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Transparency

- No such thing as “too much transparency”
- No downside to the public knowing “how” the regulator does its job
- Plenty of upside - informed participants
- Transparency supports continuous improvement

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Transparency con't


- Transparency is never contrary to the public interest
- Transparency doesn't create new risks or aggravate existing risks
- Transparency is universal - myriad ways to achieve it - find one that works for you

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Openness

- Different story
- Why does most legislation for regulators contain confidentiality provisions?
- How do you determine what is “required in connection with the administration...”?
- Back to basics...

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First Principles...


- Why do we regulate?
- Not reasonable to expect the public to assess qualifications of practitioners
- Not in the public interest to allow market forces to weed out substandard players
- Define the problem

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Openness con't

- What “problem” is openness solving?
- How does openness contribute to risk reduction / mitigation?
- Is there a correlation between openness and risk mitigation?
- Openness is not universal

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Openness is about Fairness


- Fairness to the applicant or practitioner
- Non-linear scale
- Consider the extreme...

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Transparent but Closed


- 100% transparent - all information about “how” the regulator operates is available
- 0% open - the only information disclosed about specific practitioners is their licence status
- Defensible?

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The Openness Spectrum


- Disclose everything, unless there are good reasons not to disclose
- Disclose nothing, unless there are good reasons to disclose
- What constitutes “good reasons” on either side of the coin?

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Questions about Reasons


- How might this information assist the public?
- What is the risk that the information will be misinterpreted?
- How might this information be abused?
- Can the information be used unfairly?

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Questions about Reasons con't


- Why does the public want to know?
 - Red herring question
 - The "why" is irrelevant
 - Can't selectively release information only if it's being requested for the right reason
 - Information is disclosable or it isn't - can't be conditional

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"Can" vs. "Should"


- Modern database and network technologies make it easy to make information available
- Just because we can, doesn't mean we should
- Permitted ≠ Appropriate; Legal ≠ Fair

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Consider Push vs. Pull


- Openness can be active or passive
- Active - the regulator publishes information
- Passive - the information is only made available on request

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Summary

- Be transparent
- Decisions about openness need to be considered very carefully
 - How does it advance your mandate?
 - How does it impact risk / fairness?
 - Document your analysis and rationale

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