

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 7 December 2022

Public Authority: London Borough of Enfield
Address: Civic Centre
Silver Street
Enfield
EN1 3XA

Decision (including any steps ordered)

1. The complainant has requested information regarding written instructions and subsequent advice from the QC about a quieter neighbourhood scheme. London Borough of Enfield (the "Council") answered part of the request and cited section 42(1) of FOIA to withhold the remaining parts within scope of the request.
2. The Commissioner's decision is that the Council has correctly applied section 42(1) of FOIA and does not require the public authority to take any steps.

Request and response

3. On 9 March 2022, the complainant wrote to the public authority and requested information in the following terms:

"Can you please provide copies of written instructions to the QC and subsequent advice from the QC on return in respect to the progression of the Fox Lane Area Quieter Neighbourhood, together with the costs incurred for such advice and can you please confirm whether or not they were included in the costings provided in the report?"

4. The Council responded on 28 March 2022 and amongst other legislation which the Commissioner does not oversee, so will not consider, the Council cited section 42 of FOIA to withhold the requested information, and on 6 April 2022 provided the costs of advice.

5. The Council upheld its original position at internal review.

“With regards to your request on legal advice received by the Council, all information in scope is being withheld under section 42(1) of the FOI Act. Section 42 exempts information from being released if a claim to legal professional privilege (LPP) could be maintained in legal proceedings.”

Reasons for decision

6. The following analysis sets out why the Commissioner has concluded that the Council was entitled to rely on section 42 of FOIA in this particular case.

7. Section 42(1) of the FOIA provides that information is exempt from disclosure if the information is protected by legal professional privilege and this claim to privilege could be maintained in legal proceedings. Legal professional privilege protects the confidential communications between a lawyer and client for the purpose of seeking or giving legal advice.

8. In this case, the complainant has requested the correspondence including legal advice, “please provide copies of written instructions to the QC and subsequent advice from the QC on return in respect to the progression of the Fox Lane Area Quieter Neighbourhood.” The Commissioner is satisfied from the wording of the request that the information falling within the scope of this request would constitute confidential legal advice provided by a qualified legal adviser to their client. This means that this information is subject to legal professional privilege, and the Commissioner is aware of no evidence suggesting that this privilege has been waived.

9. The Commissioner therefore considers that section 42(1) of the FOIA is engaged in relation to this information. The Commissioner will now go on to consider the public interest test.

10. The general 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 in turn is fundamental to the administration of justice.

11. In *Bellamy v Information Commissioner & the Secretary of State for Trade and Industry* (EA/2005/0023, 4 April 2006), the Tribunal explained the balance of factors to consider when assessing public interest test: "there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest."
12. The Commissioner considers that although the public interest in disclosure is strong in this case, the balance of public interest lies in withholding the information and protecting the Council's ability to obtain free, frank, and high-quality legal advice without the fear of disclosure. The Commissioner is not aware of any public interest arguments that are enough to outweigh or override the inbuilt public interest in the information remaining protected by legal professional privilege.
13. The Commissioner has concluded that the public interest in maintaining the exemption at section 42(1) outweighs the public interest in disclosure. Therefore, the Council has correctly applied section 42(1). The Commissioner requires no further action to be taken in relation to this request.

Right of appeal

14. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

15. 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.
16. 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

Phillip Angell
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SK9 5AF