

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** **8 May 2019**

**Public Authority:** Greater London Authority

**Address:** City Hall  
London  
SE1 2AA

#### **Decision (including any steps ordered)**

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1. The complainant requested information relating to the decision by the public authority to exclude the media and the public from a London Assembly meeting on knife crime in London and from the Mayor of London's summit on the same issue. The public authority disclosed some of the requested information and withheld a number of emails relying on the exemption at section 42(1) FOIA.
2. The Commissioner's decision is that the public authority was entitled to rely on the exemption at section 42(1) FOIA.
3. No steps are required.

## Request

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4. On 13 May 2018 the complainant submitted a request for information to the public authority in the following terms:

"...all emails, minutes and documents relating to a decision by the Mayor of London's Office and Greater London Authority preventing media representatives, journalists and members of the public to attend the London Assembly meeting on knife crime in the capital on 11th April 2018, and the banning of journalists from the Mayor's Summit at City Hall 10th April 2018 on the same issue, attended by Mayor of London, Sadiq Khan, a number of high-profile politicians and the Met Police commissioner.

We understand that this interpretation of electoral law was made by the GLA's monitoring officer, and our request includes all communications by email and documentation on this issue provided to the Mayor of London and Greater London Assembly elected representatives, and any communications with the Electoral Commission, Local Government Association and other relevant bodies."

5. The public authority responded on 15 May 2018. It disclosed some of the information in scope. These were predominantly internal emails discussing the decision not to admit journalists to the knife crime meetings on 10 and 11 April 2018. These internal emails were released in full minus minor redactions to remove personal data about junior staff and third parties.
6. Additional information was withheld in full relying on the exemption at section 42(1) FOIA (legal professional privilege). Further to correspondence from the complainant on the same day (15 May), on 18 May 2018 the public authority provided him with a weblink to the recording of the London Assembly meeting on knife crime in the capital on 11 April 2018. It advised that the Mayor's summit at City Hall on 10 April 2018 on the same issue was not recorded.
7. On 15 June 2018 the complainant requested an internal review of the "decision to withhold legal advice documentation concerning the decision to hold the London Assembly meeting on knife crime in the capital on 11<sup>th</sup> April 2018 and Mayor's Summit at City Hall on 10<sup>th</sup> April 2018 with the media and public excluded."
8. The public authority wrote to the complainant with details of the outcome of its internal review on 16 July 2018. The review upheld the decision to rely on section 42(1) FOIA.

## Scope of the case

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9. The complainant contacted the Commissioner on 23 September 2018 to complain about the public authority's decision to "to reject my application under the Freedom of Information Act for access to legal advice which resulted in the exclusion of the media and public from two significant meetings in relation to murders and knife crime in London." The Commissioner has referred to the complainant's submissions at the relevant parts of her analysis below.
10. For avoidance of doubt, the scope of the Commissioner's investigation therefore was to determine whether the public authority was entitled to rely on the exemption at section 42(1) to withhold the information withheld on that basis following the complainant's request on 13 May 2018.

## Reasons for decision

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### Background

11. The public authority helpfully provided a useful background to the request which is summarised below.
12. The public authority is a strategic regional authority responsible for the strategic administration of Greater London. Its areas of responsibility include transport, policing, fire and rescue, development and strategic planning.
13. The London Assembly consists of 25 London Assembly Members who are elected at the same time as the Mayor. During the 2018 local elections pre-election period, there was a spate of serious youth violence which resulted in a desire for both the Mayor and London Assembly to hold separate meetings to discuss these matters.
14. The Chair of the Policing and Crime Committee wished to hold a meeting inviting all Assembly Members, the Mayor and the Commissioner of the Metropolitan Police Service alongside other key individuals. The Mayor wished to hold a Knife Crime Summit including Government ministers, London Borough Leaders, the Commissioner of the Metropolitan Police and other key individuals.
15. In both cases some attendees including the Chair of the London Assembly Policing and Crime Committee were standing for election in these local elections.

16. The public authority is subject to very clear rules and restrictions on certain activities during pre-election periods<sup>1</sup> that incorporates the Code of Practice for Local Authority Publicity.
17. The Greater London Authority (GLA) Code of Conduct requires Members of the GLA including the Mayor and Members of the Assembly to ensure that GLA resources are not used inappropriately. Careful consideration is therefore given as to whether a meeting can appropriately take place during a pre-election period, whether that is in the lead up to the election of the Mayor and London Assembly or a local or general election.
18. Where a meeting is held, appropriate steps should be taken in the way information is presented to the meeting and the way the meeting is managed by the Chair of the meeting to ensure that anything that is said or done at the meeting is not and could not be seen to be for political purposes. For example, anything that could reasonably be regarded as giving a political candidate or their supporters/party an advantage.
19. In the case of the two knife crime meetings in April 2018 which are the subject of this request, the public authority's Monitoring Officer, in conjunction with the Head of Paid Service and the Proper Officer of the Authority (for the Assembly meeting) considered the GLA use of Resources guidance and decided that on balance it was appropriate that these meetings were held in private. Their decision was based on the following reasons: the controversial nature of the topic, the attendance by candidates in these elections, and the risk that the meetings or anything said at the meetings, could be seen to be carried out for political purposes or be reasonably regarded as giving a candidate an advantage.

### **Withheld information**

20. The information withheld relying on the exemption at section 42(1) consists of 5 separate email conversations where the GLA Monitoring Officer and the Head of Paid Staff requested and received advice from members of the Transport for London (TfL) Legal Services.

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<sup>1</sup> This period (i.e. a pre-election period) is often referred to as "Purdah"

## **Application of section 42(1)**

21. Section 42(1) states:

“Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.”

### *Complainant's submissions*

22. The complainant's submissions in support of the application of the exemption are reproduced below.
23. “I respectfully disagree that legal privilege trumps public interest in these circumstances. The advice is crucial to the reasoning, which I need to fully challenge under FOI jurisprudence. The decision prevented public accountability and participation in government body processes that are a matter of life and death for people living in London.
24. Furthermore, redacted documentation released as a result of my request indicates that GLA and the London Mayor's Office were under the false belief that later publication of the electronic record would assuage the damage done to freedom of expression by deciding Election Purdah rules were predominant.
25. The very fact that no electronic record was kept of the Mayor's Summit for later release undermines the purpose of balancing the competing interests and further compounds the damage done to the public interest and freedom of expression by holding that meeting in private.”

### *Public authority's submissions*

26. The public authority's submissions in support of the application of the exemption are summarised below.
27. The purpose of legal professional privilege (LPP) is to protect an individual's ability to speak freely and frankly with their legal advisor in order to obtain appropriate legal advice. It recognises that individuals need to lay all the facts before their adviser so that the weaknesses and strengths of their position can be properly assessed. Therefore legal professional privilege ensures that communications between a lawyer and their client remain confidential.
28. The withheld emails are subject to advice privilege as they constitute confidential communications between the public authority and their legal advisors at TfL Legal Services. The public authority was seeking advice on legal issues involved in the maintenance of political neutrality by

public bodies, specifically the GLA, and in particular the heightened requirement for political neutrality in the period immediately before elections, in this case the London borough elections due to take place on 3 May 2018.

29. The withheld emails remain privileged as they have not been circulated, shared or otherwise made available beyond the group of individuals involved in the correspondence.
30. With respect to the balance of the public interest, the public acknowledged that there is a public interest in it being open and transparent in the work it carries out and the processes that apply when carrying out its statutory functions. Specifically in this case, there is a public interest in enhancing the public understanding of why the public authority decided that members of the public and media representatives were not allowed to attend a meeting between the Mayor of London, various other politicians and the Commissioner of the Metropolitan Police on 10 April 2018 and a London Assembly meeting on 11 April 2018 on a subject matter of clear public interest.
31. While there is no doubt that a matter such as tackling knife crime is something of obvious and paramount public interest, it must be emphasised that the issue here is not about legal advice directly concerning tackling knife crime but about whether or not it was appropriate for journalists to attend the two meetings during a pre-election period. Releasing the withheld information would allow the public to better understand how the public authority's legal advisers approached the legal issues relating to that decision.
32. However, there is a strong inherent public interest, long recognised by the Courts, in maintaining the right of any person including a public body and its officers in the course of their duties to seek and receive legal advice in confidence.
33. There is a significant public interest in affording the public authority the ability to continue to seek and receive legal advice in the future on similar matters and for that advice to be subject to LPP. Similar issues are highly likely to arise in respect of future elections (local, London or general) and the legal issues will be similar. The public authority should be able to seek legal advice freely on such issues. The principle of obtaining legal advice subject to LPP should not be undermined without exceptional or otherwise overriding public interest considerations.
34. The public authority was not seeking to avoid transparency in declining access by the public to the meetings in question but was restricting public and media attendance at the meetings to ensure the public

authority's political neutrality in a pre-election period. In recognition of the public interest in the subject matter being discussed at these meetings (again noting that this is not about the public interest in legal advice directly concerning tackling knife crime), a recording of the Assembly meeting was released after the local elections had taken place.

35. Furthermore, whether it was appropriate not to allow journalists to attend the two meetings on tackling knife crime is not under consideration. The public interest being assessed is whether there are exceptional public interest considerations about whether the public authority is entitled to continue to withhold legal advice provided by legal advisers subject to LPP.
36. It is in the public interest for the public authority to be able to make informed and appropriate decisions on high profile issues. It therefore needs high quality comprehensive legal advice to support the effective conduct of its decision-making processes. It would not be in the public interest for the ability of the public authority to obtain confidential and comprehensive legal advice to be undermined.
37. The basis of legal privilege is specifically preserved in the context of Greater London regional government activities. Under section 61 of The Greater London Authority Act 1999 (GLA Act), the London Assembly can issue summons for documents for the purpose of its scrutiny of the Mayor and Functional Bodies (TfL, Mayor's Office for Policing and Crime etc). This broad power is subject to limited exceptions set out in the Greater London Authority (Protected Information) Order 2000 (made under the section 63 of the GLA Act). One of those exceptions, under paragraph 3 of the Schedule to the Order) is legal privilege, preserving the right of the public authority to seek and receive legal advice confidentially.
38. The reasons for the decision not to admit journalists to the two meetings in question was articulated in detail and without misrepresentation by the public authority to the applicant in emails.
39. On balance therefore, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld emails.

### **Commissioner's considerations**

*Is the exemption at section 42(1) engaged?*

40. The Commissioner has first considered whether the withheld information engages the exemption at section 42(1).



41. The public authority considers that the withheld emails are subject to advice privilege.
42. The Commissioner considers that advice privilege applies where no litigation is in progress or contemplated.<sup>2</sup> It covers confidential communications between the client and lawyer made for the dominant purpose of seeking or giving legal advice.
43. The legal adviser must have given advice in a legal context; for instance, it could be about legal rights, liabilities, obligations or remedies. Advice from a lawyer on an operational or strategic issue is unlikely to be privileged unless it also covers legal concerns such as advice on legal remedies to a problem.
44. The Commissioner is satisfied that the withheld emails which she has examined are subject to LPP. This is because they constitute confidential communications between the public authority and TfL Legal Services made for the dominant purpose of obtaining legal advice on political neutrality by the public authority in the period immediately before the London borough elections were due to take place on 3 May 2018. As far as she can see, disclosure of the withheld emails has been restricted.
45. The Commissioner therefore finds that the public authority was entitled to engage the exemption.

*Balance of the public interest*

46. The exemption at section 42(1) is subject to the public interest test at section 2(2)(b) FOIA. Therefore, the Commissioner has considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld emails.
47. The Commissioner considers that the public interest inherent in this exemption will always be strong due to the importance of the principle behind LPP: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice which is turn fundamental to the administration of justice.

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<sup>2</sup> In contrast to litigation privilege which applies to confidential communications made for the purpose of providing or obtaining legal advice about proposed or contemplated litigation.



48. The Commissioner does not consider that the public interest considerations need to be exceptional in order to overturn the strong public interest in maintaining the exemption. However, in the words of the Information Tribunal, there must be "clear, compelling and specific justification that at least equals the public interest in [maintaining the exemption]..."<sup>3</sup> "...At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest."<sup>4</sup>
49. Therefore, the Commissioner has attached some weight to the view that there is a significant public interest in not undermining the ability of the public authority to freely seek and receive frank legal advice in future on similar matters which are likely to come up again. Clearly, freely seeking and obtaining frank legal advice in return is crucial to the public authority's ability to make informed and legally supported decisions.
50. The Commissioner does not share the view that the decision to exclude the media and the public from the relevant meetings prevented public accountability. The public authority should be held accountable for its decisions pursuant to the important issue of tackling knife crime in London. Excluding the media and the public from two high profile meetings on the issue on the basis of election Purdah rules is not sufficient evidence in the Commissioner's view in support of the contention that the public was therefore prevented from holding the public authority accountable.
51. The Commissioner cannot comment on whether the public authority was "under the false belief" that publication of the electronic record of one of the meetings "would assuage the damage done to freedom of expression" by deciding election Purdah rules were predominant. The public authority has stated that a recording of the Assembly meeting was released after the local elections had taken place in recognition of the public interest in the subject matter discussed at both meetings. The Commissioner does not consider this explanation unreasonable in the circumstances.
52. The Commissioner cannot comment on why the Mayor's meeting on 10 April 2018 was not recorded. However, she does not share the view that that fact is significant to her consideration of whether the withheld

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<sup>3</sup> Crawford v Information Commissioner & Lincolnshire County Council (EA/2011/0145)

<sup>4</sup> Bellamy v Information Commissioner & the Secretary of State for Trade and Industry (EA/2005/0023)

emails subject to LPP should be released. The withheld emails are on the subject of political neutrality by the public authority in the period immediately before the London borough elections on 3 May 2018. Therefore, she does not share the view that failing to record the Mayor's meeting significantly reduces the weight of the strong public interest inherent in withholding the legally privileged emails. The reason for the decision to exclude the media and the public from the meetings was explained to the complainant.

53. Taking all of the above into account the Commissioner finds the public authority was entitled to conclude that in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld emails.

## Right of appeal

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54. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

55. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
56. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Terna Waya**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**