

Graham Burgess
Chief Executive

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to Mr John Brace

date 28 May 2014

By Email Only

your ref
my ref
service Chief Executive's Office
tel 0151 691 8589 Please ask for Graham Burgess
fax
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Dear Mr Brace

FOI Review

Further to your request for an Internal Review of your FOI enquiry, I have reviewed your request and also the additional comments that you have made.

As Chief Executive of Wirral Council, I am the Reviewing Officer where an exemption is applied pursuant to Section 36 Freedom of Information Act 2000 ("FOIA").

I have set out my responses below and answered the various points you raised in turn.

Point 1

The response given to the request states "Yours sincerely and sent on behalf of the Qualified Officer Surjit Tour".

Although Surjit Tour is the Monitoring Officer and a qualified person under the legislation, as this opinion is sent "on behalf of the Qualified Officer" is it unclear whether this opinion is the opinion of Surjit Tour himself or someone else acting on his behalf (who is not the qualified person). Therefore the first ground for this internal review is that it is unclear whether the opinion is of the qualified person or an opinion of someone who is not the qualified person acting on the qualified person's behalf.

Response

The reply was formulated and written by Mr Tour, the Council's Monitoring Officer and the Qualified Officer for the purposes of Section 36 FOIA.

The reply is the opinion of Mr Tour; however was sent on his behalf by Jane Corrin.

Point 2

The second ground for this internal review is that the reason given for withholding information would only apply to the minutes of the meetings and that this request was for agendas and minutes. Agendas would not contain the views given as the reason for the exemption.

Response

The initial response, relying on section 36, relates to the need for there to be safe space for the free and frank exchange of views for the purpose of deliberation. I believe that it would be inappropriate to supply copies of any Agendas, which would disclose the matters to be discussed at the meeting as it is likely to inhibit that free and frank exchange of views.

Point 3

Thirdly, the members of the Leaders Board are the leaders of Labour Group, Conservative Group and Lib Dem Group on Wirral Council (Cllr Phil Davies, Cllr Jeff Green and Cllr Phil Gilchrist). These three are politicians, all three often express their opinion at public meetings and in the press on a variety of issues. Based (in part on whether they agree) the public then express their opinion most years by voting (or not voting) for them as individuals or their respective political parties. There is therefore a public interest in the public knowing their stated positions on matters involving Wirral Council in advance of casting a vote. This is a public interest argument in favour of disclosure that wasn't considered.

Response

I agree with your statement that the three politicians often express their opinion at public meetings and to the press. However, there is a need for politicians to have safe space for the free and frank exchange of views for the purpose of deliberation, particularly when they are formulating and exploring options. I believe the use of Section 36 and the balance of the public interest has been correctly relied on by Mr. Tour.

Point 4

Your second reason for refusal (s. 40(2)) states that providing the minutes would allow individuals to be identified. I presume these individuals referred to are the members of the Leaders Board (if so the previous arguments about disclosure apply) with there being strong public interest arguments for disclosure. If they are not the individuals who make up the Leaders Board, but individual officers providing advice to the Leaders Board then the minutes could be supplied with the names (or job descriptions) of these officers redacted.

Response

I have reviewed the ICO Guidance (details of which can be found via the link below) in relation to engaging the exemption under Section 40 (2). It is my considered opinion that reliance on Section 40 (2) for the reasons set out in Mr tour's initial, response is correct and reasonable in this case.

http://ico.org.uk/for_organisations/freedom_of_information/guide/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf

Point 5

Finally prior to the Leaders Board being created in the recent past the Council's Corporate Governance Committee comprised the Leaders and a number of Cabinet Members. This committee met in public, its agendas and minutes were published on the Council's website and any member of the public could attend its public meetings if they so wished to hear the views expressed at it. Therefore if the Council could do this, which also involved the three party leaders with (to my memory) no accusations by anyone (whether councillors or officers) of a "chilling effect" on views expressed during its meetings why is the Leaders Board any different?

Response

The Leaders Board does not meet in public and provides a necessary "safe space" for the free and frank provision of advice or exchange of views on challenging and difficult matters between Group Leaders and Council Officers. The application of the exemption contained within Section 36 is appropriate and justified.

In summary, I have given careful consideration to your request, the response provided by Mr. Tour and the subsequent points you have raised in your request for an Internal Review. My considered opinion is that I fully concur with Mr. Tour's initial response and the reasons and rationale set out therein. I am of the opinion that the exemption contained within Section 36 FOIA has been correctly applied and justified having regard to all relevant and material factors and issues.

It is my considered and reasonable view that Section 36 can be relied on, if disclosure would be likely to:-

- (b) inhibit the free and frank provision of advice or exchange of views; or
- (c) otherwise prejudice the effective conduct of public affairs

Section 36 requires the qualified person to give their reasonable opinion that disclosure of the requested information would be likely to cause the types of prejudice or inhibition listed at b and/or c above. I have had regard to the ICO Guidance "Prejudice to the Effective Conduct of Public Affairs (section 36), Version 2, 22 March 2013, in considering this matter.

I am satisfied that releasing the requested information is likely to inhibit the free and frank provision of advice or the exchange of views between the Group Leaders and Council Officers at the Leaders Board meetings. A range of challenging, sensitive and significant matters are discussed and debated at the Leaders Board meetings. It is therefore my reasonable opinion that the exemption contained with Section 36 FOIA applies to your request for information.

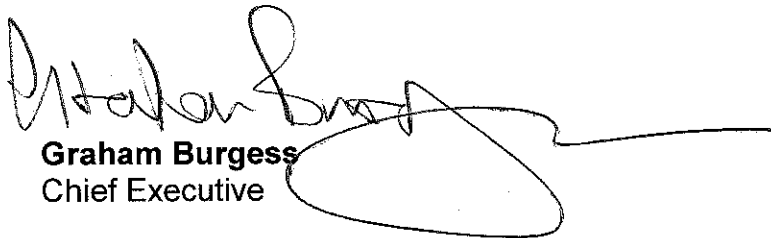
In considering the application of Section 36, I am required to consider the public interest test. I have considered the public interest test factors in favour of disclosure and those in favour of none disclosure detailed in the initial response provided by Mr Tour. It is my considered and reasonable opinion that the reasons and rationale provided in this regard remain valid and robust and do not wish to add anything further. I am satisfied that the public interest test in maintaining the exemption outweighs the public interest for disclosure.

If you remain dissatisfied with this response, then you have the right to complain to the Information Commissioner, whose address is:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

www.ico.gov.uk

Yours sincerely



Graham Burgess
Chief Executive