

GLA14/7.4

Disclosure of Information
under the Freedom of
Information Act 2000

17 April 2007

BOARD PAPER REFERENCE – GLA14/7.4 – DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT 2000

Issue

1. Categories of exemption that are most likely to be relevant for requests for information held by the GLA.

Recommendations

2. Information requests will be considered on a case-by-case basis. However, broadly speaking, it is likely requests for intelligence, inspection reports and personal information will be exempt from disclosure. Information about the GLA, its policies and procedures, will generally be released.
3. To comment as necessary.

Background

4. The Secretary of State has authorised the Chief Executive of the Gangmasters Licensing Authority, or in his absence the Chairman of the Authority, to act as a 'qualified person' under section 36(5)9(o)(iii) of the Freedom of Information Act 2000.
5. This power can not be delegated to any other member of staff at the GLA. In practical terms, this appointment means the Chief Executive is authorised to refuse to disclose information under section 36(2) of the Act in cases where disclosure would undermine the operational ability of the GLA, another government department or Agency, or prejudice or be likely to prejudice the effective conduct of public affairs.
6. GLA Board Paper 13/8.6 explained that although all requests for disclosure under FOIA must be treated on a case-by-case basis, certain categories of information would normally be refused disclosure. A list of these categories with a supporting rationale would be drawn up by the GLA executive for consideration and decision by the Qualified Persons. The paper indicated that the GLA Board would be invited to comment on the possible categories of information before that decision is taken.

Discussion

7. Part I of the Act deals with the general rules for access to information held by public authorities. Within Part 1, section 1 gives a general right to any person making a request for information to a public body to be informed in writing whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him. The duty of a public authority to comply with the general right is referred to as "the duty to confirm or deny". Part II of the Act provides a number of possible exemptions.

8. Part I of the Act also describes the effect of the exemptions in Part II on the general duty to confirm or deny. In brief, where any of the exemptions provided in Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that the general right does not apply where either:
 - the provision confers absolute exemption, or
 - in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information.
9. Several of the exemptions described in Part II of the Act may be applicable to different categories of information held by the GLA. "Investigations and proceedings conducted by public authorities" (section 30), "Law enforcement" (section 31) and Court records (section 32). In general therefore, information relating to businesses, individuals and operations that is held by or used by the GLA Enforcement Team could be regarded as exempt, because the purpose of that holding is an investigation with the prospect of prosecution.
10. Other relevant exemptions include "Relations within the United Kingdom" (section 28), "Prejudice to effective conduct of public affairs" (section 36), "Personal information" (section 40), "Information provided in confidence" (section 41) and "Commercial interests" (section 43). Much of the information held by the GLA could be exempted by one or more of these sections. It is considered likely that a case could be made to exclude individual intelligence, inspection reports and personal information in response to requests for these categories of information. For example, a routine intelligence report would generally have been provided in confidence. Its release would therefore constitute a breach of confidence that could be actionable, making the information exempt. Similarly, licence application details and inspection reports may include details that if released could prejudice the commercial interests of the business concerned.
11. In summary, all information requests will be considered on a case-by-case basis. It is likely however that requests for intelligence, for application inspection and compliance inspection reports, and for personal information about GLA staff would be refused under one or more of exemptions indicated. Information about the GLA, its policies and procedures, will generally be released.

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13 March 2007