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Harrison Grant

By email: [REDACTED]

Our ref: MGLA240912-7280

Your ref:

Date: 14 December 2012

Dear Harrison Grant

I would like to apologise once again for the delay in providing a full response to Mr Birkett's request for information under the Environmental Information Regulations (EIR). As explained previously, this delay was mainly down to the GLA dealing with a separate complaint to the Information Commissioner's Office (ICO) where some of the same information was requested.

Having now released some of this information to the complainant, we are in a position to provide Mr Birkett with a copy and address the outstanding parts of his request.

The request was as follows:

Any information that shows what the Mayor/GLA is doing to influence directly or indirectly the future shape of the Air Quality Directive, to include:

- *correspondence about the aims of AIR and JOAQUIN*
- *minutes of meetings*
- *emails*
- *impact or other assessments*

...between June 2010 and 13 May 2012.

Please find attached copies of some correspondence relating to the GLA's work on AIR. Some correspondence and minutes of meetings have been withheld as they are exempt from disclosure under the EIR, as described in further detail below.

No impact assessments have been carried out. A presentation that was provided to the European Commission can be found at: <http://www.london.gov.uk/eupartnerships>.

With reference to JOAQUIN, the purpose of this group is to deliver projects in partnership with cities and regions across North West Europe. JOAQUIN does not lobby (either directly or indirectly) the European Commission about the Air Quality Directive so there is no relevant information relating to your request.

The GLA is (and always has been) happy to provide information on London's views and activities in relation to EU air quality policy and we have recently developed a specific web page to facilitate access to the GLA's work on air quality with its European partners

(<http://www.london.gov.uk/eupartnerships>). Our very strong concern, however, is that the release of information would significantly harm our relations with other bodies, on whom we rely for co-operation in making our case on a range of urban issues which have an EU dimension, not just environmental issues.

Withheld information

There is some information that the GLA believes should remain exempt from disclosure under the following 'exceptions' of the EIR.

Exception 12(4)(d) - The request relates to material which is still in the course of completion, to unfinished documents or to incomplete data

Some of the requested information contains early drafts of documents such as the AIR Memorandum of Understanding (MOU) which forms the basis upon which the AIR group works together in order to exchange best practice and cooperate at EU level on air quality issues. These drafts are clearly unfinished documents and remain unfinished despite completion of a final version.

Exception 12(5)(a) - Disclosure would adversely affect international relations

The exception at 12(5)(a) is being applied to withhold correspondence between the GLA and 11 other European regions that make up the AIR group (together 12 regions from seven Member States). The term 'international relations' refers to relationships between the UK and other governments or international bodies, including the EU.

London is one of around 300 cities or regions represented in Brussels to influence EU policy, legislation and funding. London's European Office does this both by directly communicating with EU institutions (including the EU Committee of the Regions) and other stakeholders and by working through formal and informal networks of cities and regions. An essential part of this activity is establishing trust between London and other stakeholders to enable the sharing of information and views, and where appropriate to carry out joint activities, including lobbying of the EU in areas of common interest.

The Mayor of London has responsibility for air quality in London and, through his air quality strategy, makes policies and proposals to implement national policies, including the achievement of air quality standards that ultimately derive from EU legislation. The Mayor and the GLA work closely with DEFRA and where appropriate with the European Commission in the development of air quality plans and policies.

The AIR group is one example of an informal network (i.e. essentially a series of meetings between different organisations with no permanent or dedicated secretariat or budget) established to represent the views of a number of cities/regions to the EU on air quality issues. Its primary purpose is to agree common positions on air quality and to organise activities and events to promote those positions.

The information concerned in this request consists of email communications between the GLA and other European regions, the exchange of views between the bodies, and discussions on policy and strategic positioning in relation to the European Commission, European Parliament and other stakeholders.

The exception is deemed necessary to ensure trust and confidence is maintained between the GLA and the AIR group members - allowing for free and frank exchange of opinions and views without fear of them being made public at a later date. This is essential to allow the GLA to engage effectively with its European partners. If this information was released this would negatively impact on London's relationships with the cities and regions involved with the AIR group and also other cities and regions London works with on other issues, since it would be seen as a breach of trust.

Exception 12(3) - To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise in accordance with regulation 13

The GLA is applying this exception to withhold the names and details of junior officials from the GLA and the regions who appear on the email communications. The GLA applied the same test as that under section 40(2) of the Freedom of Information Act: i.e. does the information identify an individual and would disclosure of that information breach any of the data protection principles of the Data Protection Act. As the communicating officials in the relevant emails are non-senior and not public-facing or in positions of accountability, their names and work contact details are considered as personal data and disclosure would be unfair as they would have no reasonable expectation that their details would be made public in such a way.

Public interest test

Factors in favour of disclosing the information:

- Air quality is an increasingly high profile concern and its implications are far-reaching, both in terms of the health of individuals who are affected by it and how separate regions and countries decide to tackle it. It is in the public interest for citizens to be aware of what the appropriate authorities are doing to address air quality and how they are interacting with the European Commission to shape air quality policy.

Factors in favour of maintaining the exceptions:

- The draft and incomplete documents and the email correspondence reflect the contributions and feedback of the 12 EU regions that form the AIR group, on both the MOU and how the group can influence the European institutions. The public interest favours maintaining the exceptions at 12(4)(d) and 12(5)(a) in order to protect the 'safe space' that public bodies reasonably require in order to exchange views and agree group decisions in a sufficiently private arena without fear that those opinions and suggestions will one day be put into the public domain. The draft documents and emails largely represent the views and work of junior officials and as such it would be unfair to have these, rather than the completed and politically approved final versions of policies and position papers (which AIR publishes online at <http://en.vleva.eu/air>) scrutinised and held to account. If such drafts and communications were disclosed, other AIR regions, and other regions and cities we work with on other topics, would be hesitant to share their views and unfinished work with the GLA in the future, thereby creating a "chilling affect". This would undermine the UK's reputation and close working relationships with its European partners.
- The GLA is (and always has been) happy to provide detailed information on London's views and activities in relation to EU air quality policy – and is only opposed to releasing

information which would harm our relations with other bodies. The GLA proactively publishes information on its air quality activities at: <http://www.london.gov.uk/eupartnerships>.

- In *Campaign Against The Arms Trade v Information Commissioner and Ministry of Defence (EA/2007/0040 26 August 2008)*, the Information Tribunal found that:

"Parliament recognised and we accept that there is an inherent disservice to the public interest in flouting international confidence... that confidence continued to apply to both MOUs and disclosure would have been seen as renegeing on or flouting the basis upon which that information was obtained and the MOU entered. We regard that as a matter of significant weight in the context of international comity and relationships."

This demonstrates the importance placed on respecting another state's expectations of confidentiality, in order to maintain international relations and diplomacy. The impact of disclosures under the EIR would extend beyond any immediate effect on the relationship between the GLA and the other AIR members. Disclosing this information would give the impression that the UK government could not be trusted with confidential information and this could affect our relations with the international community more generally. There is therefore an inherent public interest in preserving international confidences.

I trust this covers all of the issues you have raised. However, if there is any further information you need please feel free to contact me.

Yours sincerely



Albert Chan
Information Governance Manager