

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 April 2023

Public Authority: Greater London Authority
Address: City Hall
Kamal Chunchie Way
London
E16 1ZE

Decision (including any steps ordered)

1. The complainant requested information about legal challenges to the Ultra Low Emission Zone (ULEX). The Greater London Authority (GLA) withheld the information requested section 32 (court records). The Commissioner's decision is that the Council was entitled to rely in section 32 to withhold the requested information. The Commissioner does not require any steps to be taken.

Request and response

2. On 9 January 2023, the complainant wrote to the GLA and requested information in the following terms:
"Please supply under FOI copies of every legal challenge to ULEZ".
3. The GLA responded on 9 January 2023 and confirmed that only one legal challenge to the ULEZ had been made, in 2021, which was dismissed by the High Court in March 2022. The GLA stated that any information held relating to the case was legally privileged.
4. On 10 January 2023 the complainant wrote back to the GLA challenging its position that all information about the case was subject to legal professional privilege. The complainant asked the GLA to review its decision, and supply him with specific documents, as listed below:

1. "The original claim form
 2. The JR claim
 3. Any skeleton argument
 4. Any witness statement
 5. The judgement and;
 6. The order".
5. The GLA provided the outcome of its internal review on 2 February 2023 and stated that the documents in question were exempt under sections 32(1)(a), (b) and (c).

Reasons for decision

6. This reasoning covers whether the GLA is entitled to rely on section 32(1) of the FOIA to refuse to provide the requested information.

Section 32 court records

7. Section 32(1) of FOIA states that information held by a public authority is exempt information if it is held only by virtue of being contained in:
- "(a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
 - (b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or
 - (c) any document created by
 - (i) a court, or
 - (ii) a member of the administrative staff of a court,
- for the purposes of proceedings in a particular cause or matter".
8. Section 32(1) is a class based exemption. This means that any information falling within the category described is automatically exempt from disclosure, regardless of whether or not there is a likelihood of harm or prejudice if it is disclosed. Section 32 is an absolute exemption and therefore it is not subject to the public interest test.
9. The GLA explained that the requested information forms part of the court bundle for the purpose of litigation. It argued that the documents listed clearly fell within the scope of both sections 32(1)(a), (b) and (c) of the FOIA. The GLA noted that the Commissioner's own guidance on this exemption used the examples of claim forms, witness statements,

skeleton arguments and trial bundles as examples of documents 'likely' to fall within the scope of sections 32(1)(a) and (b) of the exemption. The GLA confirmed that no judgment was made in the particular case in question as the case was dismissed however, it confirmed that it considered section 32(1)(c) to apply to the order.

10. The GLA also pointed out that the Commissioner's guidance confirmed that "an authority may still claim section 32 after the relevant court, inquiry or arbitration proceedings have concluded. This was confirmed by the Supreme Court's decision in *Kennedy v The Charity Commission* [2014] UKSC 20 (26 March 2011)".
11. In this case, based on the wording of the request and having considered the GLA's submissions, in the absence of any evidence that the GLA held the information for any other purpose, the Commissioner is satisfied that the requested information withheld by virtue of section 32(1)(a) and (b) is only held by virtue of being contained in a document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter.
12. Similarly, with respect to the requested information withheld under section 32(1)(c), he is satisfied that it is only held by virtue of being contained in a document created by a court, or a member of the administrative staff of a court, for the purpose of proceedings.
13. The withheld information is therefore exempt from disclosure on the basis of sections 32(1)(a), (b) and (c).

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

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF