



IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL (INFORMATION RIGHTS) UNDER SECTION 58 OF THE FREEDOM OF INFORMATION ACT 2000

Appeal No: EA/2011/0003

BETWEEN:

LONDON BOROUGH OF HARROW

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

COUNCILLOR PAUL OSBORN

Second Respondent

CONSENT ORDER APPROVAL

PURSUANT to Rule 37(1) of the Tribunal Procedure (First-tier) (General Regulatory Chamber) Rules 2009, the Tribunal approves the Consent Order in this matter in the form attached hereto, which has been agreed by all parties and dated 28th February 2012.

Signed:

[Signed on original]

Chris Hughes

Tribunal Judge

Dated: 1st March 2012

BETWEEN:

LONDON BOROUGH OF HARROW

Appellant

and

THE INFORMATION COMMISSIONER

First Respondent

and

COUNCILLOR PAUL OSBORN

Second Respondent

CONSENT ORDER

Pursuant to rule 37(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, upon reading the parties' agreed statement (in Annex A),

IT IS ORDERED BY CONSENT THAT:

1. The appeal be allowed.
2. The Decision Notice FS50381681 dated 29 November 2011 to be amended in the terms set out in Annex B.
3. There be no order for costs.

Dated this 28th day of February 2012

ANNEX A

Statement of reasons for consent order

1. This appeal is brought against a Decision Notice dated 29 November 2011 (reference FS50381681). The Decision Notice concerned a request made by the Second Respondent for correspondence relating to requests for information that he had made about “the Challenge Papers”.
2. In his Decision Notice, the Commissioner found that information that had been withheld under section 36 of the Freedom of Information Act 2000 (“FOIA”) was not exempt and ordered its disclosure. However, he upheld the Appellant’s reliance on section 42(1) FOIA in relation to other information with the exception of two documents, namely -
 - (a) A draft memorandum dated 6 January 2011 addressed to the Chairman of the Standards Committee, which was attached to an email sent to a Solicitor at the Council; and
 - (b) An email dated 17 January 2011 timed at 08:57 also to Solicitors at the Council.
3. The Council appealed only against the Commissioner’s findings in relation to the above two documents (hereafter “the disputed information”).
4. In the light of the matters set out in the Appellant’s grounds of appeal, the First Respondent now accepts that the disputed information is exempt under section 42(1) FOIA and that the public interest in maintaining that exemption outweighs the public interest in disclosure.
5. By directions dated 20 January 2012, the complainant was joined as the Second Respondent and provided with the opportunity to indicate whether he wished to oppose the appeal.

6. The Second Respondent was concerned that he was not informed that the Council had relied on section 42(1) FOIA until the Decision Notice was published and as such was unable to make any representations to the Commissioner on this exemption. However he accepts that the public interest in upholding the exemption outweighs the public interest in disclosure. Further he accepts that the disputed information is exempt under section 42(1) FOIA.

ANNEX B

The Decision Notice FS50381681 dated 29 November 2011 is amended in the following terms

1. Paragraph 13 is to be replaced by the following –

“Having inspected the withheld information to which the council had applied the exemption, the Commissioner was satisfied that it consisted of communications made by or to qualified solicitors for the dominant purpose of obtaining or giving legal advice and was therefore subject to legal professional privilege”.

2. Paragraph 52 is to be replaced by the following –

“The Commissioner’s decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the FOIA –

- It correctly applied section 42(1) and it correctly determined that the public interest in maintaining the exemption outweighed the public interest in disclosing the information”.