Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 June 2012

Public Authority: Greater London Authority
Address: City Hall
The Queen's Walk
More London
London SE1 2AA

Decision (including any steps ordered)

1. The complainant requested information relating to the Mayor of London's official diary. The Greater London Authority (GLA) withheld the requested information citing the exemptions for personal information, health and safety, and prejudice to the effective conduct of public affairs (sections 40, 38 and 36).

2. The Commissioner's decision is that the GLA has correctly withheld some of the requested information under sections 40 and 38 but the remainder was incorrectly withheld under sections 40 and 36.

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:

   - disclose to the complainant the withheld information as set out in the Confidential Annex.

4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant wrote to the Greater London Authority (GLA) on 20 June 2011 requesting information in the following terms:

"On the 23rd of October 2003, the Daily Mail published an article coming off the back of a successful Freedom of Information request in which they asked for a copy of (then) Mayor of London Ken Livingstone's official diary. Under the terms of the Freedom of Information Act I would like to request the following:

A copy of Mayor of London Boris Johnson's official diary beginning on the day he came into office and ending with today's date (20/06/2011)

If FoI requests of a similar nature have been submitted, please can you send your responses to those requests?"

6. The GLA responded on 19 July 2011. It stated that it was withholding the Mayor of London's (the Mayor's) diary in full. It cited sections 36 (prejudice to effective public affairs), 38 (health and safety) and 40 (personal information) of the FOIA as its reasons for non-disclosure. The GLA did, however, advise that summarised details of the Mayor's official engagements are published on the GLA website. It also attached information relevant to the second part of the request – correspondence relating to a similar request to the GLA.

7. Following an internal review, the GLA wrote to the complainant on 10 January 2012, upholding its decision not to disclose the Mayor's official diary. It confirmed that it considered that the requested information was exempt from disclosure by virtue of sections 36, 38 and 40 of the FOIA.

Scope of the case

8. The Commissioner notes that the complainant brought to the GLA's attention the fact that the previous Mayor answered FOIA requests regarding his diary in full. In this respect, the GLA told the complainant:

"You asked why the previous Mayor answered FOI's regarding his diary in full, for example in October 2006, and why the current Mayor isn't answering the same request.

Although the request in itself is the same - the information which is captured by that request isn't and was withheld for the reasons given in our response of 19 July 2011. We handle each request on a case by case basis and no precedent is set when the information concerned is different."

9. The Commissioner understands from this that the GLA would appear to have complied with a similar request in the past – albeit in 2006 rather than 2003 as suggested by the complainant. However, he does not

consider that this sets an automatic precedent for disclosure under the FOIA. The Commissioner's duty is to decide, on a case-by-case basis, whether a request for information has been dealt with in accordance with the FOIA. Accordingly, he has focussed on the arguments put forward by the GLA in this case when considering whether the information was correctly withheld.

10. Boris Johnson was elected Mayor of London on 2 May 2008. During the course of his investigation, the GLA advised that the withheld information comprises over 7,300 individual entries. The GLA also advised that it considered that any attachments or notes within individual diary entries are outside the scope of the request.

11. The GLA provided the Commissioner with a copy of the withheld information, in spreadsheet format for ease of reference, explaining that:

> *"The diary's original format is as a Microsoft Outlook Calendar. Please note that all entries in the Outlook calendar have been exported to Excel".*

12. The Commissioner has viewed the spreadsheet: it comprises four columns of information, headed "subject", "location", "start" and "end" respectively. The latter columns contain start and end dates but do not contain any information about timings.

13. The Commissioner is satisfied that that information constitutes the schedule of appointments in the Mayor's diary. He is also satisfied that it is unnecessary for him to consider any attachments or notes linked to diary entries.

14. The GLA explained that, due to the volume of information, "*it has not been practicable to indicate for all of the information which exemptions apply on an entry-by-entry basis*". Instead, for each exemption it was relying on, the GLA provided example diary entries from the withheld information.

15. Given the volume of information within the scope of the request and the number of exemptions cited in this case, the Commissioner recognises that the GLA was never, reasonably, going to be able to provide him with a version of the information marked up precisely to show which exemption(s) applied to each entry. He accepts that the approach adopted by the GLA is a practical way of providing him with evidence in support of its arguments for withholding the information at issue. However, he would stress that, in adopting that approach, he expects the GLA to have provided representative examples on the basis of its in-depth knowledge and understanding of the content of the Mayor's diary.

16. Despite the constraints imposed by the nature and volume of the withheld information in this case, the Commissioner is satisfied that he has been able to make a reasonable and sufficient attempt to understand the complexities of the information at issue. He has considered the specific examples provided by the GLA in support of its arguments, examples which he has necessarily relied on when considering the issues in this case.

17. The Commissioner considers the scope of his investigation to be with respect to the GLA's citing of sections 36, 38 and 40 of the FOIA in relation to Boris Johnson's - the Mayor of London at the time of the request - official diary from the date he came into office until the date of the request - a period of some three years.

Reasons for decision

Section 40 Personal information

18. The GLA cited section 40(2), which provides an exemption for information which is the personal data of any individual, aside from the requester, and where the disclosure of that personal data would be in breach of any of the data protection principles.

19. In order to reach a view on the GLA's arguments in relation to the exemption in section 40(2), the Commissioner has first considered whether the withheld information is the personal data of one or more third parties.

Is the information personal data?

20. Personal data is defined in section 1(1) of the Data Protection Act (DPA) as:

> *"data which relate to a living individual who can be identified-*
>
> *(a) from those data, or*
>
> *(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*
>
> *and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."*

21. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable.

Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.

22. Having viewed the withheld information, and considered the examples highlighted by the GLA, the Commissioner is satisfied that the requested information constitutes third party personal data on the basis that it relates either to the Mayor or to other third parties.

Would it be fair to disclose the requested information?

23. Turning to whether disclosure of this personal data would be in breach of any of the data protection principles, the Commissioner has focussed initially on the first principle of the DPA which states that personal data shall be processed fairly and lawfully.

24. In determining whether a disclosure is fair for the purposes of section 40 of the FOIA the Commissioner considers it appropriate to balance the consequences of any disclosure and the reasonable expectations of the data subject with general principles of accountability and transparency.

25. The Commissioner has first considered the personal information that relates to individuals other than the Mayor.

26. When considering the consequences of disclosure on third parties other than the Mayor, the Commissioner has taken into account the nature of the withheld information. He has also considered the fact that disclosure under freedom of information legislation is disclosure to the public at large and not just to the complainant.

27. The GLA told the complainant that the use of this exemption:

> *"safeguards the names and/or interests of certain third parties who appear in the full diary with biographical summaries for the purpose of their meetings with the Mayor".*

28. The Commissioner accepts that - where the meeting is for purely personal reasons – third parties would not expect details of their meeting with the Mayor to be disclosed to the wider public.

29. In correspondence with the Commissioner, the GLA also cited other examples of third party personal information other than the Mayor's that appears in the Mayor's diary. It argued that it would be unfair on those third parties for information, such as reminders relating to annual leave for members of the Mayoral team, to be released to a wider audience.

30. In the case of third parties other than the Mayor, the Commissioner accepts that they would not reasonably expect purely personal information to be made publicly available.

31. The Commissioner has next considered the personal information that relates to the Mayor himself.

32. The Commissioner has made a clear distinction in previous decisions between requests for information relating solely to professional and public matters (ie work as a public official or employee) and information relating to individuals in their private capacity (ie their home, family, social life or finances). The Commissioner is of the opinion that disclosing personal data is generally less likely to be fair in cases where the personal data relates to an individual's private life rather than to their public or professional life. In the case of a position such as London Mayor the Commissioner acknowledges that the boundaries between official, social and private life can overlap when diary appointments are considered.

33. The GLA told the complainant:

> *"In order to balance the Mayor's public engagements, the diary must also detail appointments relating to his personal life to ensure there are no scheduling conflicts".*

34. With respect to the Mayor's personal data, the Commissioner accepts that some of the withheld information clearly relates to purely personal engagements. However, he considers that the remainder relates to what he considers to be engagements that are not for purely personal reasons.

35. To the extent that the GLA is claiming the section 40 exemption to information relating to a mixed business/private engagement, the Commissioner considers it fair to disclose that information. He therefore requires the GLA to disclose that information, and has provided clarification in this respect in the confidential annex to this decision notice.

36. However, in the case of the Mayor's purely personal diary entries, the Commissioner accepts that the inclusion of the Mayor's private engagements helps show his availability for official engagements. In his view, it is outside the Mayor's reasonable expectations that information relating to his private engagements such as these be disclosed.

Balancing the rights and freedoms of the data subject with legitimate interests

37. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.

38. In considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, in the Commissioner's view it is also important to consider a proportionate approach.

39. In reaching a decision, the Commissioner has taken into account the fact that disclosure under the FOIA is effectively an unlimited disclosure to the public at large, without conditions. The wider public interest issues and the fairness to the third parties must therefore be considered when deciding whether or not the information requested is suitable for disclosure.

40. With respect to the third parties other than the Mayor, having considered all the circumstances of the case, the Commissioner has concluded that it would be unfair to those individuals to disclose the information related to purely personal meetings and other entries such as annual leave. To do so would contravene the first principle of the DPA. For example, he accepts that meetings between the Mayor and third parties - where the meeting is for purely personal reasons - are exempt from disclosure. Disclosure would be a significant intrusion into the private life of the third parties and there is not a legitimate public interest in this information.

41. With respect to the Mayor's personal data, the Commissioner finds that information relating to purely personal appointments is exempt from disclosure as disclosure would breach the first data protection principle. In his view, disclosure of that information would be unfair. Disclosure would be a significant intrusion into the Mayor's private life and there is not a legitimate public interest in this information.

42. As disclosure of those two categories of personal information would not be fair, the Commissioner has not gone on to consider whether disclosure is lawful or whether one of the Schedule 2 DPA conditions is met. As section 40 is an absolute exemption there is no need to consider the public interest in disclosure separately.

43. With respect to the remaining personal information relating to the Mayor and third parties, the Commissioner has found that it is fair to disclose

that information and has not been presented with any reason as to why this disclosure would be unlawful.

44. However, he must also consider whether it is 'necessary', under Schedule 2 Condition 6 of the DPA, to disclose that information to meet the identified legitimate interests.

45. In this case, he considers that, in all the circumstances of the case, disclosure is necessary to meet the significant public interest in transparency related to the Mayor's diary. The Commissioner relies on the public interest arguments cited in the section 36 analysis below. These arguments create a "pressing social need" for disclosure, which meets the necessity test.

46. In the Commissioner's view, even where disclosure is necessary to address the legitimate public interest, it may still be unwarranted if there is a disproportionate detriment to the rights of the individual concerned. However, in this case the Commissioner has already concluded, when considering fairness above, that there would not be unwarranted harm or distress caused to the Mayor or third parties from the disclosure of this information.

Section 38 Health and safety

47. The Commissioner has next considered whether the GLA correctly applied section 38 to the requested information.

48. Section 38(1) of the FOIA provides that:

> *"Information is exempt information if its disclosure under this Act, would, or would be likely to –*
>
> *(a) endanger the physical or mental health of any individual, or*
>
> *(b) endanger the safety of any individual."*

49. During the course of the Commissioner's investigation the GLA confirmed that it was relying on section 38(1)(b) and cited the lower level of likelihood. In other words, it argued that disclosure would be likely to endanger the safety of an individual. It told the Commissioner:

> *"the risk to the safety of the Mayor is real and significant".*

The applicable interest

50. According to the GLA website:

> *"The Mayor has a duty to set out plans and policies for London covering transport, planning and development, housing, economic*

development and regeneration, culture, health inequalities, and a range of environmental issues including climate change, biodiversity, ambient noise, waste disposal and air quality."

51. With respect to delivering the Mayor's vision for improving London, the GLA website states:

"The Mayor …. sets the annual budget for the Greater London Authority and the wider GLA group, which includes the Metropolitan Police, Transport for London, London Development Agency and London Fire Brigade."

52. The GLA told the complainant:

"The Mayor's diary from the date he came into office is a detailed itinerary of the Mayor's regular scheduled (and unscheduled) appointments including the dates, times, location and commuting method to and from his place of work and appointments in London.

Disclosure of the full Mayor's diary may not in itself endanger the Mayor, however as an indirect result of disclosure it would allow for persons with ill intent to build up an accurate picture of the precise movements of the Mayor's whereabouts at specific points during the working week."

53. The Commissioner accepts that this outcome of disclosure would be counter to the safety of the Mayor and so this argument from the public authority is relevant to the prejudice described in section 38(1)(b).

The nature of the prejudice

54. In citing this exemption, the GLA explained that the requested information is covered by section 38:

"under a broad approach to protecting the safety of a prominent public figure from harm".

Likelihood of prejudice

55. Unlike the other exemptions in the FOIA subject to the prejudice test, the word "endanger" is used in section 38 rather than the word "prejudice". However, the Commissioner does not consider that the use of the term "endanger" represents a departure from the test of prejudice to which section 38 is subject.

56. In this case, the Commissioner takes the view that the phrase 'would or would be likely" to endanger means that there should be evidence of a significant risk to the safety, including the security, of the Mayor.

57. The GLA has argued that there is a substantial likelihood that the Mayor of London is a potential target for attack and harassment due to him being:

> *"a prominent political figure, with a significant national and international profile and responsibility for leadership of London's government".*

Is the exemption engaged?

58. The Commissioner acknowledges that the role of Mayor is a prominent one, with many and varied responsibilities, including being "*in charge of setting the overall vision for the capital"* and "*championing London around the world".*

59. Taking into account the GLA's arguments in this respect, the Commissioner accepts that the Mayor is clearly at some risk of being targeted. However, in the Commissioner's view, the question to be considered is whether a link can be made between disclosure of the particular information requested by the complainant and the possibility that any threat posed would increase.

60. The Commissioner accepts that Boris Johnson - the Mayor of London at the time of the request and whose official diary is the subject of the request - is likely to be recognised wherever he goes and therefore his movements and patterns of travel could be considered, to some extent, to be in the public domain.

61. Having considered the arguments and examples put forward by the GLA, the Commissioner considers that some of the withheld information constitutes information of a general nature, or of a one-off nature. In respect of that information, he does not find the exemption engaged. He therefore orders disclosure of that information. For the sake of clarity, the Commissioner has provided examples of the information he considers meets those criteria in a confidential annex that will be provided to the public authority.

62. However, taking into account the extent to which the remaining withheld information, if disclosed, would be likely to be publicised and scrutinised, in the Commissioner's view disclosure of that information would expose information that could conceivably be used to predict the future whereabouts of the Mayor to a wider audience. Clearly the disclosure of such information could make it easier for individuals or groups to target an attack, for example by enabling a profile of his regular movements to be established.

63. Therefore with respect to that withheld information, the Commissioner accepts that disclosure of that information would be likely to endanger

the safety of an individual – namely the Mayor. It follows that he finds the exemption engaged in respect of that information.

The public interest test

64. Having concluded that section 38(1)(b) is engaged in respect of some of the withheld information, the Commissioner has gone on to consider the balance of the public interest.

Public interest arguments in favour of disclosing the requested information

65. In correspondence with the complainant, the GLA cited a number of generic public interest arguments in favour of disclosure, namely promoting transparency and accountability. It also considered that there is a public interest in participation that allows for a greater understanding of key issues being discussed by the Mayor of London.

Public interest arguments in favour of maintaining the exemption

66. Arguing in favour of maintaining the exemption, the GLA told the complainant that it was not in the public interest to compromise the personal security of the Mayor by providing information "*which may contribute to premeditated events by persons with ill-intent*".

67. It referred to there being "a sizeable risk" that disclosure in this case may endanger the health or physical well-being of the Mayor. In support of its argument, the GLA explained that the Mayor was one of the subjects of a foiled terrorist plot, referring the Commissioner to the relevant media coverage.

Balance of the public interest arguments

68. Applying the public interest test means weighing the harm that is identified in a particular exemption against the wider public interest that may be served by disclosure.

69. In this respect the GLA advised:

> *"The current position on publication meets the public interest in disclosure and ensures that the Mayor is able to function securely and effectively …… without adding to the cost imposed on the public purse through an increase in the security risk to which he is exposed".*

70. The Commissioner recognises that there is the potential for disclosure in this case to impact the GLA's ability to maintain the safety of the Mayor. In this respect, he accepts that it is not in the public interest to disclose

information that would expose the Mayor to greater risk, for example by disclosing information that would pinpoint his movements.

71. Having viewed the withheld information, considered the specific examples provided by the GLA and balanced the opposing public interest arguments, the Commissioner finds that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. He therefore finds that the information was correctly withheld.

Section 36 Prejudice to effective conduct of public affairs

72. Section 36 is the only exemption in the FOIA that requires a determination by a 'qualified person'. The exemption will only apply if the reasonable opinion of a qualified person is that one of the forms of adverse effect specified in subsection 2 would follow from disclosing the information.

73. Section 36(2) states that:

> *"Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-*
>
> *(b) would, or would be likely to, inhibit -*
>
> *(i) the free and frank provision of advice, or*
>
> *(ii) the free and frank exchange of views for the purposes of deliberation or*
>
> *(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs".*

The opinion of the qualified person

74. The first condition for the application of the exemption at section 36 is the qualified person's reasonable opinion. In accordance with section 36(5)(m) of the FOIA, the qualified person for the GLA is the Mayor of London.

75. In this case, the GLA advised that a submission, dated 7 July 2011, was sent to the qualified person. A response was received on 18 July 2011.

Is the opinion reasonable?

76. In the Commissioner's view the submission to the qualified person lacked clarity as to the opinion he was asked to provide, both with

respect to the relevant subsection(s) of the exemption and the likelihood of prejudice or inhibition.

77. In essence the submission referred to both section 36(2)(b)(ii) and 36(2)(c) - the free and frank exchange of views for the purposes of deliberation and the effective conduct of public affairs - as being the appropriate limbs of the exemption to rely on in this case.

78. However, in the Commissioner's view, the submission falls short of what he would expect to see demonstrated regarding the likelihood of inhibition or harm occurring as a result of disclosure. For example, he does not consider that it gives a clear indication of whether the risk of any prejudice or inhibition occurring was considered to be one that 'would be likely to' occur, or whether the risk met the higher test of 'would occur'. Furthermore, in his view, the arguments in the submission refer to the public interest test, an issue which properly falls to be considered when, or after, the decision has been taken that the exemption is engaged.

79. Notwithstanding his concerns about the quality of the submission to the qualified person, the Commissioner is satisfied that the overall conclusion of the process was correct. In his view it is not unreasonable to engage section 36(2)(b)(ii) and (c) given the range and nature of the diary entries. However, having duly considered the arguments put forward by the GLA, he takes the view that only the lower level of harm has been demonstrated.

80. He therefore finds the exemption engaged in relation to the information withheld by virtue of section 36(2) and he has carried this lower level of likelihood through to the public interest test.

The public interest test

81. Even where the qualified person has concluded that the exemption applies, the public interest test must be applied to the decision whether or not to disclose the withheld information.

Public interest arguments in favour of disclosing the requested information

82. The GLA recognised the public interest in disclosure with respect to promoting:

> *"transparency, accountability and participation that allows for a greater understanding of key issues that are being discussed by the Mayor of London".*

83. Similarly, it accepted the argument in favour of disclosure with respect to enhancing "*the quality of discussions and decision making generally*".

84. The GLA argued strongly that the public interest was satisfied by its pro-active publication of details of the Mayor's engagements and meetings on its website. The GLA told the complainant that it considers that by publishing that information, it "*strikes the appropriate and correct balance*" between the public interest arguments about public participation and understanding and providing the Mayor and the GLA with "self-contained space" to ensure that its work can be carried out unimpeded.

85. In correspondence with the Commissioner, the GLA argued that the information it publishes, and the opportunity for it to be scrutinised, "compares favourably" with the official information made available by the Government about the engagements of Cabinet Ministers.

86. The Commissioner notes that a monthly report, summarising the Mayor's activities, is published on the GLA website. During the course of the Commissioner's investigation, the GLA confirmed that the type of diary engagement included each month in the Mayor's report to the Assembly, includes:

- all public engagements undertaken as Mayor including openings, launches, speaking engagements, award ceremonies, lunches, receptions and visits;
- all GLA commitments, such as Mayors Question Time, GLA Budget Committee, People's Question Time;
- all board meetings chaired or attended, including Cabinet committees; and
- all meetings with external people including the functional bodies, unless there is a commercially sensitive reason why it would not be appropriate to put it in the public domain at that time.

87. The GLA also told the complainant that, in handling her request, it had considered what additional benefit might be obtained by the publication of further information. It told her that it had concluded that the disclosure of the whole diary would not provide a complete picture of how the Mayor spends his time:

> *"given the amount of activity which will not be recorded in a schedule of appointments".*

Public interest arguments in favour of maintaining the exemption

88. With respect to its withholding of information for the purpose of safeguarding the effective conduct of public affairs, the GLA told the complainant that such entries:

> *"would reveal the identity of specific individuals that the Mayor has met with and information regarding the details of the meetings themselves, where is it considered, in the reasonable opinion of the Mayor, that disclosure of these selected meetings would not be in the public interest as it would hinder the 'private space' required to conduct certain free and frank discussions for the purposes of formulating new ideas and policies".*

89. The GLA provided the Commissioner with further explanation in support of this view, arguing that it would not be in the public interest for the Mayor's Office to have to spend time and resources commenting on, and justifying, all the Mayor's meetings.

Balance of the public interest arguments

90. In both the submission to the qualified person and in correspondence with the complainant, the GLA cited subsections (2)(b)(ii) and (2)(c) of the section 36 exemption. However, in the course of the Commissioner's investigation, the GLA only referred to section 36(2)(c).

91. As the GLA appears to be citing multiple limbs of the exemption, the Commissioner has considered separately, in the case of each limb of the exemption, whether the public interest in disclosing the information under consideration equals or outweighs the public interest in maintaining the exemption.

92. The Commissioner has considered firstly the public interest arguments in respect of section 36(2)(b)(ii). In doing so, he notes that, in this case, the public interest arguments put forward by the GLA in relation to section 36(2)(c) are broadly similar.

93. The Commissioner notes that, having accepted the reasonableness of the qualified person's opinion that disclosure of the information would be likely to have the stated detrimental effect, he must give weight to that opinion as a valid piece of evidence in his assessment of the balance of the public interest.

94. The GLA has argued that disclosure would prejudice the free and frank provision of advice and the effective conduct of public affairs because the Mayor requires private space to hold informal and preliminary exchanges, including with high profile or influential individuals, free from

undue speculation and media intrusion and because disclosure would have a negative impact on his ability:

> *"to be able to formulate and debate issues and to communicate with stakeholders in the knowledge that free and frank discussions will not be subject to public scrutiny".*

95. In the Commissioner's view, disclosure of details of who the Mayor is meeting and telephoning (and, by omission, who he is not) is strongly in the public interest. In the Commissioner's view, such information may indicate who has influence and who does not, a matter he considers to be of importance given the prominence of the role of Mayor and the influence and responsibility the position carries with it.

96. Similarly, he considers it reasonable to take the view that disclosure in this case would enable the public to see the extent of the Mayor's duties and how he divides his time. The Commissioner acknowledges that the diary entries range from what he considers could be described as mundane to those that are more informative. However, in his view, there is a strong public interest in disclosure to the extent that it reveals the way in which the Mayor's time is spent between, for example, official business, meeting with individuals from the public and private sectors and the internal running of his office. The Commissioner does not accept the argument of the GLA that the view of the Mayor's schedule presented by the diary would not significantly inform the public. The Commissioner also finds that the disclosure of the withheld information under section 36 would add significant public interest information to the meetings already published by the GLA.

97. In balancing the opposing public interest arguments in this case, the Commissioner has considered the diary entry examples put forward by the GLA in support of its arguments. In doing so, he notes that the GLA has not categorised the examples in any way or used the examples to properly illustrate the severity and extent the harm disclosure would cause. The GLA only provided three examples out of the 7,000 diary entries in support of its section 36 arguments.

98. He notes that, while the examples provided relate to a meeting or appointment, they do not make any reference to the topic under discussion.

99. Accordingly, although recognising the potential importance of the GLA's arguments, he does not agree that disclosure, even if it results in scrutiny, would be likely to severely impact on the Mayor's ability to continue to meet, and discuss frankly, with whom, and on which matters, he wishes.

100. He also considers that, in general, only the more recent entries in a diary are likely to attract sensitivity, for example with respect to policy in the making or an individual's intentions. In this respect, he is mindful of the long timeframe of the request in this case.

101. The Commissioner has only given limited weight to the arguments in favour of maintaining section 36(2)(b)(ii) and finds that the public interest in maintaining the exemption does not outweigh the public interest in disclosure.

102. Turning next to the public interest arguments in respect of section 36(2)(c), the Commissioner has considered the argument that the Mayor needs to carry out his work efficiently and without unwarranted public scrutiny.

103. The Commissioner recognises the argument that disclosure could lead to further, follow-up requests, based on the disclosed information, which could be burdensome. He also recognises that any subsequent requests following disclosure are a perfectly valid use of FOI. He also recognises that, in accordance with section 14 of FOIA, a public authority is not obliged to comply with vexatious or repeated requests.

104. The Commissioner is aware that the GLA has, on a previous occasion, disclosed information about the then Mayor of London's diary - although it has not referred to this previous disclosure in its submissions to him. Having considered the arguments put forward by the GLA in this case, the Commissioner is not satisfied that it has put forward sufficient evidence to demonstrate that it would be likely to face a significant problem as a result of disclosure in this instance. Nor is he satisfied that the GLA has shown how disclosure is likely to lead to a burdensome diversion of resources to manage the impact.

105. The Commissioner has only given limited weight to the arguments in favour of maintaining section 36(2)(c) and finds that the public interest in maintaining the exemption does not outweigh the public interest in disclosure.

106. The Commissioner is mindful of the volume of information at issue in this case and recognises the burden of redaction in ordering disclosure. However, taking all the circumstances of this case into account, the Commissioner considers that steps ordering disclosure with redaction are not unreasonable. Whilst the effort required to carry out the redaction is significant the Commissioner finds that this is a legitimate step to order, noting the public interest in the information and the significance of the Mayor's role. He therefore requires disclosure and has provided details of the information to be disclosed in a confidential annex to be provided to the public authority.

107. In conclusion, the Commissioner would stress that his decision relates to this one diary in particular and with respect to the specific circumstances of this case: each diary will be organised in a particular way and different diaries will reveal different information depending on the role of a government minister/mayor/council leader or senior official.

Other matters

108. The GLA drew to the Commissioner's attention the fact that it pro-actively publishes a considerable amount of information about the Mayor's engagements in his *'Reports to the Assembly'*. However, in providing him with a copy of the Mayor's diary, the GLA did not attempt to distinguish between the withheld information and the information that, having been published in those reports, in the Commissioner's view is exempt by virtue of section 21 – accessible to the applicant by other means.

109. Whilst acknowledging that the volume of information within the scope of the request is considerable, the Commissioner considers that his investigation has been made more complex due to his having to distinguish the information that has actually been withheld from the information that is in fact publically available.

Right of appeal

110. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

111. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

112. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed ……

Steve Wood
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SK9 5AF