



Assurance Group
London Borough of Barnet,
2 Bristol Avenue, Colindale,
London NW9 4EW
2 March 2020
Our ref: 5996564

Thank you for your request received on 22 January 2020, for the following information:

I see from the 'Saracens Loan - Update Report' which is being discussed at committee next week that Saracens wrote to the council on 18 November 2019, I would like a copy please of that communication including any attachments and any reply.

I would like to see all of Cath Shaw's letter and emails sent or received during January 2020 which relate to Saracens as well as any letters and notes she has made on the subject of Saracens including any notes of any meetings or phone calls with any representative of Saracens (if there have been any meetings at which notes were not taken I would like to know who attended and the purpose and location of said meeting).

We have processed this request under the Freedom of Information Act 2000.

Response

I can confirm that London Borough of Barnet holds the information you requested. This request is extremely wide but has been interpreted as being about the loan to Saracens by the council. Because the focus is overwhelmingly about the financial aspects of the loan to Saracens it is being responded to under the Freedom of Information Act rather than the Environmental Information Regulations, 2004.

An update report was provided to the Policy and Resources Committee on 29.1.2020 and is available at:

<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=693&MId=10105&Ver=4>

However, we consider that the following exemptions apply to some of the information requested. The remaining information is not withheld and is attached.

I see from the 'Saracens Loan - Update Report' which is being discussed at committee next week that Saracens wrote to the council on 18 November 2019, I would like a copy please of that communication including any attachments and any reply.

This correspondence is being refused under S.41 FOI Act because it was provided by Saracens in the expectation that it is confidential. Please see refusal notice below.

I would like to see all of Cath Shaw's letter and emails sent or received during January 2020 which relate to Saracens as well as any letters and notes she has made about Saracens including any notes of any meetings or phone calls with any representative of Saracens (if there have been any meetings at which notes were not taken I would like to know who attended and the purpose and location of said meeting).

This request is extremely wide but has been interpreted as being about the loan to Saracens by the council. Some correspondence has been withheld because it was provided in confidence or was subject to Legal Professional Privilege or is commercially sensitive. Please see attached the emails that are in scope with redactions.

There were 5 calls with the Interim CEO of Saracens

- 13Jan-Following upon appointment as acting CEO, asking to discuss any implications for council-advised that a call the following week would be more useful.
- 17Jan-15:00-voice mail following agreement to speak at that time
- 17Jan-15:05-details reported in various emails including those attached
- 21Jan-12:38-voice mail left
- 21Jan-12:39-confirmation of factual accuracy of committee report prior to publication

Refusal Notice- S.41 FOIA Information Supplied In Confidence

Section 41 of the Freedom of Information Act 2000 provides that (1) information is exempt information if – (a) it was obtained by the public authority from any other person (including another public authority); and (b) the disclosure of the information to the public by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

Section 41 is an absolute exemption and therefore the information will not be supplied to you. Section 41 relates to confidentiality; and this information originates from a third party and was provided to us in confidence. Release would be an actionable breach of confidence.

Even where the absolute exemption in Section 41 is engaged, we must still consider the public interest in disclosure, because the law of confidence recognises that a breach of confidence may not be actionable when there is an overriding public interest in disclosure.

Factors in favour of disclosure

- The public interest in the promotion of transparency, accountability, public understanding and involvement in the democratic process.

Factors in favour of withholding

- Information originates from a third-party Saracens and was provided to LBB in strict confidence and disclosure could be a breach of confidentiality.
- An update report has been provided. An update report was provided to the P and R committee on 29.1.2020 is available at:

- Any public interest in release would not be enough to prevent an actionable case

Whilst there are arguments on each side, in the circumstances of the case, there is no overriding public interest in disclosure and so the information is withheld.

Refusal Notice Section 42 FOIA- Legal Professional Privilege

We consider that the qualified exemption set out in Section 42 (Legal professional privilege) subsection 1 applies to the information requested because the information is subject to legal professional privilege. Therefore, we have decided to withhold the information.

In applying this exemption, we have had to balance the public interest in withholding the information against the interest in favour of disclosure.

Factors in favour of disclosure

- A public interest in making authorities as accountable as possible
- Passage of time- the legal advice is 18 months old

Factors in favour of withholding

- There is very heavy public interest inherent in Legal Professional Privilege
- There is a strong element of public interest inbuilt into privilege itself.
- It is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the clearest case.
- The relevant information has been released in the public domain when a decision on the loan was made and updates provided at every stage. (see links below)

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

Refusal Notice S.43 FOIA- Commercial Sensitivity

We consider that the qualified exemption set out in Section 43 (Prejudicial to commercial interests) subsection 2 that are to be applied] applies to the information requested.

Therefore, we have decided to withhold the information. In applying this exemption, we have had to balance the public interest in withholding the information against the interest in favour of disclosure.

Factors in favour of disclosure

- Furthering the understanding, and participation in the public debate of issues
- Facilitate the accountability and transparency of public authorities for decisions taken
- Facilitate accountability and transparency in the spending of public money

- Allowing individuals to understand decisions made by public authorities affecting their lives and, in some cases, assist individuals in challenging those decisions

Factors in favour of maintaining the exemption

- Damage to business reputation or the confidence in customers or suppliers or investors may have in it
- Detrimental impact on Saracen's commercial revenue or threaten to secure finance and weaken position in a competitive environment
- Council position in a competitive environment, market sensitivity of information and potential usefulness to competitors
- Negative effect on competitiveness if competitors were to have access to information
- Appropriation information has been put into the public domain at every stage of the loan agreement most recently on 29th January and this is kept under review. Please see:

<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=693&MId=10105&Ver=4>

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

Refusal Notice Section 40(2)

[Part 1 of Schedule 19](#) of the Data Protection Act 2018 amends the personal data exemption under section 40 of the Freedom of Information Act 2000(FOI). These are consequential amendments designed to ensure that the correct provisions of the GDPR and the new Act are referenced instead of the now repealed DPA 1998. They will not fundamentally impact when personal data can, and cannot, be disclosed in response to an FOI request.

Personal Information is governed by the Data Protection Act legislation and is defined as any information relating to an identified or identifiable natural person ('data subject')". It adds that: an identifiable natural person is one who can be identified, directly or indirectly, by reference to an identifier such as a name, an identification number, location number, an on-line identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

The withheld information is exempt because disclosure would contravene the first data protection principle which requires that personal data is processed fairly and lawfully. Disclosure of the requested information would breach this principle and the requirement of fairness.

Because individuals working for the council have a reasonable expectation of privacy and do not expect that the council would disclose their names or contact details in response to a freedom of information request, especially as they are relatively junior and not in public facing roles. The council's redaction policy states that officers' names and contact details under the level of Assistant Director will generally not be released. All the posts redacted are under the Assistant Director level.

Further Information:

<https://barnet.moderngov.co.uk/documents/s57530/Saracens%20Loan%20update.pdf>

<https://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=7108>

<https://barnet.moderngov.co.uk/documents/s47458/Copthall%20Report%20Public.pdf>

<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=693&MId=10105&Ver=4>

Further information

If you are interested in the data that the council holds you may wish to visit Open Barnet, the council's data portal. This brings together all our published datasets and other information of interest on one searchable database for anyone, anywhere to access. <http://open.barnet.gov.uk/>

Advice and Assistance : Direct Marketing

If you are a company that intends to use the names and contact details of council officers (or other officers) provided in this response for direct marketing, you need to be registered with the Information Commissioner to process personal data for this purpose. You must also check that the individual (whom you wish to contact for direct marketing purposes) is not registered with one of the Preference Services to prevent Direct Marketing. If they are you must adhere to this preference.

You must also ensure you comply with the Privacy Electronic and Communications Regulations (PECR). For more information follow this Link www.ico.org.uk

For the avoidance of doubt the provision of council (and other) officer names and contact details under FOI does not give consent to receive direct marketing via any media and expressly does not constitute a 'soft opt-in' under PECR.

Your rights

If you are unhappy with the way your request for information has been handled, you can request a review within the next 40 working days by writing to the Information Management Team at: foi@barnet.gov.uk. Or by post to Information Management Team (FOI) London Borough of Barnet, 2 Bristol Avenue, Colindale, NW9 4EW

If, having exhausted our review procedure, you remain dissatisfied with the handling of your request or complaint, you will have a right to appeal to the Information Commissioner at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF (telephone: 0303 123 1113; website www.ico.org.uk). There is no charge for making an appeal.