

Information Management Team

Khaleel Edwards

FOI Reference: **9737745**

Email: foioc@hackney.gov.uk

Date: 25 May 2022

Dear Khaleel Edwards

Freedom of Information Act 2000 - Followup to Q1

Following our initial response of 23 May 2021, thank you for providing clarification to Q1 of your former request received 24 May 2022. This has now been processed and our response is below.

Your request states:

I would like to request the below information regarding the PanLondon Dockless Bicycle Byelaw:

Clarification: In order to enable London Councils to implement a pan-London byelaw, every local authority needs to delegate certain powers to London Councils. Hackney Council has not done this yet. Therefore I would like to know Why have the powers for the Pan-London dockless bike Byelaw not been granted to London Council Transport and Environment Committee?

1) Why have the powers for the Byelaw not been granted to London Council Transport and Environment Committee?

The Council's Response

We have detailed below the information that is being released to you.

The decision is ultimately London Councils' decision to make, however, Hackney has the following observations that London Councils should consider.

Hackney's position on the regulation of dockless shared mobility is public and well publicised. Dockless bikes have been on the agenda for at least 3 formal committee meetings, where Hackney has made its position on the need for tough



regulation clear and this is on the public record. This has included a Full Council meeting in November 2019

(<https://hackney.moderngov.co.uk/ieListDocuments.aspx?CId=112&MId=4655>)

where discussion on the Byelaw was itself subject to a decision and the Council:

RESOLVED, that Council delegates the Council's functions relating to making and promoting the pan-London dockless byelaw to London Council's Transport and Environment Committee.

RESOLVED, Council approves the Chief Executive as the authorised person to delegate the Council's functions in recommendation 2.1 of the report.

In short, Full Council agreed in principle to the byelaw, but delegated the decision on what wording of the byelaw we would find acceptable to the Chief Executive and this is on the public record.

If London Councils were to name Hackney as one of the boroughs holding out, it could prejudice London Council's ability to conduct public affairs, as anyone could easily deduce from our public position that there are ongoing discussions between us on whether or not the Byelaw is strong enough. It would in essence "lift the lid" on frank policy discussions between London Councils and Hackney which could harm London Councils' legal position (or any of the other boroughs implementing the byelaw) in the future.

Therefore, we consider this falls under section 36 exemption.

Section 36 provides an exemption if disclosure would or would be likely to:

(a) prejudice collective responsibility or the equivalent in Wales and Northern Ireland; (b) inhibit the free and frank provision of advice or exchange of views;

or

(c) otherwise prejudice the effective conduct of public affairs.



In Favour of Maintaining the Exemption

If the London Borough of Hackney is named as one of the boroughs holding out, it could prejudice London Council's ability to conduct public affairs, as anyone could easily deduce from our public position that there are ongoing discussions between us on whether or not the Byelaw is strong enough.

It would, in essence "lift the lid" on frank policy discussions between London Councils and Hackney which could harm London Councils' legal position (or any of the other boroughs implementing the byelaw) in the future.


Additionally, London Councils and Hackney Council have met with external Counsel for both parties present and it was agreed that Hackney's external Counsel would provide additional legal advice on the Byelaw. And therefore, we would further argue that Hackney's position on the Byelaw is wrapped together with legal advice that it is giving to London Councils, which would be exempt under section 42.

Lastly, Hackney would also want consideration given to its commercial interests. Section 43(2) exempts information whose disclosure would, or would be likely to, prejudice the commercial interests of any legal person (an individual, a company, the public authority itself or any other legal entity).

Hackney would also want consideration given to its commercial interests. Hackney has a commercial interest and an ability to generate income through the operation of a Dockless Bike scheme. The Council's position on the regulation of the schemes through the Byelaw is linked to its commercial interests and one of the key factors in the ongoing discussions with London Councils is in relation to how the Byelaw affects our commercial position.

Factors in favour of maintaining the exemption

To justify that Hackney has a commercial interest: Hackney Council has recently conducted a procurement exercise and selected a Dockless Bike Operator (for 2 years, with potential 2 year extension) and the structure of the contract



generates income for the Council. There is a high likelihood that the Council will re-tender the contract in a window of four years or less.

Impact of disclosure on Hackney's Commercial position: While on the face of it, simply disclosing that we have not signed the Byelaw would seem not to directly prejudice our commercial position. However, combined with the reasons given already, i.e. that someone could readily deduce why we haven't signed up, there is a risk that this could negatively affect our ability to negotiate or to compete in a commercial environment in the future re-tendering exercise as the disclosure could introduce doubt in regards to the exclusivity of operations that is a core part of our commercial leverage. If other operators deduce a vulnerability in the regulatory regime, this undermines the Council's ability to procure exclusive operators.


In favour of disclosure

In considering the public interest test relating to a section 43 exemption, the Council would consider that in favour of disclosure there is a strong public interest in openness and transparency, and also that there is an argument that transparency in procurement can promote competition.

Balance of the public interest

Regarding the former point in favour of disclosure, the Council considers that on balance the public interest in protecting the Council's commercial interests and ability to generate income outweigh the argument in favour of the public's interest in transparency in regards to this element of the procurement, which differs from a situation where the procurement is to spend public money, in this case the Council is in receipt of income.

Regarding the latter point in favour of disclosure, the Council would consider that it has conducted a highly transparent recent procurement exercise and has already disclosed the information that it feels would encourage other bidders to develop bids in the future and that disclosing this information would have no positive impact on attracting future competition.



Against disclosure, the Council would consider that introducing doubt about the regulatory regime, ie by disclosing that a partner that favours strong regulation has not signed up to the Byelaw, could in turn negatively affect our ability to negotiate or to compete in a commercial environment in the future re-tendering exercise, and this in turn would harm the Council's ability to generate income that is reinvested back into the public service. For these reasons, the Council considers that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

For these reasons, the Council considers that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Therefore, we would consider an exemption under section 43 would also be justified under the public interest test, although it would be unnecessary to argue for a s43 exemption, if you agree and favour our position on sections 36 and 42.

Lastly, I trust that London Councils will use this information as background, but will write their own response without disclosing any sensitive information in this email which is not for use in the FOI response.

Please quote the reference number **9737745** in any future communications.

Appeals & Complaints Procedure

If you are dissatisfied with this response and wish to request an internal review, please write to the Information Management Team as a reply to this message.

Your request should be submitted to us within 40 working days of receipt by you of this response. Any request received after this time will only be considered at the discretion of the Council.



If you are still dissatisfied with the Council's response after the internal review you have a right of appeal to the Information Commissioner at:

<https://ico.org.uk/global/contact-us/email/>

Telephone: 0330 123 1113

We will now close your request as of this date.

Yours faithfully

Information Management Team
London Borough of Hackney

