

Internal Audit & Risk
London Borough of Bexley
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The person dealing with this matter is

Direct Dial 0203 045 4943
Date 13 July 2015
David Hogan

Mr Malcolm Knight
By email to: bexleycouncil@malcolmknight.co.uk

Dear Mr Knight

Thank you for your request for information received on 16 June 2015 concerning:

Please provide all Bexley Council internal audit reports made in the period 5th June 2014 to 31st May 2015 relating to recovery of council parking debts suitably redacted in line with legislation.

This request is being handled under the Freedom of Information Act 2000 (FOI Act).

I am writing to inform you that we have searched our records and there is one report you requested held by the London Borough of Bexley. This internal audit report was undertaken to investigate issues in relation to your objection to the accounts of the London Borough of Bexley which you have raised with the Council's external auditor.

The Internal Audit report refers extensively throughout to a report from the Local Government Ombudsman. The Ombudsman information is an essential part of the information presented throughout the report – it is not peripheral or incidental. I consider that the absolute exemption set out in Section 44 (Prohibitions on disclosure) sub-section (1) (a) of the FOI Act applies to the information requested. Section 44 (1) (a) is engaged where the disclosure is prohibited “by or under any enactment”. In this case, the disclosure is prohibited by virtue of the Local Government Act 1974.

Section 32 (2) of the Local Government Act prescribes that the Ombudsman is not permitted to disclose any information obtained in the course of, or for the purposes of, the investigation of a complaint, unless they consider it is necessary for the purposes of the investigation (or for other very limited reasons mostly related to legal proceedings). This ‘statutory bar’ extends to local authorities holding information from the Ombudsman.

Additionally, given the nature of your objection, the report refers extensively to legal advice sought and obtained. The client's ability to speak freely and frankly with their legal adviser in order to obtain appropriate legal advice is a fundamental requirement of the English legal system. Section 42 exemption of the FOI Act is therefore also engaged, in respect of legal professional privilege.

Section 42 is not an absolute exemption and therefore the authority needs to apply the public interest test by considering whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

Factors in favour of disclosure

A general public interest in transparency, accountability and furthering public debate.

Factors in favour of withholding

The concept of legal professional privilege and the rationale behind the concept. This ensures frankness between lawyer and client which goes to serve the wider administration of justice. The Information Commissioner's guidance is that the general public interest inherent in this exemption will always be strong due to the principle behind legal professional privilege. Tribunal decisions have made it clear that some clear, compelling and specific justification for disclosure must be shown which equals or outweighs the public interest in maintaining the exemption.

In general terms, there is therefore a very substantial public interest in maintaining confidentiality in respect of legal privilege.

Therefore, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

If you are unhappy with the way your request for information has been handled, you can make a complaint and request a review by writing to:

Complaint and Freedom of Information Officer
London Borough of Bexley
Civic Offices
2 Watling Street
Bexleyheath
Kent
DA6 7AT

Or by email to foi@bexley.gov.uk

Yours sincerely

David Hogan
Head of Internal Audit, Counter Fraud & Risk