**First-tier Tribunal**
**(General Regulatory Chamber)**
**Information Rights**

**Appeal Reference: EA/2019/0191**

**Heard at Field House**
**On 26 November 2019**

**Before**
**JUDGE HOLMES**
**PIETER DE WAAL**
**ROSALIND TATAM**

**Between**

**PROFESSOR TIM CROOK**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**and**

**THE GREATER LONDON AUTHORITY**

Second Respondent

**Appearances:**

**The Appellant: In Person**
**The First Respondent: Not attending**
**The Second Respondent: Mr Christopher Knight, Counsel**

## DECISION AND REASONS

The Tribunal dismisses the appeal. Decision Notice, no. FS50788438, dated 8 May 2019 is confirmed and no further action is required from the public authority.

## REASONS

1. In this appeal the Appellant, Professor Crook appeals against a Decision Notice issued by the Information Commissioner on 5 May 2019, in which she determined that the public authority, the Greater London Authority ("the GLA"), was

entitled to rely upon s.42(1) of the FOIA to exempt the requested information from disclosure.

2. The Appellant appealed the Decision Notice by a Notice of Appeal dated 3 June 2019. In the Notice the Appellant indicated that he required a Decision at a hearing.

3. The Commissioner filed her response to the appeal on 28 June 2019. She was content with a paper hearing of the appeal.

4. On 4 July 2019 the Tribunal directed that the GLA be joined as Second Respondent to the Appeal. The GLA submitted its Response dated 1 August 2019 (pages 22 to 38 of the bundle).

5. The Appellant filed a response to the Commissioner's response dated 12 July 2019 (pages 43 to 46 of the bundle).

6. The Registrar issued further case management directions on 15 October 2019. She directed that the disputed information received be held on a closed basis pursuant to rule 14(6). The hearing was listed, as an oral hearing, for 26 November 2019.

7. Accordingly, the Appellant attended and the Second Respondent was represented at the appeal hearing, which was held at Field House, on 26 November 2019. The First Respondent relied upon her written response, and was not represented before the Tribunal. The Tribunal had before it an open bundle (references to page numbers are to pages in that bundle), which included both parties' representations, and a closed bundle, comprising of the disputed information. A joint bundle of authorities was provided to the Tribunal. The Appellant had prepared and read an Opening Statement, and Counsel for the Second Respondent had prepared a Skeleton Argument.

8. Having considered the submissions and the evidence contained in the open and closed material, the Tribunal reserved its Decision, which is now given. The Tribunal apologises for the delay in promulgation, occasioned, initially, in part by a desire to await any imminent Decision of the Upper Tribunal in ***Moss v Information Commissioner***, which turned out not to be imminent, also by pressure of judicial business, and more latterly, by the restrictions occasioned by the Covid – 19 emergency which has limited access to judicial premises and resources.

***The Background.***

9. The request made by the Appellant to the GLA which gives rise to this appeal was dated 13 April 2018, and is at page 159A of the bundle. The background to it is as follows.

10. The Appellant is a Law Professor, and Vice – President of the Chartered Institute of Journalists, and Chair of that Institute's Professional Practices Board. In early 2018 the issue of the increasing amount of knife crime in London was one of growing public concern, in response to which the GLA, and the Office of the Mayor of London, convened two meetings. One, described as a "Mayor's Summit" at City Hall, London, on 10 April 2018, was called by the Mayor, and the other a meeting of the Police and Crime Committee of the London Assembly, was called by Steve O'Connell, Assembly Member and Chair of the Police and Crime Committee ("PCC"), on the following day, 11 April 2018. The Mayor was requested to appear at the Assembly Meeting.

11. A decision was made by the GLA that the Press would be excluded from these meetings. To be more precise, in relation the Mayor's Summit, this was by invitation only, and to that extent, as no representatives of the Press or media were invited, this was effectively a private meeting. The invitees were not only Assembly Members, but local MPs, other Council Leaders, the Metropolitan Police Commissioner and the Home Secretary. These decisions were later said to have been based upon the fact that local elections were imminent, and the GLA was concerned that to admit the Press may give rise to the reporting of comments made by candidates in those elections, contravening the provisions referred to as "purdah" that are applied to elections. Details of the London Assembly meeting, and the fact and reasons why the meeting would be closed, but broadcast after the elections, were communicated to the public and the press in a News Release dated 5 April 2018 (page 163 of the bundle).

12. At the time, the GLA and the Mayor's Office were being advised by Emma Strain, the Monitoring Officer. It was she who considered that media admission into both these meetings would offend the "purdah" rules, and advised accordingly.

13. The first questioning of the decision to have the PCC meeting held in private came from Gareth Bacon, Assembly Member, and Leader of the Conservative Group, in an email addressed to Ed Williams and Emma Strain on 6 April 2018 at 21.03 (pages 165 to 166 of the bundle). His concern was that whilst the PCC meeting was to be held in private, the Mayor was able to hold his meeting, and publicise it, which he referred to as a "stunt".

14. Emma Strain replied to him by email of 08.30 on 7 April 2018 (page 165 of the bundle). She explained how she had, as Monitoring Officer, briefed the Mayor's Office about the pre – election period rules. She then explained the guidance that she had given to the Mayor's Office.

15. It seems that others (or it may have been Gareth Bacon) were raising the query as to whether the Mayor's Summit could be held during purdah, as Sarah Gibson of the Mayor's Office received such an enquiry (from whom is redacted), which she raised in an email on 7 April 2018 (page 168 of the bundle). This was passed on, and the fact that Emma Strain had approved the press release was confirmed (page 167 of the bundle).

16. Whilst these queries related to the Mayor's Summit, on 10 April 2018 media representatives began to raise concerns about the PCC meeting of the Assembly the following day. One wrote to Alison Bell, the External Communications Manager on 10 April 2018, expressing the desire to film the event, and challenging the decision to exclude the press (page 169 of the bundle). The identity of the Monitoring Officer was sought, and then emails were sent to Emma Strain expressing concern at the closed meeting of the PCC (see page 172, 176 of the bundle). In due course, the issue made the London Evening Standard, following a complaint made by editors at the BBC, Sky News and ITN that they had been barred from the PCC meeting.

17. The meeting duly took place, on 10 and 11 April 2018, and the decision to exclude the media and the public was maintained. The Assembly Meeting was video recorded, but the GLA would not release the recording until after the elections on 3 May 2018. The debate continued after the events took place, and Jeff Jacobs, Head of Paid Service, responded on 17 April 2018 to the complaint from the three broadcasters (pages 184 to 185 of the bundle).

18. In the meantime. On 13 April 2018, the Appellant made his FOIA request in these terms (page 159A of the bundle):

*"We are making a request under the Freedom of Information Act for all emails, minutes and documents relating to a decision by the Mayor of London's Office and Greater London Authority preventing media representatives, journalists and members of the public to attend the London Assembly meeting on knife crime in the capital on 11th April 2018, and the banning of journalists from the Mayor's Summit at City Hall 10th April 2018 on the same issue , attended by the Mayor of London, Sadiq Khan, a number of high – profile politicians and the Met Police Commissioner.*

*We understand that this interpretation of electoral law was made by the GLA's monitoring officer, and our request includes all communications by email and documentation on this issue provided to the Mayor of London and Greater London Assembly elected representatives, and any communications with the Electoral Commission, Local Government Association and other relevant bodies."*

19. The response from the GLA was dated 15 May 2018 (pages 160 to 161 of the bundle), and sent by Paul Robinson, the Information Governance Officer. He enclosed with this letter copies of documents that fell within the scope of the request (pages 162 to 188 of the bundle), but withheld some further correspondence, on the grounds that it was information that was exempt from disclosure under s.42 of the FOIA, as it was legal advice, subject to legal professional privilege. He went on, having summarised the principles of legal professional privilege ("LPP"), to state that the GLA had considered the public interest test, and had weighed up whether the public interest in protecting LPP outweighed the public interest in disclosure. He made reference to the FTT Decision in ***Bellamy v the Information Commissioner and the Secretary of State for Trade and Industry EA/2005/0023*** referred to by the Information Commissioner's Office, in which the strong public interest inbuilt into

the privilege is recognised. The GLA accordingly relied upon that interest as outweighing the public interest in disclosure.

20. The Appellant made a further (non – FOIA) request, not in the bundle, for any recordings of the two meetings. The GLA responded on 18 May 2018 (page 189 of the bundle) to inform the Appellant that the Mayor's meeting was not recorded, but the London Assembly meeting had been, and the Appellant was referred to the link where he could access the recording. This had been released after the elections on 3 May 2018.

21. By letter of 15 June 2018 the Appellant sought an internal review (page 190 of the bundle) of the decision to withhold the legal advice documentation concerning the decision to hold the two meetings with the media and the public excluded. In his request the Appellant disagreed with the contention that LPP "trumped" the public interest in the circumstances. He contended that the legal advice was crucial to the reasoning, which he needed to challenge the decision under FOI jurisprudence. He said that the decision had prevented public accountability and participation in vitally important government processes. The release, after the event, of redacted information showed that the GLA believed, mistakenly, that the release of an electronic record would "assuage" the damage done. The fact that no such record was made of the Mayor's Summit meeting further compounded the damage done to the public interest and the freedom of expression by that meeting being held in private.

22. An internal review was conducted, by Tim Somerville, the Senior Governance Manager. The result was sent to the Appellant in a letter dated 16 July 2018 (pages 191 to 193 of the bundle). After a recital of the complaint, and the GLA's response to the request, Mr Somerville referred to a (then) recent Decision Notice FS50699814, relating to a request about the change of name of the Department for Digital Media and Sport, in which, at para. 47, the Commissioner had stated what factors she would take into account, in determining a s.42 issue, which included, but were not limited to, whether the issue under consideration involves a large amount of money, affects a large number of people, whether there was a lack of transparency in the public authority's actions, and whether the legal advice obtained was selectively disclosed, or was misrepresented to the public. Having concluded that none of those factors were present in these circumstances, the reviewer maintained the non – disclosure on the grounds of LPP.

***The ICO's involvement.***

23. The Appellant complained to the Information Commissioner on 23 September 2018 (pages 194 to 199 of the bundle). By letter of 14 January 2019 (pages 200 to 202 of the bundle) the Appellant was informed of the appointment of an investigator, and on 21 January 2019 the investigator wrote to the GLA (pages 204 to 206 of the bundle) seeking an explanation of the basis upon which it was relying on s.42(1) of the FOIA.

24. On 1 April 2019 the Ian Lister the Information Governance Manager of the GLA replied to the ICO (pages 208 to 216 of the bundle). There were four appendices to this letter, three of which comprised of open material that had already been disclosed, and the fourth comprised of the withheld material in respect of which LPP was claimed.

25. This detailed letter starts by setting out the role and constitution of the GLA, and its responsibilities. It sets out the history of the rise in knife crime in the run up to the 2018 local elections, which led to the Chair of the Policing (sic) and Crime Committee and the Mayor of London both deciding to hold meetings (the latter a "Knife Crime Summit") to discuss these issues. Some of the attendees for these meetings were standing as candidates in these local elections, including the Chair of the London Assembly Policing and Crime Committee.

26. On that basis, in accordance with the Code of Practice for Local Authority Publicity , to ensure neutrality in the period leading up to local elections, and other requirements, the GLA had been concerned to hold the two meetings in question in private , given the controversial nature of the topic, the attendance of candidates in the local elections and the risk that the meetings, or anything said in them could be seen to be carried out for political purposes, or to result in a candidate being given a political advantage.

27. The role of the Monitoring Officer, and her need to take legal advice, was explained, and the way in which she had done so, in this instance, from the "in – house" legal team, provided by Transport for London ("TfL") Legal Services. Mr Lister went on to explain the email communications that had been discovered, and the parties to these exchanges. He explained how these had largely been disclosed, with suitable redactions, to the Appellant. He then identified some five further email conversations in which advice from TfL Legal Services was communicated. These were the documents in respect of which the GLA maintained the exemption under s.42(1) of the FOIA. These were disclosed to the ICO, and form the basis of the closed material before this Tribunal.

28. Mr Lister's letter then goes on to recite the nature of the advice requested and given, the identification of the legal adviser and the client, and the question of whether privilege had been lost at any stage. He then goes on to set out the public interest considerations favouring disclosure, and those in favour of maintaining the exemption. In doing so he states (page 215 of the bundle):

*"The legal advice in question was given after the decision had been taken by the GLA and in a context where there was a significant risk of potential future litigation."*

He sets out the GLA's reasons for maintaining the exemption, asserting that there are no exceptional circumstances which would justify overriding the public interest in non – disclosure. He points out that the issue is not whether the decision to exclude

the press was appropriate, but whether the legal advice relating to that decision should be made public.

***The IC's Decision Notice.***

29. The Commissioner then took her decision, and issued her Decision Notice on 8 May 2019 (pages 1 to 10 of the bundle). She upheld the GLA's claim of exemption on the grounds that the requested information was subject to LPP, and that the balance of the public interest lay with non – disclosure, largely for the reasons advanced by the GLA in its letter of 1 April 2019.

***The Appellant's appeal.***

30. The Appellant appealed by Notice of Appeal dated 3 June 2019, in which he set out his Grounds of Appeal over three pages (pages 13 to 21 of the bundle), and attached 14 documents, six of which are legal authorities, or other Tribunal decisions.

31. The Appellant's central theme in his Grounds of Appeal is that the Commissioner had wrongly decided that LPP "trumped" the public interest in releasing the legal justification for excluding the media and public from critically important regional government executive consultation meetings on a critical issue. He refers to the legal advice being at the" political heart, source origin of a decision" that was unprecedented in applying election purdah considerations in the GLA. He contended that without knowing what this legal advice was it was impossible for professional journalists and media news organisations to "account for a grotesque breach of Article 10 freedom of expression rights" under the ECHR. He goes on to cite the judgement of the European Court of Human Rights in ***Magyar Helsinki Bizottsag v. Hungary,*** and makes reference to what he alleges is a "standing right under Article 10 for access to the legal advice". He argues that this substantially changes the balancing exercise of public interest under s. 42(1), and s.2(2)(b) of the FOIA.

32. The Appellant argues that it is impossible to assess, discuss and evaluate the validity of the justification for holding the meetings in private without knowing the legal basis for advising that there was a political neutrality obligation, which could only be achieved by excluding professional media and members of the public from the meetings. The GLA and the Commissioner had treated the application of s.42(1) as if it were an absolute exemption.

33. He went on to refer to Tribunal decisions referred to by the Commissioner, and advanced countervailing arguments from other Tribunal decisions. He contended that the information that had been released was evidence of the clear compelling and equally strong countervailing public interest considerations overriding the LPP exception, which was not absolute.

34. He quoted from an email sent to the GLA by an unidentified editorial figure in which serious concern about the exclusion of the press was expressed.

35. The Appellant continued his Grounds of Appeal with further references to decisions of the Tribunal, and the extremely serious breach of Article 10 which had occurred. He went on to contend that the Commissioner had not properly considered the guidance issued by the Ministry of Justice in relation to section 42, and he cited an extract from a legal textbook on the law of freedom of information. He made further reference to the Article 10 freedom of expression right to government body information, which, he says, was the result of the ECtHR decision in ***Magyar***, which meant that the duty to disclose over maintaining legal professional privilege was much stronger than it had previously been in freedom of information cases. He then cited a tribunal decision, ***Mersey Tunnel Users Association v Information Commissioner and Merseytravel (EA/2007/0052)***, in which disclosure was ordered. He made reference to the findings in that case, where the public interest in disclosing information clearly outweighed the strong public interest in maintaining the exemption.

36. In conclusion of his Grounds of appeal, the Appellant said this:

*"If the legal opinion in this case persuaded the largest, richest and most powerful UK city authority to hold public interest political and consultative meetings in secret, its content and reasoning must be available for public debate and challenge to prevent further and equally serious derogations and breaches of Article 10 rights."*

***The IC's response to the appeal.***

37. The Commissioner responded by a formal Response dated 28 June 2019 (pages 22 to 40 of the bundle), with the Grounds of Opposition being contained in a separate Response document (pages 22 to 38 of the bundle).

38. In the Response the Commissioner sets out the factual background and history of request, gives a description of the withheld information, and sets out the conclusions in her Decision Notice. She notes that the Appellant did not appear to dispute the conclusion that s. 42 was engaged, and summarises her understanding of the Appellant's Grounds of Appeal, from which she discerned four reasons advanced by the Appellant in support of his contention that she had erred in concluding that the public interest in maintaining the exemption under s.42 outweighed the public interest in disclosing the withheld information. She summarised these as being:

i) By failing to take account of Article 10 ECHR when considering the public interest balance;

ii) By failing to give sufficient weight to the consequences of the legal advice being given and followed when considering the public interest in disclosure;

iii) By failing to consider other authorities on s.42;

iv) By failing to consider the Ministry of Justice's exemptions guidance.

39. After setting out the legal framework, and defining legal advice privilege, the Commissioner went on to consider the public interest test. She agreed that the exemption was not an absolute one, and consequently was subject to the public interest test in s.2(2)(b) of the FOIA. As at common law LPP is regarded as an absolute exemption from the duty of disclosure, there was a strong inherent public interest in maintaining the s.42 exemption whenever it was engaged. She referred to the long line of cases in which the test to be applied to such information had been considered, and particular weight is given to the public interest in maintaining the exemption. She made reference to the Tribunal decision in ***Bellamy v the Information Commissioner and the Secretary of State for Trade and Industry EA/2005/0023***, and its endorsement in the High Court in ***DBERR v O'Brien v IC [2009] EWHC 164 QB***. Reference was also made to the upper tribunal decision in ***DCLG v Information Commissioner & WR [2012] UKUT 103 (AAC)***, and ***Savic v Information Commissioner, AGO & CO [2017] UKUT AACR 26***. The Commissioner cited ***Bellamy*** in support of the contention that it was for the Appellant to adduce sufficient consideration which would demonstrate that the public interest in maintaining the exemption was in a particular case outweighed by any public interest in justifying disclosure.

40. In responding to the four particular grounds of appeal, in relation to Ground 1, the Article 10 issue, she disagreed that the decision of the ECtHR in ***Magyar*** did confer a right of access to information held by a public authority, although such a right may arise in certain limited circumstances. She referred to the decision of the Supreme Court in ***Kennedy v Charity Commission [2015] AC 455***, in which it had been held that Article 10 did not give a free - standing right of access to information held by public bodies.

41. Reference was made to the ECtHR case of ***Times Newspapers Ltd and Kennedy v UK (App.No.64367/14)*** in which the Supreme Court judgment was considered. The Commissioner did properly point out that the issue of whether lower Courts and Tribunals in England and Wales should follow ***Magyar*** or ***Kennedy*** was the subject of an appeal to the Upper Tribunal in ***Moss v Information Commissioner***.

42. In any event, the Commissioner argued, Article 10 is itself a qualified right, and, by reference to other first – tier Decisions, she argued that the balancing exercise would produce no different result.

43. Turning to Ground 2, the Commissioner accepted that disclosure of the withheld information would allow the public to better understand how the public authority's legal advisers approached the legal issues relating to that decision. She accepted, therefore, that there was a public interest in the withheld information, but it was nevertheless outweighed by the public interest in maintaining the exemption.

44. In relation to Ground 3, the Commissioner discussed the first-tier tribunal decisions referred to by the Appellant, ***Berend***, ***Pugh*** and ***Mersey Tunnel Users Association.*** In in relation to the first of these, the Commissioner does not dispute that the exemption is not an absolute one, and she did not treat it as such. In relation to the second, the Commissioner disagreed that the GLA no longer had a recognised interest to protect in the circumstances, as it was likely to seek and receive legal advice in the future in respect of similar matters arising in respect of future elections. In relation to the third decision, the Commissioner points out the particular facts of that Decision, which was in relation to a question of pure public administration, which she did not consider was the case in these circumstances.

45. Finally, in relation to Ground 4, she pointed out that the guidance referred to was simply that, guidance and was not binding upon this Tribunal. In any event the public interest in accountability and transparency had to be weighed against the strong public interest in the GLA being able to obtain the legal advice that it did freely and on a confidential basis.

46. On 4 July 2019 the Registrar directed that the GLA should be made a party to the appeal, and made further directions for the conduct of the appeal (pages 41 to 42 of the bundle).

47. The Appellant filed a reply to the Commissioner's response (pages 43 to 46 of the bundle) on 12 July 2019. In this document the Appellant recognises that the appeal turns on the merits of the balancing exercise between public interest in Article 10 rights, for journalist's public to attend observe and report on two vitally important regional government meetings, with the need to protect confidentiality in legally privileged communications between a public authority and lawyers instructed by that authority. He goes on however to disagree with the Commissioner's interpretation of the weight and relevance of the authorities cited, and her conclusion in favour of the public interest in maintaining the confidentiality of communications outweighing the interests which the Appellant seeks to advance. He submits that neither the GLA nor the Commissioner had fully appreciated the gravity of the breach of the Article 10 rights which had occurred. He referred to the importance of political speech, and its acknowledgement in the Supreme Court.

48. He went on to discuss the two possibilities about the advice that been received. It may have been the case that the legal advice was that both meetings should go ahead with the media and public present, in which case the GLA ignored that advice. Alternatively, it may have been the case that GLA was (he would say) wrongly advised that it should hold these two meetings in secret. He submitted that the public interest in knowing the truth of this matter outweighed the public interest in the advice remaining protected by LPP.

49. He argued that the circumstances of the case justified the Tribunal permitting an exception to overall the public interest in lawyer and client legal privilege. He did so on the basis of the seriousness of the issues that were discussed these meetings,

namely the spiralling increase in knife crime in London, and the unprecedented exclusion of media and public from such vitally important meetings to discuss these life-and-death issues.

50. In particular (page 45 of the bundle) the Appellant said this:

*"The legal advice relied on by GLA has to be disclosed so that the public can have confidence and understanding that the GLA considered every other available option, alternative and possibility in ensuring political neutrality before deciding to deny the media and public their full Article 10 freedom of expression rights.*

*The legal advice has to be disclosed in order for the public to know why a remote concern of political neutrality being undermined because one or two GLA members present were involved in local elections could be justified in shutting down public and media access to meetings being conducted by the regional London authority that was not involved in any electoral process."*

51. The Appellant goes on to make reference to what he describes as a catastrophic decline in local and regional journalism publications and resources. He cites various statistics and support of his contention that the profession and industry are in decline. He seems to advance this argument to explain the lack of resources that the industry and profession had to legally challenge the decision making by way of an application for an injunction, or judicial review. He suggests that seeking the fullest disclosure of all decision making was the only remedy available to a media industry struggling to fulfil its democratic purpose in service to the public in the interests of freedom of expression. He went on to refer again to the judgement in ***Magyar***, and repeated his assertion that journalists now have a "standing right to state and government body information under Article 10 in order that they fulfil the 'special watchdog' functions on issues of public interest. This was the reason why he was pursuing the appeal by way of an open Tribunal hearing on behalf of professional journalists who were trying to fulfil their public watchdog role as an NGO charity constitutionally committed to furthering freedom of expression and the rights of journalists and the wider public.

***The Response of the Second Respondent.***

52. The GLA submitted its Response on 1 August 2019 (pages 47 to 57 of the bundle). Its position was that the information was exempt from disclosure under section 42(1), and there were no weighty or material factors which justified overriding the inherently strong public interest in the maintenance of LPP.

53. In setting out the background, the GLA referred to the local government elections which took place in London on 3 May 2018. Reference was made to the rule in the pre-election period known as "purdah", during which local authorities must comply with additional restrictions on activities, particularly in relation to publicity which are or might be considered to be incompatible with political neutrality. To provide more detail for the source of this rule, it is found in particular in the "Code of

Recommended Practice on Local Authority Publicity", issued by the Secretary of State pursuant to s. 4 of the Local Government Act 1986. Reference is also made to GLA's own internal Guidance as to how normal business should be conducted in pre-election periods.

54. The Response goes on to detail how the two meetings on 10 and 11 April 2018 were within the purdah period, how some attendees of both events, including the Committee Chair, were candidates in the elections on 3 May 2018. Senior GLA officers had sought legal advice in relation to those meetings, and what, if any, publicity could be given to them.

55. The Response then details the Appellant's FOIA request, the response to it, and how he had been provided with a web link of a recording made of the London assembly meeting on 11 April 2018. The ensuing paragraphs detail the history of the Appellant's request for an internal review, its outcome, and his subsequent reference to the Commissioner is then set out. The Commissioner's conclusions in her Decision Notice are rehearsed.

56. The Response then goes on to discuss the legal context of the request, and the Commissioner's decision. It acknowledges that section 42(1) provides a qualified and not an absolute exemption. The GLA argues, however, that repeated appellate authority binding on this Tribunal has emphasised the special weight to be given to the protection of LPP. Whilst first-tier decisions had been referred to, the Upper Tribunal decision in ***DCLG v Information Commissioner & WR [2012] UKUT 103 (AAC)*** was an authority which this Tribunal should consider, and had acknowledged the "heavy weight" to be accorded to the exemption, albeit that it should not be elevated into an absolute exemption. Reference was also made to the Upper Tribunal's decision in ***Savic v Information Commissioner, AGO & CO [2017] UKUT AACR 26.***

57. The Response then considers the Appellant's Article 10 arguments, pointing out that he relies strongly, almost exclusively, upon these rights. It is pointed out that the maintenance of LPP is itself a fundamental right, under the ECHR and the common law.

58. The Response then considers the Appellant's arguments based on the judgment in ***Magyar***. The GLA disputes that this decision establishes a freestanding right of access to state information, and makes reference to the Supreme Court decision in ***Kennedy***. It is argued that the ECtHR decision merely recognises that there may be circumstances in which such a right arises, but there are four criteria that need to be satisfied for it to do so. In any event, the GLA argues, this amounts to no more than application of the public interest test which the Tribunal is already required to apply under s. 42(1).

59. The Response then continues to set out the GLA position in respect of the specific arguments advanced by the Appellant, and challenges a number of the

assertions that he has made. In summary, the GLA contends that there were strong contextual reasons supporting the maintenance of the exemption over and above the inbuilt public interest in maintaining LPP. In particular, reference is made to the request following the decision very shortly, and the threat that was made of a formal complaint, or even legal action, against the GLA. This would have made it wholly improper for one side to dispute to have to disclose its legal advice when the other side did not.

***The Appellant's response to the Response of the Second Respondent.***

60. The Appellant filed a response (pages 108 to 113 of the bundle) to the Second Respondent's Response which is undated, but is likely to have been filed between 1 and 8 August 2019. The first point that the Appellant makes in this document is that this is a unique case, as there had never previously been a challenge under the FOIA of legal advice to a public authority to exclude the public and media from meetings held during a political campaigning period for elections that were not being held by that local or regional authority. He pointed out an error in the submissions of the GLA which referred to the "run up to the GLA elections on 3 May 2018". (The Second Respondent by email of 8 August 2019, page 158 of the bundle, has acknowledged that this is an error, but an inconsequential one.)

61. The Appellant then goes on to dispute the contention made by the GLA in its Response that he had conspicuously and unjustifiably exaggerated the nature of the impact of the decision. He then sets out at some length arguments in support of his contention that this was a serious, and indeed grotesque, breach of the Article 10 rights of journalists. He then goes through a number of statutory and other provisions relating to the merits of these meetings being conducted in private, and says (page 11 of the bundle):

*"Consequently, there is a prima facie case that* ***the decision to hold these meetings in private was unlawful.***" [- Appellant's emphasis]

He continues to develop this theme in the remainder of this document ending with this paragraph (page 112 of the bundle):

*"6. In conclusion, the appellant is seeking the disclosure of the legal advice in the particular circumstances of this case because it would appear that it is being relied on by the Second Respondent for a decision to unlawfully hold two significant regional London authority meetings in private. The professional media and general public had an acute and intense public interest in these meetings being open to public attendance, and subject to contemporaneous reporting that attracted qualified privilege in defamation law. These are indeed weighty and material factors justifying the overriding of the public interest in respecting lawyer and client legal privilege."*

***The oral hearing - The Appellant's submissions.***

62. In addition to this written material, which both parties were content to rely upon, the Appellant and the GLA appeared before the Tribunal. They spoke to and elaborated upon their respective written submissions, in the Grounds of Appeal, the Responses of both respondents, and the Appellant's responses to both those Responses.

63. The main additional points to come out of the oral submissions were these. The Appellant took the Tribunal to the expressions of concern about the meetings being held in private that were made at the time, which appear in the emails disclosed (pages 163 to 183 of the bundle). He identified in particular one email (page 172) on 10 April 2018 as having been sent by senior member of the BBC. He referred to communications from Assembly Members, expressing concern about this proposal. Additionally, not in the bundle, but adduced at the hearing, he produced a quotation from Caroline Pidgeon, an Assembly Member , expressing her opposition to the Assembly meeting being held in private. This was in response to the Appellant asking her for her "opinion". He referred to the complaint that the BBC, Sky News and ITN made to the GLA, which was reported in the Evening Standard, and to the GLA's response to it from Jeff Jacobs (pages 184 to 185 of the bundle). He submitted that the advice was needed to show the source of the decision. When one of the Tribunal members raised with him the response referred to, he submitted that he could not assume that this response was replicating the legal advice received. He later took the Tribunal to an extract, at section 31.3.1 from McNae's Essential Law for Journalists, at Tab in the Authorities bundle. This deals with when bodies must meet in public. He also referred the Tribunal to the document "Open and accountable local government" at pages 114 to 146 of the bundle.

64. The Appellant also expanded his Article 10 arguments based on ***Magyar.*** He pointed out how the Supreme Court judgment in ***Kennedy*** was at odds with the ECtHR judgment, and how public authorities were keen to rely upon the latter. The Appellant's organisation was a "watchdog" body, satisfying that requirement, which was exercising, and fighting hard for the protection of, Article 10 rights.

***The Second Respondent's oral submissions.***

65. For the Second Respondent Mr Knight relied on five main points:

i)The in-built weight to be afforded to LPP;

ii)The withheld information will tell the Appellant and the pubic little they do not already know, and will not materially add to the public debate which has already been held;

iii)It was particularly important to maintain LPP in the context of a controversial decision, as this was;

iv)At the time of the request there was a real risk of a legal challenge to the decision;

v) The issue upon which the legal advice was sought – the effect of purdah on local authority business is a recurrent one, and was likely to arise again.

66. Mr Knight developed these points, and took the Tribunal to the authorities in the joint bundle, particularly ***O'Brien***, ***DCLG***, and ***Savic*** . The weight to be afforded to the LPP exemption was considerable, but not, he accepted, to be raised to a level whereby it became an absolute exemption.

67. In considering the Article 10 arguments, he pointed out that LPP was itself recognised as a fundamental right, and referred the Tribunal in particular to the authority of ***R. (Morgan Grenfell) v Special Commissioner of Income Tax [2202] UKHL 21.***

68. In relation to point (ii) Mr Knight made reference to disclosed material, and the discussion that had already taken place as to the merits or otherwise of the decision to hold the meetings in question in private. The public already knew a good deal about how the meetings came to be held in private, and the concerns raised by media representatives had been disclosed along with the replies to them. He made particular reference to the email at pages 187 to 188 of the bundle, from the three news organisations, in which, in the final paragraph, the authors make reference to considering what further options were open to the complainers to ensure there was a proper and prompt opportunity for appropriate public scrutiny of the proceedings of the London assembly. This, it was submitted, would include the option of legal proceedings. This was echoed in a further email from the same source on 13 April 2018 in which reference was made to the complainers considering their options (page 185 of the bundle). Reference was also made to page 218 of the bundle, which was later to confirmed (allegedly) to have been sent on 26 April 2018, addressed to the claimant and a colleague, from Emma Strain, the GLA monitoring officer in which she responded to the issues that had been raised.

69. He went on to refer the Tribunal to the Code of Recommended Practice on Local Authority Publicity, and its application to the GLA, and the GLA's own internal document, the Use of GLA Resources, in which the relevant provisions relating to publicity in the circumstances are to be found.

70. In elaboration of point (iii), Mr Knight addressed the importance of maintaining the exemption in these particular circumstances, and pointed out that the legal advice in question was provided after the decision to hold the meetings in private had been taken (see page 215 of the bundle, Ian Lister's response to the ICO), at a time when there was a real risk that this decision of the GLA would be subject to a legal challenge, and was still within the three month time limit for presentation of a claim for judicial review. This latter point relates to (iv) above.

71. In relation to point (v), Mr Knight submitted that the issue of the effect of purdah upon local authority business was likely to arise in future.

72. In summary, he added that the subject matter of the meetings in question was irrelevant, and had nothing to do with the decision to hold the meetings in private. There had not been the grotesque "breach of the Article 10 rights of journalists, who do not have an automatic right to be invited to every public meeting.

73. Finally, having drawn points of distinction with the reasons for the decision in ***Mersey Tunnel Users Association***, Mr Knight addressed the Appellant's arguments based on ***Magyar*** and Article 10. His first proposition was that there was no need for the Tribunal to consider this issue, as LPP is itself a Convention right, the main authority for which was ***R (Morgan Grenfell) v Special Commissioner of Income Tax [2202] UKHL 21***. Alternatively, on a proper analysis of the judgment in ***Magyar***, *all* that was required was for the Tribunal to carry out the same public interest test as was required by s.42(1) in any event. Article 10 did not add anything to what was already an exercise of balancing public interests.

***The Appellant's submissions in reply.***

74. In his reply Appellant again made reference to his strongly held view that the holding of these two meetings in private was a "disgraceful breach" of Article 10. He made reference to the number of young persons who had been the victims of knife crime, and drew analogies with the Grenfell Fire enquiry. He disputed the propriety of the GLA calling informal meetings to circumvent their obligations of transparency and accountability. As he put it, "purdah" had become "pravda". It was not enough that the participants could send tweets from the meetings, or could be questioned about what happened after the event. The GLA account after the event was more "pravda", and was spin doctoring.

75. Returning to the s.42(1) issue, he contended that the withholding of the legal advice was not proportionate, and did not add to the public debate. If there was no deficiency in the GLA's decision-making, this was a good basis for an exculpatory release of the advice. The controversial nature of the decision taken cut both ways, and was an argument for the release of information. In terms of the risk of live proceedings, as it was now more than three months since the decision was made, this was no longer a consideration. On the other hand, if the effects of this "bonfire of misconception and misdirection" as it was put, continues to have effect this was all the more reason why the legal advice needed to be made public.

***Matters arising from the submissions.***

76. In relation to page 218 of the bundle, the letter to the Appellant and a colleague, referred to by Mr Knight, the Appellant denied having received this document. It is odd that it was included in the bundle without comment, and was sent also, apparently to Dom Cooper, to whom the Appellant had copied his letter of 18 April 2018 sent to the Mayors Press Office. That letter itself is, curiously, not in the open bundle, but is referred to in Ian Lister's letter to the ICO of 1 April 2019. The

contested letter (in redacted form) which is alleged to have been sent to the Appellant on 26 April 2018 is probably what is referred to as "Appendix 3" to Ian Lister's letter. Unfortunately, what was in "Appendix 1", which is described as "copy of case correspondence with Prof. Crook" is not clear, nor is page 218 of the bundle marked as being "Appendix 3" to Ian Lister's letter to the ICO.

77. The Tribunal has no reason to doubt the Appellant's contention that he did not receive that letter, and, in the closed material, only a draft version appears. There is thus no version before the Tribunal bearing any email transmission data, nor any indication of any other form of transmission (post seems most unlikely). The Tribunal is not satisfied in these circumstances that this letter was indeed ever (until the ICO investigation or the preparation of the bundle) seen by the Appellant, and will discount it for the purposes of its Decision.

78. Further, having been informed that the dichotomy of the approach that domestic first – tier Tribunals should take, if and when faced with a choice between following the ECtHR judgment in ***Magyar***, or the Supreme Court judgment in ***Kennedy***, is the subject matter of an appeal to the Upper Tribunal in ***Moss v Information Commissioner***, the Judge did raise with the parties whether they considered our Decision should be delayed until after the Decision in that appeal was available. At the time of the hearing of this appeal, that appeal had not been heard, was due to be in January 2020, but still, as at the date of this Decision has not been, or, if it has, no Decision has yet been issued.

79. Neither party suggested that this Tribunal should defer judgment until that Decision was available, but, in the event that the Tribunal considered that this issue was one upon which this appeal may turn (the Second Respondent's position is that it certainly does not) , this Tribunal could, of course, always take that course. As will be apparent, we have not considered it necessary to do so.

***The closed material.***

80. The Tribunal then viewed the closed material. It cannot, of course, reveal its contents, but suffice it to say that its contents do indeed fall within the types of information that the GLA has suggested it would. From it the Tribunal is quite satisfied, and the Appellant has not argued that it should not be, that the communications that have been withheld do indeed amount to communication of legal advice, in circumstances which give rise to LPP within the meaning of s.42(1).

81. What the closed material confirms, and can be disclosed without defeating the purpose of withholding it, is not only what the advice was, but when it was given. The decision to call the meetings, and that they would be held without the press being present, was made on or before 5 April 2018. The Press Release for the former is dated 5 April 2018, and the invitation to the latter is dated 6 April 2018. The two were rather different. The initial complaint, as can be seen from pages 165 to 168 of the open bundle, raised by Gareth Bacon, was that the Mayor seemed to being allowed to

make some political capital by holding his Summit meeting, when the PCC meeting was to be in private. No such restriction was apparently being placed upon the Mayor's Summit, though it was by invitation only, and the press and media were not to be invited. This was his initial complaint, and what prompted the enquiries to Emma Strain on 6 April 2018. It is clear, as Ian Lister's letter to the ICO asserts, that the first legal advice sought or given was after those decisions as to how each meeting was to be held, and indeed whether the Mayor's Summit could be held, were taken.

82. The closed material shows that the first request for legal advice made of GLA's legal advisers at TfL was on 7 April 2018. Nothing in the withheld material predates 7 April 2018. Thereafter advice was sought in response to the various emails received on 10 April 2018 from Assembly Members, and representatives of the three media organisations, the BBC, Sky News and ITN, in which complaint was made about the decision to hold the meetings in private, and in respect of which the latter group , as can be seen from the open bundle, referred to "further options" that may be open to them to ensure a proper and prompt opportunity for appropriate scrutiny of proceedings of the London Assembly.

83. Whilst the Tribunal viewed closed material, there was no closed session, nor any closed submissions in the absence of the Appellant and the public.

***The Law.***

84. The relevant provisions of the FOIA are as follows.

*s.42 Legal Professional Privilege*

*(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.*

*(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.*

***Findings.***

85. This appeal, as all parties agree, falls within a narrow compass. The only issue is whether the Commissioner's Decision Notice was in accordance with the law, in her upholding of the exemption claimed by the GLA under section 42(1) FOIA. There has been no argument but that s.42(1) was engaged, so the sole issue has been whether the disputed material which would be exempt under that section as being subject to LPP should nonetheless be disclosed because the public interest test under s.2(2)(a) of the FOIA favours disclosure.

86. In approaching the determination of this issue, the Tribunal is mindful of the substantial weight that the authorities referred to by all parties have held should be

applied to the exemption of material covered by LPP. That is not to say that it is an absolute exemption, and the Tribunal is satisfied that the Commissioner did not treat it as such. It is nonetheless a very weighty one, requiring countervailing public interest factors of equal or greater weight to tip the scales of public interest in favour of disclosure. The Appellant argues that such factors are present in the circumstances of this case, both Respondents argue that they are not.

87. Much has been made of the legality of the GLA decision to exclude the press and the public from the two meetings in question. That is, of course, not the issue before this Tribunal. The Appellant's position, however, is that this decision was not only one that was "wrong", but that it was illegal, both under domestic legislation, and, because he contends it infringed, "grotesquely", the Article 10 rights that he argues journalists now enjoy following the ECtHR judgement in ***Magyar***.

88. The Tribunal agrees that this view of the effect of that judgment is a central plank upon which the Appellant bases this appeal. As such, the starting point has to be whether the Appellant's view of the effect of the decision in ***Magyar*** is indeed correct. Counsel for the GLA has argued that the Appellant has overstated the effect of this decision. The Tribunal has been taken to the relevant passages, and the limited extent to which a right under Article 10 to access information held by a public authority may in certain circumstances arise. There are two contexts which are referred to, and the relevant one here is where access to the information is instrumental for the individual's exercise of his or her right of freedom of expression, and where its denial constitutes an interference with that right. There are then four threshold criteria which must be met if this exception is to apply, as set out in the Second Respondent's Response and paragraphs 158 to 170 of the judgement.

89. The Court's four criteria for engaging the Article 10 right are:

a) Purpose of request.

As a prerequisite, the purpose of the request must be to enable [the requester's] exercise of the freedom to receive and impart information and ideas to others. The information must be "necessary" for the exercise of freedom of expression;

b) Nature of information sought.

The information must meet a legitimate public interest test to prompt a need for disclosure under the Convention.

c)Role of requester.

The applicant must be in a privileged position, seeking the information with a view to informing the public in the capacity of a public watchdog. Such a privileged position should not be considered to constitute exclusive access.

d)Information ready and available.

Weight should be given to the fact that the information requested is ready and available.

90. Criteria (b) (c) and (d) are not in issue here, as they are clearly satisfied. The first, however is very much in issue. As has been demonstrated by the information before the Tribunal, however, the release of the legal advice is not "necessary" for the exercise by the Appellant, or anyone else, of their Article 10 rights. They have been, or would be, perfectly able to exercise those rights without sight of the legal advice. The Tribunal agrees with the Second Respondent's submission that, at most, the application of Article 10 merely requires, by another route, the Tribunal to carry out a public interest test that it is required to carry under s.42(1) in any event. In other words, to use the Appellant's language, the Article 10 right, interpreted at its highest on the basis of the decision in ***Magyar*** does not "trump" the public interest in maintaining LPP, itself a fundamental right under both the ECHR and a common law.

91. For those reasons, the Tribunal sees no reason to defer its determination of this appeal pending the determination of the Upper Tribunal's appeal in ***Moss***.

92. This brings the Tribunal back to where it started, conducting a public interest balancing test under s.42(1) of the FOIA. The Tribunal considers that the burden is upon the Appellant in the circumstances to displace the substantial weight to be given to the exemption. He seeks to do so by, apart from extensive reference to infringement of Article 10 rights, arguments that the decision itself was a highly controversial and unusual one, taken in circumstances where the meetings in question were to discuss very serious violent crime of obvious public interest to Londoners, and the nation as a whole.

93. That was so, and is not disputed by the Respondents, but that is insufficient, they both say, to displace the public interest in the maintenance of LPP in these circumstances.

94. It is perhaps instructive to consider the one cited instance of the LPP exemption being displaced on the public interest test. That is the FTT Decision in Mersey ***Tunnel Users Association v Information Commissioner and Mersey travel (EA/2007/0052)***. The facts bear some examination. The request at issue in that case related to legal advice from Counsel received by the public authority in 1994 as to how to treat certain sums of money received from the operation of tolls on the Mersey Tunnel. The request, in 2005, sought disclosure of that advice in connection with a dispute as to how any operating surplus from the Mersey Tunnel should be applied. The Tribunal found that s.42(1) was engaged, and then considered the public interest test. It reviewed the other first – tier Decisions on the issue (including ***Bellamy***). In deciding that the balance lay in favour of disclosure, in the course of its Decision, the Tribunal said this:

*"46. The circumstances here are striking. A public authority has pursued a settled course over a period of many years, involving tens of millions of pounds, and in effect preferring one sector of the public over another in circumstances where legitimate and serious questions can readily be asked about both the power to make the payments and the obligation to do so. In making those remarks we are not to be taken as expressing any view, or questioning in any way, the propriety or legality of Merseytravel's actions. Our concern is in the public interest in transparency. It is striking that, when Merseytravel addressed that public concern, on their website in 2002, and stated "Merseytravel has though a legal duty to use toll income to repay district councils for financing the Tunnel losses which occurred between 1988 and 1992", they were unable to answer clearly Mr McGoldrick's simple question: "which act refers to this legal duty?" Their reply came down to counsel's opinion. Hence this appeal."*

And, in conclusion:

*"51. Finally, we come to strike the balance in the particular circumstances of this case. Weighed in the round, and considering all the aspects discussed above, we are not persuaded that the public interest in maintaining the exemption is as weighty as in the other cases considered by the Tribunal; and in the opposing scales, the factors that favour disclosure are not just equally weighty, they are heavier. We find, listing just the more important factors, that considering the amounts of money involved and numbers of people affected, the passage of time, the absence of litigation, and crucially the lack of transparency in the authority's actions and reasons, that the public interest in disclosing the information clearly outweighs the strong public interest in maintaining the exemption, which is all the stronger in this case because the opinion is still live. To quote Bellamy: "there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that public interest". In our judgement, the countervailing considerations adduced here are not equally strong; they are stronger. The opinion should be disclosed."*

95. There are, therefore, considerable differences with the facts of this case. Not least of these is the context in which the advice was provided, and how central it was to the public authority's position. It was the only explanation given for the decision, applied and relied upon then for years for a fiscal policy, with significant ongoing financial consequences involving millions of pounds of public money, and disclosure was the only way for anyone to understand the basis of the authority's actions. It relied upon legal advice, but would not say that that advice was.

96. The position here is different, the GLA has explained its decision, and did so very soon, which was that it believed that the election purdah rules required it to exclude the press and the public from two meetings.

97. More crucially, and this appears to have been a slightly overlooked factor, whilst confirmation of that belief may, or may not, have come from the legal advice received, the decision had already been taken, without the benefit of obtaining it first. The legal advice was only sought when the decision was questioned, firstly by a Member on 6 April 2018, in relation to the Mayor's Summit, and then , on 10 April 2018 , when a number of complaints about the decision to hold the Assembly Meeting in private were received, and threats of further action were being made by some

powerful and well-resourced media organisations. (It is a little unfortunate that para. 11 of the Response of the Second Respondent rather misstates the position, in that it suggests that Senior GLA officers sought legal advice in relation to the meetings and what, if any, publicity could be given to them before the decision to hold them in private was taken, when this was not actually the case.)

98. This confirms how the disclosure of that advice was not necessary to be able to understand, and indeed, challenge if appropriate, the GLA's original decision, or rather two decisions, for there were actually two, as there were two, different, meetings.

99. This vital fact also undermines two central points of the Appellant's appeal. In his Grounds of Appeal, he made reference to the legal advice being "at the political heart, source origin of a decision" that was unprecedented in applying election purdah considerations in the GLA. He also in these Grounds goes on to say: *"If the legal opinion in this case persuaded the largest, richest and most powerful UK city authority to hold public interest political and consultative meetings in secret, its content and reasoning must be available for public debate and challenge to prevent further and equally serious derogations and breaches of Article 10 rights."*

100. The advice, however, was not the source or origin of the decision, nor did the legal opinion persuade the GLA to do anything. The GLA took the decision before, and without obtaining, any legal advice, and then took legal advice when that decision was questioned, initially by a Member, and then by representatives of the media.

101. The explanation of the decision, in fact, was given at an early stage, in some detail, in response to the joint complaint from the BBC, Sky News and ITN in Jeff Jacobs' email of 17 April 2018 (pages 184 to 185 of the bundle). Whilst the Appellant may lack the resources to mount to a legal challenge to the GLA's decision, those three representatives of the media certainly do not. The Tribunal notes that none of them took any action, nor did they seek sight of the legal advice in order to consider whether they should do so.

102. We would note too that the subject matter of the request at issue in ***Savic*** was the decision to take military action in Kosovo. The information sought was the Attorney General's advice to the Government. Notwithstanding the public interest in openness and in understanding and evaluating on an informed basis the reasons for the decision to take military action, which was accepted by the Upper Tribunal to be a legitimate and strong one, the public interest test was nonetheless determined in favour of maintaining the exemption. This rather demonstrates how the strength of the public interest in the subject matter, which, being a decision to take military action must be on a par with the issues in this case, cannot, of itself, outweigh the considerable weight to be afforded to the LPP exemption.

103. Further, it is , this Tribunal considers , not without significance that , whilst the Appellant has contended on the one hand that disclosure of the legal advice is necessary to enable interested parties to understand the reason why these meetings were held in private, and whether the GLA ignored advice to the contrary, or acted on the basis of flawed legal advice, and for such parties to hold the GLA to account, from his response to the GLA Response (pages 109 to 111 of the bundle) it is clear that the claimant considers that the decision to hold these meetings in private was unlawful, and that there is a *prima facie* case that this was so. This rather defeats the Appellant's argument that disclosure of the legal advice received was necessary in order for the GLA to be held to account. This conclusion that the Appellant has reached, without the benefit of seeing the legal advice received by the GLA, is one that presumably could have been reached at the time by any other interested party capable of carrying out the legal research which the Appellant has clearly done. It would have been open to any such party to seek a judicial review of the GLA's decision. Disclosure of the legal advice received by the GLA was clearly thus not necessary in order for any such action to be considered or taken.

104. As suggested by Wynn Williams, J. in ***O'Brien***, in conclusion, we will summarise our findings in relation to the public interest factors as follows:

*(a)Factors in favour of disclosure:*

*The need for transparency and openness in public affairs*

*The unusual and controversial nature of the decision to exclude the press and the public from the meetings*

*The considerable and legitimate public interest in the subject matter of the meetings*

*The qualified Article 10 rights of the press to information held by public authorities*

*(b)Factors in favour of maintaining the exemption*

*The in - built weight to be afforded the LPP exemption*

*The fact that the advice was given after the decisions to hold the meetings in private had been taken, and was not the reason for the decisions being taken*

*The timing of the request so close to the decision, which was at the time when the decision could have been the subject of legal proceedings in which the public authority would be prejudiced by having to disclose its legal advice*

*The fact that the advice is not necessary for the understanding of the GLA's reasons for taking the decisions that it did, or for any potential legal challenge to that decision*

*The fact that the issue of what business pubic authorities may lawfully conduct during a period of pre – election purdah is likely to be a recurrent one, in respect of which legal advice without the risk of disclosure may need to be taken in future*

105. For all the reasons set out above we consider that the factors in favour of maintaining the exemption do outweigh those in favour of disclosure, and, this appeal fails. No steps are required to be taken by the Information Commissioner, whose Decision Notice is confirmed.

Signed:

Judge Holmes,
Judge of the First-tier Tribunal
Date: 21 April 2020