



request-686728-da61e709@whatdotheyknow.com

Dear John Hanlon

Freedom of Information Request 4939685 – Response & Internal Review

Thank you for your request that the City Council undertake an Internal Review of the above information request. For purposes of clarity and context, your original request and our accompanying responses are summarised below as follows –

- “1. All emails between Brabners and LCC over the Tarmacademy?”*
- 2. A copy of the legal advice Brabners gave to LCC over the Tarmacademy?”*

Response:

Liverpool City Council would firstly take the opportunity to apologise for the delay in responding on this occasion. By way of context and as you will be aware, Liverpool City Council in common with all other public authorities in the UK, Europe and worldwide have, since March, been dealing with and responding to the Coronavirus pandemic. The introduction of substantial Government restrictions well before the submission of your request have had wide reaching and ongoing impacts being felt across society. These impacts specifically affected all Service Areas of the City Council as Officer resources and personnel are diverted to supporting the most vulnerable residents of this city.

Specifically, from early March, direct impacts were being seen for the City Council in terms of staff absence due to symptoms of or self-isolation due to Coronavirus as well as significant and substantial increases in demand for those Services which specifically support children, the elderly and the most vulnerable residents across Liverpool.

In light of the above factors, Officers from early March were gradually and in increasing numbers assigned to different Service Areas to ensure continuity of service, provision and support for children, the elderly and the most vulnerable residents across Liverpool as indicated above.

This impacted considerably on the ability of colleagues to identify, retrieve and collate information, as well as the absence of relevant Officers whose knowledge informs the preparation and content of responses whilst resources are focussed on the ongoing pandemic.

With the above factors in mind, we greatly appreciate your patience and understanding for the delay on this occasion. We acknowledge that on this occasion, we have been unable to meet deadlines for response associated with your request, and on that basis uphold your complaint on the basis that our response has not been issued in a timely manner, due to the impacts detailed above.

Your complaint is therefore upheld on this basis.

Turning now to the specifics of your request. Our responses to this request are as follows –

In relation to both elements of your request, we note that such correspondence would relate to the provision of legal advice, and constitute correspondence between a solicitor and client that inherently include exchanges of legal advice and position.

We have therefore assessed such correspondence, if extant, in light of exemptions as detailed below.

Section 42 – Legal Advice Privilege

Such correspondence if extant of its very nature and content and reflecting the client legal responsibilities of the third party external Solicitor would by definition include exchanges of legal advice and position. An exemption to disclosure of such correspondence is set out at Section 42 of the Freedom of Information Act 2000.

Inherent within this correspondence and supporting documentation is advice offered from the City Council's legal representatives setting on a range of key operational matters relating to the City Council.

With this in mind the City Council has then assessed public interest considerations relating to this request.

Section 42 – Public Interest Test

In considering the public interest test and its application in the context of the information retrieved, as is standard practice when dealing with all such issues, the City Council has carefully considered the factors both for and against disclosure of the information held.

The City Council does not consider that generic public interest arguments are relevant in the majority of cases as indeed this one – rather, the specific circumstances and nature of the information enable this to be focused and therefore more refined.

Factors in favour of disclosing the information –

- (i) transparency of the operational management structures of the City Council and exchanges of information on advice of a professional and specialist legal nature; and
- (ii) the level of public interest in disclosure and understanding how public authorities such as the City Council operate.

Factors against disclosure of the information –

- (i) inherent within the exchanges of emails requested is legal and technical advice setting out a range of legal options and potential implications arising thereof. The disclosure of this legal advice would compromise the City Council's ability to effectively conduct its business as a public authority;
- (ii) the overriding principle within the English Legal System of confidentiality and privilege in respect of exchanges of legal advice between solicitor and client; and
- (iii) the level of public interest – limited. The interest of an individual or small group of individuals does not of itself constitute public interest of sufficient weight such as to override fundamental principles of the English Legal System.

A key factor in the application of the Exemption was that of the ability of an organisation such as Liverpool City Council to receive legal advice in relation to negotiations for previous, current and ongoing matters and to be able to continue and conclude such negotiations in a manner which is not prejudicial to the legal interests of either itself or indeed any third party.

It is with this in mind that the City Council considers that the factors against disclosure of such information outweigh those in favour of publication. On this basis the City Council applies Section 42 FOIA to the information held insofar as Legal Advice Privilege is considered to be engaged.

Section 43 (2) – Prejudice to Commercial Interests

In addition and in the alternative to the application of exemptions under Section 42, such correspondence of its nature and reflecting the seniority and responsibilities of the Officer and third party concerned similarly if disclosed have the potential to prejudice the commercial interests of either the City Council or third parties.

Given the nature of the information relates to the commercial and financial nature of such exchanges, the City Council considers that a Section 43 (2) Exemption may be engaged. With this in mind the City Council has then assessed public interest considerations relating to this request.

Section 43 (2) – Public Interest Test

In considering the public interest test and its application in the context of the information retrieved, as is standard practice when dealing with all such issues, the City Council has carefully considered the factors both for and against disclosure of the information held.

The City Council does not consider that generic public interest arguments are relevant in the majority of cases as indeed this one – rather, the specific circumstances and nature of the information enable this to be focused and therefore more refined.

Factors in favour of disclosing the information –

- (i) transparency of the process with which the City Council considers commercial and financial proposals relating to the administration of its assets and services; and
- (ii) the level of public interest in understanding the operations of public authorities

Factors against disclosure of the information –

- (i) inherent within such communications are exchanges relating to business planning, commercial and financial consideration. The disclosure of information of this type relating to either party would compromise the City Council's ability to effectively consider commercial options and subsequently conduct negotiations and could give rise to an actionable breach of confidence as well as inhibiting the effectiveness of the City Council's negotiations on future commercial projects;
- (ii) such processes are already subject to scrutiny and held to account through the Scrutiny Process as discharged through public meetings of the City Council's Select Committees; and

(iii) the level of public interest – limited (this request).

A key factor in the application of the Exemption was that of the ability of an organisation such as Liverpool City Council to undertake and ultimately complete commercial negotiations on an extensive range of operational matters

Were information of this nature to be routinely disclosed the ability of the City Council to achieve the best possible commercial and financial outcomes for the use of public funds as well as supporting regeneration and wider activities under its general powers of competence, and to be able to continue and conclude such negotiations would be significantly prejudiced.

Taking into consideration all of the above factors, Section 43 (2) is therefore applied to the extent that any information contained within email exchanges to which your request relate include information of a commercial and financial nature.

This concludes our response.

In accordance with the application of Sections 42 and 43 (2) of the Freedom of Information Act 2000 we have not provided all of the information requested. As such this letter serves as a Section 17 Notice under the Freedom of Information Act 2000.

If you remain dissatisfied you may also apply to the Information Commissioner for a decision about whether the request for information has been dealt with in accordance with the Freedom of Information Act 2000.

The Information Commissioner's website is www.ico.gov.uk and the postal address and telephone numbers are:- Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK95AF. Telephone 0303 123 1113. Email – mail@ico.gsi.gov.uk (they advise that their email is not secure)

We trust this information satisfies your enquiry.

Yours sincerely

A Lewis

Information Team