



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Appeal Reference: EA/2016/0244**

**Heard at Fleetbank House  
On 3<sup>rd</sup> May, 2017**

**Before**

**JUDGE**

**DAVID FARRER Q.C.**

**TRIBUNAL MEMBERS**

**DAVE SIVERS**

**and**

**ANDREW WHETNALL**

**Between**

**LONDON BOROUGH OF BROMLEY (“LBB”)**

Appellant

**and**

**THE INFORMATION COMMISSIONER (“THE ICO”)**

First Respondent

**and**

**ERNEST AGBADA**

Second Respondent

Robin Hopkin appeared for LBB

Laura John appeared for the ICO.

Mr. Agbada appeared in person.

### **DECISION AND REASONS**

The Tribunal finds that the FOIA s.36(2) exemptions claimed for the disputed information, namely the redacted content of the Internal Audit Report by the Royal Borough of Greenwich (“RBG”) entitled “LB Bromley – Parking Enforcement” and dated 15<sup>th</sup>. February, 2015 (“the Report”) were engaged but that the public interest requires its disclosure. The names to which the s.40(2) exemption was applied are not to be disclosed.

The Tribunal therefore orders LBB to disclose the redacted information, save for the names, to Mr. Agbada within 35 days of publication of this decision.

1. LBB has a contract with Vinci Park Services Limited (“VPS”) for the enforcement of parking restrictions.
2. In 2014 former employees of VPS, made a series of allegations as to irregularities in VPS’ performance of the contract. The allegations material to this appeal can be divided into two broad classes -
  - (i) The employment by VPS of people who had no right to work in the UK. as civil enforcement officers (“CEOs”) (sometimes termed “traffic wardens,”)
  - (ii) The matters described in the Closed Annex to this decision

Mr. Agbada was prominent among these whistleblowers.

3. Both LBB and VPS initiated investigations into these allegations but it was soon apparent that they required an independent review – hence the Report. Further allegations were made by former employees after RBG began its investigation.
4. Following the issue of the Report VPS and LBB reached a settlement, the terms of which are confidential, in respect of breaches by VPS of the terms of their contract. LBB obtained leading counsel’s opinion as to whether the illegal employment of certain CEOs (see §2(i)) and other flaws invalidated penalty charge notices (“PCNs”) which they had issued. It may be assumed that the advice was “No”; it is hard to see why an errant motorist should escape payment of an otherwise valid PCN on account of the status of the CEO.
5. Mr. Agbada, who held a passport in the name “Joseph Kennedy Arthur” made a series of allegations against VPS in 2014 relating to the illegal employment of CEOs, as did his partner, Toyin Morafa. He was dismissed by and she resigned from VPS in 2014. Mr. Agbada’s written submissions made clear that he considered that both of them had been very badly treated by VPS, LBB and the Home Office, with which he was involved in litigation. He suspected that persons within each of those three bodies were conspiring to harm his interests and those of Ms. Morafa. He wanted disclosure of the full Report because it would reveal the truth as to VPS’s knowing involvement in both classes of malpractice referred to in §2.
6. Following earlier requests in July, August and September, 2015, each of which was refused on grounds of confidentiality, he made a further request for disclosure of the Report on 14<sup>th</sup>. December, 2015. This was also refused. LBB cited FOIA ss. 30, 31 and 40(2) as material exemptions. It confirmed this position following what was effectively a request for a review of that decision. He had complained to the ICO in October, 2015 as to LBB’s refusals to disclose the Report and the ICO commenced an investigation into the refusal of the 14<sup>th</sup>. December request in January, 2016.
7. In the course of that investigation, LBB switched from reliance on ss. 30 and 31 to s.36(2)(b)(i) and (ii) and 36(2)(c), which read -

*“2 Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act –*

*(b) would, or would be likely to, inhibit –*

- (i) the free and frank provision of advice, or*
- (ii) the free and frank exchange of views for the purposes of deliberation, or*

*(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs”.*

8. The officer identified by LBB as the “qualified person” was Mr. David Bowen, a solicitor, who is Director of Corporate Services and Monitoring Officer. The ICO agreed, and the Tribunal finds, that he is an appropriate qualified person. Mr Bowen’s opinion apparently endorsed the submission made to him to the effect that disclosure of various parts of the Report would be likely to inhibit advice and exchanges of (s.36(2)(b)(i) and (ii)) and that any disclosure would be likely to prejudice the conduct of LBB’s affairs (s.36(2)(c))<sup>1</sup>

LBB continued to rely on s.40(2) as to the disclosure of the names of individuals identified in the Report.

#### The Decision Notice (“the DN”)

8. Given the extent of LBB’s proposed redactions of the Report, the DN could do little more than identify the issues and state the ICO’s findings as to s.36. The reasons were set out in a Confidential Annex. The Tribunal has taken a similar course. In the DN the ICO stated that the opinion of the qualified person, as to each of the claimed exemptions, was reasonable, hence that each was engaged to the extent indicated in the submission. However, having considered the balance of the public interests in withholding and disclosing the Report, she found that the interests in withholding did not outweigh the interests in disclosing.
9. She upheld LBB’s application of s.40(2) to the names of individuals. So the issue of protection of personal data does not arise on this appeal.
10. She ordered disclosure of the whole Report, subject to that redaction of names. LBB appealed.

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<sup>1</sup> The submission does not expressly address the question whether the specified result (i) “would” or (ii) “would be likely to” flow from disclosure but the latter term appears in the text in relation to both inhibitions and prejudice and it is assumed that this represents the qualified person’s opinion.

## The appeal

11. As with the DN, the Tribunal is restricted in this open decision to a skeletal summary of LBB's case. It was, of course, that Mr. Bowen's opinion as to the engagement of each of the three exemptions was reasonable and that, in each case, the public interest in disclosure, although substantial, was clearly outweighed by the public interest in withholding the redacted information.
12. In support of its case LBB called first Mr. Bowen, who identified the submission and confirmed his opinion as to the satisfaction of the requirements for the engagement of the relevant exemptions. The effect of his redacted evidence and of his answers in cross examination are reflected in the Closed Annex.
13. Benjamin Stephens, its Head of Parking. In his witness statement he described the wide range of parking services, which are provided jointly with the Borough of Bexley. He referred to the demands on those services and the consequent strain on human and financial resources. PCNs involved very considerable work and were not easy to administer. There were a very large number of challenges, of which only a very small proportion were determined by the independent adjudicators in favour of the motorist. Nevertheless, they required prompt responses within strict time limits. There is a "cottage industry" devoted to challenges, which increases the work of the parking service team and diverts them from what are, in many cases, more valuable tasks. The redacted elements of his witness statement and certain matters arising in cross examination by Miss John are dealt with in the Closed Annex.
14. Cross examination by the ICO as to the closed elements of these witnesses' statements took place in a brief closed hearing in the absence of Mr. Agbada and Ms. Morafa. On resumption of the open hearing he was told of the general nature of what had been discussed. He was, of course, well aware of the other matters referred to in §2(ii). Miss John, for the ICO, fully represented his relevant interests when cross examining. He was not excluded from any part of the final submissions.
15. Mr. Agbada applied for Councillor Ian Dunn, a member of the LBB Audit Sub – Committee, to attend the closed hearing on his behalf. Mr. Dunn had read the full report on the usual terms as to confidentiality, which he had, of course, respected, when discussing related matters with Mr. Agbada. LBB opposed this application because of the undertaking as to confidentiality and the familiar difficulties where a representative has attended a closed session but cannot report fully to the excluded party. Having regard to the *Browning* guidance, the Tribunal refused this application.

16. Mr. Agbada called Torin Morafa, his partner, who had also been employed then dismissed by VPS. She also spoke of discrimination and injustice at the hands of VPS and LBB. She stated that the local community in Bromley was generally unaware of the Report and the issues regarding parking which it was likely to expose.
17. As his final submission, Mr. Agbada simply stated that he wanted the Report because it would confirm his claims as to a conspiracy directed against him and other CEOs. It would also be in the public interest.
18. The Tribunal finds that Mr. Bowen's opinion, in so far as it applied to the engagement of s.36(2)(c) to all the redacted information, was reasonable. The public interest, however, requires that all that information should be disclosed. That is not because we consider that it discloses, or might disclose injustice to or a conspiracy directed against Mr. Agbada, Ms. Morafa or other CEOs (as to which we should need much clearer evidence in order to draw a conclusion on the public interest) but for the reasons set out in the Closed Annex. The opinion was also reasonable as to s.36(2)(b)(ii) but that is of no practical significance, given our decision as to s.36(2)(c).
19. The Tribunal therefore orders LBB to disclose the disputed information, namely the unredacted Report within thirty – five days of the publication of this decision.
20. This is a unanimous decision.

Signed

David Farrer Q.C.

Judge of the First-tier Tribunal

Date: 5<sup>th</sup> June, 2017

Promulgated date: 19<sup>th</sup> June 2017