

GREATER **LONDON** AUTHORITY

Dan Anderson
Fourth Street
(By email)

Our Ref: **MGLA060317-4734**
3 April 2017

Dear Mr Anderson

Thank you for your further correspondence which the Greater London Authority (GLA) received on 6 March 2017. You have expressed dissatisfaction with the way the GLA has responded to your request for information (ref MGLA310117-1195). I am now responding to you under the GLA's internal review procedure.

Background

Below is a summary of the correspondence you have had with the GLA to date:

- 15 Aug 2016: MGLA200716-8895 - You emailed the GLA a review of the Garden Bridge Trust's *"Operations and Maintenance Business Plan (2016)"* produced by Fourth Street.
- 31 Jan 2017: MGLA310117-1195 - You made a Freedom of Information request to the GLA for correspondence relating to the Garden Bridge *Operations and Maintenance Business Plan*, between named individuals. The GLA responded on 28 Feb 2017, providing some of the requested information and withholding some information under the exception in Regulation 12 (5)(b) of the Environment Information Regulations.
- 02 Feb 2017: MGLA020217-1459 – You requested acknowledgement that your request had been received.
- 27 Feb 2017: MGLA270217-3916 – You reminded the GLA that a response was due in relation to your request.
- 06 March 2017: MGLA060317-4734 – Request for Internal review received.

Your complaint – Re case reference MGLA310117-1195

You have submitted a complaint (Appendix 1) seeking to appeal the level of redactions applied in relation to your request.

Internal review

This internal review is conducted by someone who was not involved in the handling of the original request. Before considering the public interest arguments that have been put forward, I have gone on to first consider whether the exception has been correctly applied.

- Does the requested information fall under the category of Legal Professional Privilege (LPP)?

The coverage of regulation 12(5) (b) is broad, but guidance¹ issued by the ICO does specify that public authorities may wish to consider its application against material that is covered by LPP. The guidance states that:

...LPP exists to ensure complete fairness in legal proceedings. LPP protects advice given by a lawyer to a client and confidential communications between them about that advice.

The information that was withheld from disclosure is one email chain between lawyer and client, where Transport for London (TfL) Legal is the lawyer and the GLA is the client. This email chain therefore falls into the category of LPP.

- Would there be an adverse effect to the course of justice?

The GLA provided evidence that the requested information related to negotiations and are considered 'live'. In ICO decision Notice FER0414615², the Information Commissioner consented that when privileged information is still considered 'live', the following adversity can be observed:

"Disclosure of the advice would provide an indication of the arguments, strengths or weaknesses which the council might have, unbalancing the level playing field under which adversarial proceedings are meant to be carried out".

In considering whether the entire email chain would adversely affect the course of justice, I have gone on to examine the loss of LPP, as disclosure under the FOIA would be considered unrestricted disclosure outside of the context of litigation and would mean confidentiality would be lost and LPP would cease to apply to this information more widely.

- Is it possible to release some of the information and maintain LPP?

This point was illustrated in *Mersey Tunnel Users Association (MUTA) v Information Commissioner* (EA/2007/0052³). The public authority had obtained legal advice some time earlier on how to spend revenue, and had referred to it when dealing with the MTUA. The Tribunal found that:

"None of the references reveal the full advice, or anything approaching that, or quote directly from it" and that the disclosed information did not reveal "...the reasoning behind the legal advice or the other options considered".

¹ https://ico.org.uk/media/1208/legal_professional_privilege_exemption_s42.pdf

² https://ico.org.uk/media/action-weve-taken/decision-notice/2012/716774/fer_0414615.pdf

³ http://foiwiki.com/foiwiki/info_tribunal/DBFiles/Decision/i46/MerseyTunnelDecision_website.pdf

I have therefore decided that it is possible for unrestricted disclosure of part of the email chain whilst the remaining information maintains its LPP protection because the substance of the legal advice will not be revealed. Please find attached.

- Public interest arguments in favour of disclosing the requested information

The public interest inherent in this exception will always be strong due to the fundamental importance of the general principle LPP. However it is important to consider the facts of each case and I will now examine the public interest in disclosing the remainder of the information contained within the email chain whereby the GLA considers is protected by LPP.

You have submitted grounds for disclosure using three responses to the Assembly at Mayors Question Time and a London Assembly Motion dated 8 February 2017. These highlight the extent of public funding into the Garden Bridge project and the Mayors committal in ensuring to ensure proper plans are in place so the bridge will not require any further public funds.

You have also informed us that you believe the balance of the public interest *“is best served by transparency with respect to the manner in which the Garden Bridge Trust’s “Operations and Maintenance Business Plan” (OMBP) is being dealt with by the Mayor and his senior staff”*. The ICO have also provided a steer (paragraph 33⁴) for public authorities to consider *“the strong public interest in transparency as to how justice is administered”*.

Outcome

In reviewing your complaint, I examined whether the exception was correctly engaged before considering the public interest arguments. I uphold that the exception has been correctly engaged; however I have decided that some of the requested information can be disclosed without loss of LPP protection to the remaining information.

In considering whether the remaining information relating to your request can be withheld on balance of the public interest arguments for disclosure; I have decided that the balance of the public interest weighs in favour of non-disclosure for the following reasons:

- The project is still ‘live’.
- The timing of the request in relation to the current review into the Garden Bridge is a relevant factor. The review will look in detail at whether value for money has been achieved from the taxpayers’ contribution to the project, and investigate the work of TfL, the GLA, and other relevant authorities around the Garden Bridge going back to when the project was first proposed.
- The outcome of the review will therefore address the factors you have put forward for disclosure.
- The significant amount of non-LPP information already released into the public domain to aid transparency.

I trust I have addressed your concerns. However, if you remain dissatisfied you may take your complaint to the Information Commissioner at the following address:

Information Commissioner’s Office

⁴ https://ico.org.uk/media/for-organisations/documents/1625/course_of_justice_and_inquiries_exception_eir_guidance.pdf

*Wycliffe House
Water Lane
Wilmslow
SK9 5AF
<http://www.ico.org.uk/complaints>*

Yours sincerely

Ian Lister
Information Governance Manager

Appendix 1

I would like to appeal the level of redactions in the attached document that was released under a Freedom of Information request (MGLA310117-1195) on the grounds of public interest.

Please note that the Mayor has stated, on numerous occasions, that his intention to underwrite some £3.0 million per annum of Garden Bridge maintenance and management costs (as described in Mayoral Directions 1647 and 1472) is predicated on the strength of the Garden Bridge Trust's Business Plan (the "OMBP"). Beyond his public statements to this effect, I refer you, for example, the Mayor's written responses to a number of questions put to him by Members of the London Assembly, as summarised below:

- **Response to London Assembly Question 2016/1967:** *"...If the public funding is maintained and the project is completed then the remaining public contribution will deliver the £330 million of benefits described in the project's business case as well as the repayment of TfL's £20 million loan to the Garden Bridge Trust. The maintenance costs for the bridge after completion will be met by the Garden Bridge Trust, which has a credible business plan in place to raise the funds needed to meet those costs. On the balance of benefits and public costs, I have concluded it is in Londoners' and taxpayers' interests for the bridge to be completed."*
- **Response to London Assembly Question 2016/3560:** *"I am committed to ensuring that no more of Londoners' taxes that I control will go to the Garden Bridge. I will not allow any guarantees to be entered into for the maintenance and operation of the bridge unless I am convinced that this will not lead to further public expenditure down the line. It is up to the Garden Bridge Trust to demonstrate this in its business plan and any related documents."*
- **Response to London Assembly Question 2016/2537:** *"I support construction of the bridge, but I have been clear that no more of Londoners' taxes that I am responsible for will go into the project. Therefore, before I allow the guarantees to be entered into, I am reviewing all guarantee documents and the Garden Bridge Trust's business plan to ensure proper plans are in place so the bridge will not require any further public funds."*

The level of taxpayer exposure that is directly related to the Business Plan is significant. In addition to some £3.0 to £3.5 million of annual running costs, the strength of the business plan is also central to a considered understanding of the likelihood that the Garden Bridge Trust can and will repay its £20 million loan from Transport for London.

Irrespective of the merits or drawbacks of the project itself, the Mayoral guarantee of its running costs is itself a highly contentious and controversial issue, as evidenced by the Motion that was passed with near unanimous, cross-party support by the London Assembly, urging the Mayor not to enter into this arrangement:

- **London Assembly Motion, February 8, 2017:** *"This Assembly welcomes the Mayor's commitment that no further public money be spent on the Garden Bridge project and believes that the best way for him to ensure this is by refusing to sign the guarantee of the bridge's running costs."*

In view of these circumstances, I believe that the public interest is best served by transparency with respect to the manner in which the Garden Bridge Trust's "Operations and Maintenance Business Plan" (OMBP) is being dealt with by the Mayor and his senior staff. The number and extent of redactions in the attached document – where it is not even possible to see meeting agendas or invited attendees – seems excessive and overly secretive.

I therefore respectfully request that these redactions be reviewed in line with your published appeals process and in view of the significant public interest that is served by a better understanding how the Garden Bridge Trust's Business Plan is being scrutinised by The Mayor and his senior staff.