certainly agree that our starting position is always that information should be placed in the public domain unless there is some really good reason why not. We also completely accept the way that the Local Government Act works in terms of Part 1 and Part 2 and that you should put as much information as possible in Part 1 and you should only include in Part 2 information that is absolutely essential and it should be very limited in scope. You know, it may be bidding scores, it may be commercial approach to a negotiation, or out-turn prices from a tender where it would not be appropriate to put that information in the public domain. There will be circumstances where it really would be prejudicial commercially to our commercial interests to do anything else.

I also accept that it should be very rare that there should only be a Part 2 paper. There will very occasionally I think be reasons why that was appropriate. TfL has had one or two examples recently where we were considering bond transactions in the market and if we had to make any reference to that on the public part of the agenda that would have triggered obligations in terms of the stock exchange and we would have had to have made announcements of things that we were not ready to announce because we had not taken a decision, so it would have got us into some difficult territory. But I do accept that should be the exception and it should happen in very limited cases and only where it is completely justifiable.

Since we transitioned to the Local Government Act from April last year, if you look at the Board and the Finance and Policy Committee papers, 95% of the papers have either been Part 1s or have had a Part 1 and a Part 2, it has been very rare where we have had a just Part 2. The other issue that goes with this, is it is not just about the paper, it is about the discussion, because, as those of you that are familiar with the way well-run local authorities take these decisions, you can usually have most of the discussion in public anyway, even if there is a limited amount of information that is in Part 2. Sometimes if people want to refer to the very specific commercial information that is in the Part 2 then you do have to close the meeting, but ideally you do not specifically reference that in the discussion, but you use it to inform the discussion, but then you still take the decision in the public part of the meeting. We also try to do that. It is not always feasible because sometimes members will want to discuss the actual information and question the information in Part 2 and obviously you cannot practically do that without divulging the information, so you have to move to the Part 2 of the agenda.

It is also important I think to take the decisions in public and make sure that the decisions are recorded, so what we have struggled to do, and I think we have almost always achieved this, is that we try not to publish separate Part 2 minutes as well. You are able under the Local Government Act regime to have a Part 1 minute and then a Part 2 minute and the Part 2 minute is not published because it is agreed on Part 2 of the subsequent agenda. But we have tried to

avoid that and I think that is good practice to avoid that when you can and generally speaking we have managed to find a way of publishing minutes, which cover the whole of the agenda, which includes things that were discussed on Part 1 or Part 2. So we do put the content of it in the public domain so people know what has been discussed and there is not the suggestion that things have been discussed in secret behind closed doors.

Joanne McCartney (AM): Often there are valid reasons for keeping things in Part 2, but you give an example of market discussion and Martin gave an example earlier about requesting the cable car contract and given reasons why it could not be released and then it being put out silently a few months later. I am just wondering what can you do to improve the mechanism by which you release information that was once sensitive but that those sensitivities have now gone or you have changed your mind? I am just wondering what can be improved, because it seems that the cable car one, it is not like people have been asking, for it suddenly to appear without any announcement or without any acknowledgement to those people asking the questions in the first place.

Sir Edward Lister (Mayor's Chief of Staff): I think that is possibly a piece of work that we have not got to, and certainly I am talking from the GLA perspective. I mean we do not go back looking at items, which we have omitted for confidentiality reasons, and look to see whether we could release those now. That is not something we have done; maybe it is something we should look at doing. The only concern I have is how much work would be involved in doing that and whether it would actually be of any interest to anybody anyway by then.

Joanne McCartney (AM): But there are some things that would be of key public interest and this was clearly one of them that I think you should have been alive to.

Martin Hoscik (MayorWatch): It was really, and I would say, even as somebody who wants a lot of information, I accept that there is information that cannot be put in the public domain. I do repeat what I said, I think that the Mayoral Decision scheme has been policed very honestly, they put information into the Part 1 and in many cases you get the impression the Part 2 is just a couple of pages at best, and sometimes things have to be held back. A decision recently went up on the Mayor's Advanced Business Park [Royal Docks redevelopment] deal. I was interested, Howard seemed to imply that among the information that TfL would keep out of the Part 1 was bid scoring, and yet the ABP contract, which was a major contract for the Mayor, contains the score of the bid. It comes back to consistency. If you are going on to the Mayor's website you can see where the Mayor's officials have scored bids that he is awarding, for the contracts that he is awarding, then that should be the base point for everybody. All component bodies within the GLA should provide the same information and seek to redact the same information. Again, I come back to my earlier point that this is somewhere where I think a lot of this work needs to be done by a single core team here where people can challenge the internal presumptions and say, "That simply falls foul of the Mayor's transparency and openness agenda and you cannot keep that redacted; that goes into Part 1", because I do not think there is enough internal challenge, I do not think there is any imperative internally to challenge what somebody else in the organisation says, particularly when it is an organisation, which (although Howard would disagree) is inherently secretive.

Tony Arbour (Chairman): Before we go on, I need to ask, is there any internal challenge at TfL?

Howard Carter (General Counsel, TfL): There is certainly a huge amount. We are very conscious, as I have already said that the presumption is that information goes out unless there is a good reason why not. If somebody says, when they are asked to provide the piece of information, that they think there are some reasons why that should not be put in the public domain, we always insist on seeing it, so we certainly do not take that for granted. We ask them what their reasons are and we challenge those reasons, and it is only if we are satisfied that those reasons stack up and that we can justify them that we would go ahead with that.

In relation to Information Commissioner cases, the Information Commissioner would expect us to do that, they will ask us what the reasons were and they will ask us for our justification, and in all of the cases that go to the ICO we have to explain ourselves. The fact is that we have a very good relationship with the Information Commissioner's Office, we accept the guidance that they give. In fact, if you look back over the last year or so, there have only been a small number of cases that have gone to the ICO from TfL over the last year, and in almost all of those cases the ICO has agreed with TfL's analysis of the application of an exemption, so we absolutely do that and the Information Commissioner would question us about that and would have something to say about it if we did not.

It is the same point that Martin made earlier about costs. I have already mentioned the overall cost to TfL of dealing with FOI responses in a typical year. But also in terms of applying the cost limit, we do not apply the cost limit if it might just be slightly over the cost limit because that would be petty to do that, we only do that if we think there is a really significant additional cost coming from having to go and retrieve the information. I have seen a couple of recent cases in the ICO, not TfL cases, where they have gone through very methodically and asked authorities to demonstrate what those costs involved, look at the unit cost that they were claiming for going and retrieving information, and tested that thoroughly. I think it is absolutely right and we would be criticised if we did not.

Tony Arbour (Chairman): OK, well you have challenged him, you denied that there is no internal challenge, the clear suggestion therefore from you, Martin, is that the level of challenge is different in this building than at TfL.

Martin Hoscik (MayorWatch): I think the underlying assumption is different. I am very clear, if you look at the Mayor's record, and I did not want to say this at the beginning, I was remiss, if you look at the London Datastore, and you look back to the Mayoral Decision scheme, the Mayor has been very proactive and certainly in his first term really pushed that transparency, and I think that some of the other parts of the organisation have followed his example. The Metropolitan Police Service's commitment to put all their taser use data online in the next few months I think directly follows from the fact that they have political oversight from the Mayor, strong political oversight, and they are following the example they are set. It just seems to me that TfL do not quite place the same standard as everybody else, and I am not really sure, you will hear the justification for keeping Val [Shawcross] out of a meeting, it does seem to be, "We will do what we have to do but we will not do anything else", and I think in City Hall, particularly

on the Mayor's side, the Freedom of Information, the Localism Act, is the starting point for data transparency and information openness, not the end point, and at TfL I think they simply go where they have to and absolutely no further.

If that is not the reality then they have worked very hard to create that perception and they probably need to take some of these criticisms onboard and look at the message that they convey to people.

Howard Carter (General Counsel, TfL): Could I just comment on the Datastore, because I think this is an important aspect of this debate that we have not discussed so far in the meeting. TfL has got a very strong focus on providing customer information and we have been at the forefront of providing information, both for the Datastore, where we have been a proponent of that initiative in terms of the Mayor, we are fully, fully supportive of it. TfL was one of the first organisations to provide live feeds and to provide large amounts of data in a format, because this is the big issue that you hear from the app developers and others who can use this information constructively, is that what they want is an open data feed in a way that they can use and manipulate and do all the clever things that we have seen people do with the apps. TfL has been absolutely at the forefront of that and also I think there is reference in your report to the work of the Shakespeare review², which demonstrated the financial benefits, the monetarised benefits that there can be to customers in terms of that, and cited TfL as an example of good practice and being at the forefront of that work. So I think in terms of the provision of operational information and live feeds we are right up there with the best of transport organisations.

Tony Arbour (Chairman): You are certainly fighting their corner jolly well.

John Biggs (AM): I would agree with that, I think the open publication of the data, the open access philosophy, is something that maybe should be translated more widely across the whole organisation, but you would expect me to say that.

Howard Carter (General Counsel, TfL): TfL is actually encouraging other organisations and having dialogue with others to try and encourage them to follow our lead in this area.

John Biggs (AM): OK, I wanted to raise another incidence, which for once is not about TfL, it is about the core GLA and the Housing and Investment Group (HIG). I look at Mr Middleton who I think is responsible for this. Quite often that publishes agendas in which nothing is published, basically just a list of reports, and everything is restricted. We hear about it occasionally when a housing scheme is opened, but it is talking about hundreds of millions of pounds of public money being used to build housing in London in particular and I think it is an area where a greater transparency and where this hierarchy of what should be revealed should be very closely examined by the organisation.

² *Shakespeare review of public sector information*, Department for Business, Innovation and Skills, May 2013

Tom Middleton (Head of Governance and Resilience): I think that is a perfectly valid criticism and we are actively addressing it at the moment, so I think you will be seeing more papers going into the public domain than was previously the case.

John Biggs (AM): That is another very welcome development then, and the other one, which is not in our questions, but again it continues to trouble me, which is it was Churchill who said, did he not, that, “Democracy is the worst form of government apart from all the other ones”, and one of the attributes of democracy is that you have oppositions who are troublesome, annoying, but by having access to confidential information they can help responsibly to make the process work more effectively. So my question is, notwithstanding the issues about publication of data to the wider world, whether the Assembly is grown-up enough to be able to share confidential information, which is not published to the wider world. I just wanted to rest that question; it is not part of the recommendations in the report, but I think it is something that is of value. Because it happens in every other local authority.

Andrew Boff (AM): Along with that rested question, we must remind ourselves that when the London Organising Committee of the Olympic Paralympic Games wanted to reveal ticket sales to the Assembly, they revealed it to Assembly Members on a confidential basis and within hours it was leaked. So we as an organisation have to grow up as well.

John Biggs (AM): That is a risk that you run in democracy, I mean we have always heard, I have been the victim of it, so I know.

Tom Middleton (Head of Governance and Resilience): Chair, can I just make a quick point on that, I think yesterday one of the Assembly Committees [Budget Monitoring Sub-Committee] looked at New Year’s Eve and we were very happy to provide Katie’s [Smith, Head of Scrutiny and Investigation, GLA] scrutiny team with confidential papers on the basis that they would not be publicly disclosed and as far as I am aware they have not been publicly disclosed; so we are more than happy to do that when it comes to IPB and HIG papers.

Joanne McCartney (AM): One thing I wanted to ask Edward about was really about information to us so that we can do our duty to hold the Mayor to account, and in particular we are still getting issues with information from MOPAC and particularly around the length of time it takes to respond to Mayor’s Questions. I have had to put a question in this time asking, is it acceptable that 70% of my requests and Mayor’s Questions have not been answered in time. I should not have to do that, should I?

Sir Edward Lister (Mayor’s Chief of Staff): No, you should not. I fully accept, and the Mayor fully accepts, that the performance of MOPAC in answering questions is not satisfactory. They are taking steps to correct the situation, it is taking longer than I think any of us would have hoped.

Joanne McCartney (AM): It has taken about nine to ten months now and we have been hearing that same thing I am afraid.

Sir Edward Lister (Mayor's Chief of Staff): I know, and I do accept that and I know that the senior management within MOPAC are very conscious of the fact they have to speed up the process of getting these answers out and getting the information out through the system. So I can only but agree with you, but I can assure you that there is a lot of pressure being applied by the senior management at MOPAC and by the Mayor on to MOPAC to get this resolved.

Joanne McCartney (AM): A lot of the questions I am asking are particularly stuff that is held at the Metropolitan Police Service, they should be able to just print off because it is on spreadsheets, so it should not take that great a time. So in letter-writing, I know Jenny [Jones, AM] has I think still got issues with the time it takes letters. I do not even bother, I go straight to the Metropolitan Police Service and Caroline [Pidgeon MBE AM] does the same, and that is not an effective system.

Sir Edward Lister (Mayor's Chief of Staff): No. I am not trying to defend any of it. I accept they have to get this resolved and the pressure is on them to get it resolved and they do need to get this information through to Assembly Members in a timely manner and it is taking just far too long to process the paperwork.

Darren Johnson (AM): I would welcome Sir Edward's comments that the performance is not satisfactory. Have you thought about actually doing a shared service agreement on this and delegating the entire MOPAC correspondence and questions function to City Hall where you have a competent team of officers who could actually do the job properly and get on with it rather than continue with this nightmare and this misery, both for you in terms of constantly having to hassle them, and for the Assembly Members in terms of failing to get the answers they need?

Sir Edward Lister (Mayor's Chief of Staff): No, we have not, is the answer to your question.

Darren Johnson (AM): Could you?

Sir Edward Lister (Mayor's Chief of Staff): I think we would still have to staff up for it in the same way that MOPAC has to staff up for it, to deal with it.

Darren Johnson (AM): But if they are integrated with the management structure you might actually get somewhere.

Sir Edward Lister (Mayor's Chief of Staff): I am hopeful that the team at MOPAC, the senior management team, are going to resolve this problem. Obviously, if they do not get this matter resolved, then we are going to have to take other action.

Tom Middleton (Head of Governance and Resilience): I think it is fair to say they are recruiting now.

Joanne McCartney (AM): What would this other action be?

Sir Edward Lister (Mayor's Chief of Staff): I think they are, as Tom just mentioned, they are actively recruiting additional people, at a senior level as well, to actually get this information out and to manage the system, and that is what they are doing.

Valerie Shawcross CBE (AM): Well I did want to get Steve Woods' and Edward's comment on what Howard had said to me because he said basically TfL is condescending to possibly consider making the panels open and going beyond the actual letter of the Localism Act, and I just wondered what Steve and Edward felt about that, because my interpretation would be that basically at the moment they are circumnavigating the Localism Act by having private sessions and informal sessions and I just think that, rather than this being a matter of TfL deciding to give us this information, that there ought to be a stronger recognition that we all work for the public and that the public ought to be able to see these things.

Sir Edward Lister (Mayor's Chief of Staff): My understanding, maybe I have misunderstood this, but my understanding is that these are small groups, sub-committees, whatever they are called, of people who are going through a series of issues in more of a discussion format and they are not actually making the firm decisions; the firm decisions are being made by the main Board of TfL. A bit like we do things here with the Mayor, or as groups of officers of the Authority, meeting to discuss issues. These are not the formal decision-making processes; they are on the journey to it where we are preparing the options.

Howard Carter (General Counsel, TfL): That is absolutely right. They consist of two things, a discussion about operational information for each of the main business areas, and that information is published, because it is always on the open part of those agendas, the Managing Directors for Rail and Underground and for Surface Transport provide an account of the operational performance of their areas for each period, and that information is then discussed. As I say, that report is always published in full. Those panels are not decision-making, they are informal discussions, there are papers in the second part of the agenda, which are usually quite short, and usually are just there to have a very early-days discussion about general issues.

Valerie Shawcross CBE (AM): I do not quite get the argument here because we are being told that because they are less important that we should not be able to go and see them, whereas actually the development of a policy is often very interesting. I wonder if Mr Wood would like to comment on this, because it does to feel to me like, you know, the real debate and decision has been locked away in a cupboard where we cannot see it and there is an attempt in a sense to evade the spirit of the Localism Act.

Steve Wood (Head of Policy Delivery, Information Commissioner's Office): The first thing I have to say is I cannot comment really on the Localism Act issues, it is not a piece of legislation we are responsible for, so it would be inappropriate for me to really judge on it, so I will continue to offer some general observations. We are focused on information so it is what information would be held about those meetings and I think what we would discover in situations where people are asking questions about how a meeting has taken place, people will continue to ask questions via FOI, people can still request information about those meetings. Where there are meetings where the public or important stakeholders are saying they have an interest in those meetings, then that at least perhaps raises the question, should more

information be proactively available about those meetings? So our focus has to be on the information. It would be really a question for perhaps the DCLG about the Localism Act issues.

Howard Carter (General Counsel, TfL): Just to add to that, the Budget and Performance Committee [of the London Assembly] recently heard from Peter Anderson, who is a TfL Board Member and he is also Chair of the Finance and Policy Committee [of the TfL Board], and also Sir Peter [Hendy], and there was a discussion in that meeting about the importance of TfL Board Members having some informal opportunity to be able to discuss things with staff and, for that matter, with the Mayor. These are not lengthy meetings, they are short opportunities to have very informal discussions and decisions are not taken in those meetings. Whenever a decision on a large project or a particular initiative needs to be made, there are full papers that go to the relevant committee, usually the Finance and Policy Committee, because that is the right place for those decisions to be taken. When we do that we follow completely, in fact I would say we go beyond, the requirements of the Local Government Act in terms of making sure that the papers are published wherever they can be. Every single one of those meetings since April last year has been open to the public, and wherever possible we record the decisions that were taken in those meetings in open minutes, which are then subsequently published for the next meeting. So there is no question whatsoever of trying to avoid the obligations under the Local Government Act.

What I have said is that we take the point that it may be helpful for us to look at whether, in terms of those panel arrangements, we could move some of that business into the committee structure. The annual review, which is a normal piece of regular governance business that we do, of the effectiveness of the Board where they have a discussion about whether they feel they are operating as best that they are able to do, which is due to take place in the autumn. I am very happy to take that issue and to ask them to consider that again and with a very positive attempt to see whether we can move more of that business from the panels into Committees.

Sir Edward Lister (Mayor's Chief of Staff): May I just make the point, we have within the GLA a group that does meet, the IPB, which is not open to the public, and so we are all doing this, you do need to have space to have discussions --

Valerie Shawcross CBE (AM): I think we all understand public life that sometimes you need to have a think-tank type activity, but if nobody is auditing what is being put on in that panel and what is not, it is easy to become suspicious that what has happened is that some structures have been created so that you can move business that might properly be dealt with in a committee into this covert panel thing, and who is the arbiter of what goes in that and what goes in the proper open committee. That is why I have question marks about this and it does seem to be accompanied by an attitude that this is not a question of right, but of the TfL's kindness and their ability to decide that we ought to have a look. But, you know, I feel that there is an in-principle right to see some of this.

Tony Arbour (Chairman): OK, thank you very much for coming. It was one of those occasions where there is unanimity across the parties on this report and I would say to Howard that we are going to continue to be on your case.

Howard Carter (General Counsel, TfL): We welcome that.