

**THE GREATER LONDON AUTHORITY'S  
ETHICAL STANDARDS REGIME**

**MONITORING OFFICER**

**DECISION NOTICE:**

**NO ACTION**

**GLA Case Reference: January 01/15**

**Decision**

To take No Action on the complaint.

**Complaint**

*Below is a general and brief summary of the Complainant's complaint.*

The original complaint ("the complaint"), made on 29 January 2015, was that the Mayor had allegedly disclosed confidential information relating to the disposal of the redundant fire stations at Southwark, Bow and Silvertown.

The complainant stated that, in the Deputy Mayor's [Sir Edward Lister] letter of 21<sup>st</sup> January 2014 to the Chair of LFEPA, it was admitted that the values of the highest commercial open market bids for the purchase of the relevant fire stations was disclosed to the Education Funding Agency [EFA]. (The letter is attached at Appendix 1.) It was alleged that this was done, despite the information about the bids being provided to the Mayor in papers that were clearly marked and intended to be confidential.

The complainant stated that the Deputy Mayor contended, in the letter of 21 January, that the value of the bids was not in itself confidential and argued that this was not correct as, irrespective of the name of the bidder, that disclosure would give the EFA an unfair advantage in being able to influence the outcome of the tender process.

The complainant's view was that it is also the Mayor's clear indication that he wishes the sales to be made to EFA, whom it is alleged that he has unfairly advantaged by his breach of confidentiality, and that the bidders whose bids were disclosed stand to suffer, whether or not their names were released, and it was alleged that the consequence is that LFEPA and through LFEPA, the Mayor, may now well be liable in damages to the disadvantaged bidders, for this "outrageous and blatant breach of confidentiality", depending on the final outcome of the sales process and the Mayor's directions.

The complainant confirmed that he wished the matter to be treated as a formal complaint against the Mayor's conduct over this "clear breach of local government law and the GLA code of conduct".

The complainant confirmed that he considered the Mayor to have breached the terms of paragraph 4(a) of the GLA's Code of Conduct for Elected Members – which states:

"You must not —

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where —

(i) you have the consent of a person authorised to give it; (ii) you are required by law to do so; (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or (iv) the disclosure is —

(a) reasonable and in the public interest; and (b) made in good faith and in compliance with the reasonable requirements of the authority;..."

## **Procedure**

The approved procedure under which complaints are to be considered is as follows:

### *"Initial assessment of your complaint*

*The Monitoring Officer will conduct an initial assessment of all complaints on a case-by-case basis and, in doing this, will also take into account relevant guidance and advice (and may seek the views of an Independent Person appointed by the GLA for such purposes).*

*The Monitoring Officer will also take into account any relevant criteria and factors that, over the course of time, the GLA's Standards Committee had previously taken into account when assessing complaints.*

*In light of the absence of formal sanctions available to the Monitoring Officer to apply in the event of a formal breach of the Code, the Greater London Authority expects this complaints process to be proportionate to the issues raised and the expected outcomes. The Monitoring Officer will therefore take into account the wider public interest and the cost to the public purse of undertaking any investigation into alleged breaches of the Code. Complaints are, therefore, only likely to be taken forward for investigation where the allegations are objectively and reasonably considered to be serious matters. Whilst every complaint will be judged on its particular merits, it is possible that, for example, a complaint by one Member of the Authority against another that only alleges a lack of due respect will not be considered to be a matter where an investigation would be appropriate nor in the wider public interest. Similarly, a suggestion that an elected Member who has exercised his or her right to voice a legitimate opinion has brought their office and/or the Authority into disrepute by so doing is likely not to be taken forward for further consideration. As an additional example, the failure of an elected Member to respond to correspondence or to choose to terminate correspondence with an individual would also be unlikely in and of itself to be investigated.*

*After conducting an initial assessment of your complaint, the Monitoring Officer will do one of the following:*

- (a) decide that no action should be taken on your complaint (and inform you of this decision and the related reasons); or*
- (b) pass your complaint to the Monitoring Officer of a different authority, if he/she considers that that is a more appropriate way of dealing with your complaint; or*
- (c) decide that he/she is minded to investigate your complaint, subject to representations of the member you have complained about (who may seek the views of an independent person appointed by the GLA for such purposes); or*
- (d) decide to investigate your complaint (and inform you of this decision and the related reasons).*

*Considering what information should be provided after initial assessment*

*After the Monitoring Officer has assessed your complaint, he/she will then decide whether a written summary of your complaint should be provided to the Member complained about; whether your identity should be provided to that Member (if this has not already happened).*

*When taking these decisions, the Monitoring Officer must consider whether providing these or any details would be against the public interest or would undermine a person's ability to investigate your complaint (as this may be necessary at a later stage).*

*How are you told about the Monitoring Officer's decision?*

*The Monitoring Officer will write to you and the Member you are complaining about following the initial assessment to inform them of the outcome. A decision not to investigate a complaint (along with summary details of the complaint) will then be published on the GLA's website.*

*A decision of 'no action' is the end of the GLA process*

*Where the Monitoring Officer has decided that no action should be taken on your complaint, there is no ability to ask the GLA for a review of the Monitoring Officer's decision, which is final. In these circumstances, you may be able to complain to the Local Government Ombudsman (PO Box 4771, Coventry CV4 0EH; Telephone: 0300 061 0614; Fax: 024 7682 0001)."*

Following consultation with all parties to the complaint (all of whom were in agreement), the Monitoring Officer decided that that these matters were not capable of effective resolution through informal means.

The Monitoring Officer then proceeded to consider whether to refer the matter for formal investigation.

## **Reasons for decision**

The Monitoring Officer considered the explanation provided to LFEPA on behalf of the Mayor in a letter dated 19 February 2015 concerning the disclosure of bid information which stated:

“There has been no breach of confidence by the Mayor or GLA staff. The only information disclosed was the level of the highest bid. The level of the highest bid was not provided to the world at large or generally to the bidders’ competitors.

These details were disclosed as part of the Mayor’s consideration of issuing a direction to LFEPA as the disposal of the fire stations and was not to scupper the bids but to find out if the EFA [Education Funding Agency] and new schools providers would increase their bids so as to make good to LFEPA the loss, or some of the loss, if best consideration was not obtained as a result of the direction. The details were disclosed outside of LFEPA’s bidding process, and after the process had ended. There was no intention to give any bidder an advantage in the process.

There was no abuse or misuse of the information provided to the Mayor, and therefore no breach of confidence has occurred.”

The Monitoring Officer obtained his own advice from Leading Counsel on this matter. That advice is privileged, but, as a detailed summary, it can be disclosed here that the QC advised as follows:

That, on the basis that: section 328A of the GLA Act 1999 would enable the Mayor to direct the Fire etc Authority to exercise the function of sale of its property by disposing of the property to a named purchaser, that the Mayor could issue guidance that in the exercise of the function of disposal of property, the Fire etc Authority should inform the Mayor of the bids received, and that it does not appear to be suggested that any directive power undertaken by the Mayor was defective, it follows that the information was provided confidentially to the Fire etc Authority but in the context of the applicable legislative regime. This legislative regime enables the Mayor to give directions such that the confidential information was capable of being provided to the Mayor. The Fire etc Authority did not act unlawfully in doing so.

In respect of the Mayor, information may be impressed with confidence if the necessary attributes of the information demands such confidence. If, as is the case, the Mayor was able to make a direction of the kind discussed, it appears unlikely the information as received was impressed with confidence in exactly the same way as it was for the Fire etc Authority. That Authority received the bids for the purpose of judging one against another whilst the Mayor, given his powers, was not in that position. His role was broader. The information was used by the Mayor for what may properly be described as a public purpose. In those circumstances it appears that one should not say there was an abuse of confidential information.

It is also noted that paragraph 4(a) of the GLA's Code of Conduct states that the Mayor (or relevant Member of the London Assembly) "...must not...disclose information given to [him] in confidence by anyone, or information acquired by [him] which [he] believe[s], or ought reasonably to be aware, is of a confidential nature, except where...the disclosure is...reasonable and in the public interest; and (b) made in good faith and in compliance with the reasonable requirements of the authority." [The underlining has been added for the purposes of this Notice only.]

The Monitoring Officer considers that:

- (a) Upon review and on advice it cannot properly be said that there has, in fact, been a "clear breach" of local government law by the Mayor or his officers in this instance; and
- (b) It follows, taking account of Leading Counsel's advice and the precise terms of the GLA's Code of Conduct, that where the Mayor can be said to have been acting within his powers and for a proper public purpose, that it cannot properly be determined that the provision of the relevant information to the third party organisation by the Mayor was unreasonable; as such, it would not be in breach of the terms of paragraph 4(a) of the GLA's Code of Conduct, as has been alleged by the Complainant.

The Monitoring Officer has therefore decided that, whilst it is accepted that the complaint was made in good faith based on what the complainant considered to have been a misuse of information provided to the Mayor in confidence, in light of the factors listed above there are not sufficient grounds to warrant a further, formal investigation of the Mayor's action that is the subject of the complaint.

### **Confidentiality and Publication**

The Complainant- Mr Andrew Dismore AM - has confirmed that his identity and a summary of the complaint could be provided to the Mayor and made available on the Authority's website. In also taking into account the public interest and the general requirement to be transparent, the GLA's Monitoring Officer decided that these details should be provided to the Mayor and should also be published.

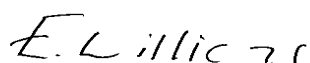
This Decision Notice has been sent to the Complainants and to the Mayor on 14 April 2015 and will be made available on the Authority's website in due course.

### **Right to appeal**

There is no right to appeal to the GLA against this decision.

**Signed:**

**Date: 14 April 2015**



**GLA Monitoring Officer**