



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

Appeal Reference: EA/2018/0090

**Heard at Sheffield MC
On 29 August 2018**

Promulgation Date 2nd May 2019

Before:

**JUDGE HOLMES
ANNE CHAFER
MALCOLM CLARKE**

Between:

LIAM HARRON

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

DECISION AND REASONS

DECISION

The Tribunal allows the appeal, and for the decision notice dated 28 March 2018 is substituted the following:

The public authority is required, within 20 working days of receipt of this substituted Notice, to provide to the Appellant the information requested in his FOIA request of 2 February 2017, ref. No. 1124-16, limited to information falling within the scope of that request, and excluding any emails passing between members of RMBC's Legal Department on 15 September 2016.

REASONS

1. In this appeal the Appellant, Liam Harron, appeals against a Decision Notice issued by the Information Commissioner on 28 March 2018, in which she determined that the public authority, Rotherham MBC ("RMBC"), had correctly applied s. 42(1) of the FOIA, on the grounds

that the information requested was exempt by reason of it being information in respect of which a claim to legal professional privilege could be maintained.

2. The appellant appealed the Decision Notice by a Notice of Appeal dated 25 April 2018. The appellant indicated that he was content with a paper determination.
3. RMBC on 9 May 2018 notified the Respondent that it did not wish to be added as a party to the appeal, and provided its own responses to the Grounds of Appeal [0090/275 - 276].
4. The Commissioner filed her response to the appeal on 7 June 2018. The Appellant filed a response to the Commissioner's response dated 21 June 2018.
5. The Registrar issued case management directions on 11 May 2018 directing that this appeal and that in 2018/0086 would be considered by the same Panel, and the same Judge who was (alone) considering the appeals in 2018/0009 and 2018/0047. Further directions were issued on 24 July 2018, confirming that the appeal would be dealt with on the papers, giving directions for the filing of written representations, and acknowledging receipt of the disputed information.
6. There were two hearing bundles, one open and one closed. The Tribunal will use the format "[0090/XXX]" to refer to page numbers in the open bundle. The Tribunal reserved its Decision, which is now given, with apologies to the parties for the delay in its promulgation, occasioned by a mixture of pressure of judicial business, technological issues, and family medical circumstances experienced by the Judge.
7. This is one of four connected appeals, and the Judge has already pointed out to the parties the unhelpful and time-consuming form of the bundles presented to the Tribunal in all four appeals. This appeal has an open bundle of some 276 pages, with many documents that appear in the bundles in the other appeals. Again, there is, at least, duplication of many documents (e.g two copies of the Appellant's 7-page document of 15 December 2015) within this bundle. A composite, and adequately indexed, bundle for use in all four appeals would clearly have been preferable, though that is probably an observation made with the benefit of hindsight.
8. Some documents are not contained within the bundle for this appeal, but are relevant, and where it is necessary or helpful to refer to these they will be referred by reference to their appeal bundle by the use of the format [00**/**].

The Background.

9. Common to all the appeals is the background to the particular request made by the Appellant which gives rise to this appeal.
10. The Appellant is a retired headteacher. In the aftermath of serious Child Sexual Exploitation (“CSE”) in Rotherham, which led to the publication in August 2014 of the Jay Report into CSE in Rotherham between 1997 to 2013, he and a colleague Chrissy Meleady, saw a need to give victims, survivors and their families a voice, to assist them in dealing with their experiences, and to help inform the establishment of systems and procedures that would gain support of those directly affected by CSE.
11. Consequently, the Appellant and Chrissy Meleady between November 2014 and February 2015 received and compiled contributions from victims, and others affected by CSE, and on 15 February 2015 published them in a 44-page A4 softback booklet, entitled “Voices of Despair Voices of Hope” (hereinafter “Voices”). The Appellant and Ms Meleady worked in close consultation with RMBC and South Yorkshire Police in the production of this work. David McWilliams was appointed in January 2015 as Director of Commissioning and Performance for Children and Young People’s Services at RMBC. The Appellant consulted with him during production of the publication.
12. The Appellant funded the production of Voices himself. It was not intended to be a commercial product. The initial production run of the publication was 500 copies.
13. On 10 March 2015 RMBC ordered 1500 copies of Voices. This was unexpected, and the Appellant had to arrange increased production to meet this order. It was anticipated that RMBC would distribute the publication. The 1500 copies were produced and delivered to RMBC in or around March 2015. The Appellant kindly provided the Tribunal with a hard copy of the publication at the hearing.
14. Around February 2015 RMBC the Secretary of State for Communities and Local Government exercised his powers to suspend the Council, and its functions were thereafter carried out by Commissioners, appointed by the Secretary of State. Accordingly, ultimate control of RMBC functions lay in the hands of these Commissioners, and it was to them that RMBC officers reported from February 2015.
15. On 24 July 2015 the Appellant, Chrissy Meleady and David McWilliams met. By then the latter had been appointed Assistant Director Early Help & Family Engagement, but he re-affirmed RMBC’s intention to

distribute the publication through a planned workforce distribution programme, likely to commence that autumn.

16. On 5 September 2015 far right - wing activists came to hold a demonstration in Rotherham, seeking to exploit the fact that the perpetrators of the CSE that had been uncovered were from ethnic minority groups. This had led to clashes with the Police and anti-fascist groups who had demonstrated against the right - wing groups.
17. Against this background, and to promote racial harmony, the Appellant, still working with Chrissy Maleady, proposed a second edition of the publication, in which he hoped to defuse racial tensions , and to present a more conciliatory approach, to bring together communities. He was concerned that racism was now becoming as big a problem in Rotherham as CSE had been, and the purpose of the next edition of Voices would be to listen to the voices of victims, survivors, and their family members and others adversely and directly affected by racism.
18. He therefore sent an e-mail to David McWilliams and Ian Thomas, the Strategic Director of Children and Young People's Services at RMBC, on 11 September 2015 impressing upon them that the second edition of Voices was now a very high priority for himself and Chrissy Maleady. In that email he also asked for a breakdown of the distribution of the 1500 copies of the original publication that had been supplied to RMBC.
19. On 15 September 2015 David McWilliams replied in an email to the Appellant. He summarised the distribution of Voices up to that point, which was around a couple of boxes. In that email, however, he informed the Appellant of RMBC's decision not to distribute the first edition of Voices any further. He explained this decision in these terms in his email:

"However, before I took this any further we sought independent, expert guidance on the content and after consideration Commissioner Newsam and Ian [Thomas] agreed to keep any further distribution limited to those already mentioned and or any individuals that we felt should be sighted on the publication.

20. He went on:

"I thought you might find it helpful if I shared some of the feedback we received:"

21. David McWilliams then set out some seven paragraphs of issues that RMBC apparently had with the publication, which were the reasons that the decision had been taken not to distribute it any further. In the version of this email at page 61 of the 0009 bundle the first two

paragraphs are in Arial font, but the text of seven paragraphs which followed the words “. the feedback we received:” are in italic, until the end of the email, where the sign - off “Best wishes. Dave” reverts back to Arial, non - italic, font.

22. This email is not contained in the bundle for this appeal, but parts of it are referred to in other documents (e.g. in the Appellant’s 15 December 2015 document [0090/28] where an extract is referred to). The Appellant replied to him by email later the same day , expressing his concern at the change in position. He asked whether there had been any positive feedback.

23. The Appellant on 16 September 2015 raised his first FOIA request to RMBC in these terms:

“The email from David McWilliams yesterday about Voices of Despair, Voices of Hope is both baffling and distressing.

I think it is essential, for the public record, to get to the bottom of all the mistakes that have been made.

As a Freedom of Information (FOI) Request, I am asking for a copy of all communications relating to Voices of Despair, Voices of Hope from 2 December 2014 up to 16 September 2015.”

24. This was the beginning of the Appellant’s attempts to obtain an explanation of why RMBC, having purchased 1500 copies, had changed its mind about distributing so many copies of Voices, with no warning that this was likely to happen. It is to be noted that it is not the failure of RMBC to purchase 1500 copies that is at issue, but its decision not distribute the copies it had purchased, a misunderstanding that the Appellant has pointed out is contained in the IC’s Decision Notice.

25. His reasons for seeking this explanation were, the Tribunal accepts, that he felt in a difficult position in relation to those who had contributed to Voices, who had been led to believe that RMBC would be widely distributing it, and who could perceive this decision as a yet further instance of not being listened to by the establishment, one of the central issues in the CSE affair that the publication of Voices was intended to address.

26. This request was given the internal reference no. by RMC of FOI 600. This, of course, would be of 2015. The Appellant’s original initial request of 16 September 2015 was given the reference FOI 714, but this was clearly at a later stage. Confusion as to allocation of numbers to requests has been apparent through these appeals.

27. RMBC responded to that request on 23 October 2015 (outside the time limit, but nothing turns on that). The Appellant was provided with some copy documents, but did not consider that his request had been adequately responded to, so he sought, on 26 October 2015, and again on 7 December 2015, a review of the information provided to him under this Request. In this particular request of 26 October 2015 the Appellant had requested, at part 3:

“Information sent out with the Voices of Despair Voices of Hope publication to those taking part in any appraisal or evaluation.”

He also asked, at part 4, for:

“... the information generated when processing this FOI request (the metadata) which includes the internal notes, emails etc...”

In this document he set out 5, non – exhaustive, categories of documents which he considered should be disclosed.

(It appears to be at this stage that this was treated as a new request and given the reference FOI 714).

28. RMBC did not treat this as a review, but as a request for clarification. It responded by letter of 19 November 2015 informing the Appellant that it was being so treated, and that he would receive a further response by 23 November 2015. In fact, he received a further response on 7 December 2015, when he was supplied with further information. He responded to this in the document entitled “Comments on the information received on Monday 7 December 2015” dated 15 December 2015 [0090/28 – 34]. It is, however, unclear precisely what the Appellant received, other than a request for further clarification of three areas of six that he had previously referred to. From subsequent documents it appears that he was given the information that two copies of the Voices publication were sent to the “expert”, with an explanation about why an independent review was being sought.

29. The further information that the Appellant received appears to have been that which appears at [0009/139 – 141], which had been provided in draft to Commissioner Manzie for comment, and was sent then to Jean Imray for further comment before being released to the Appellant [0009/138].

30. The Appellant also that day, 7 December 2015, sought a review of his request, in the sense of his original request, which he considered had not yet been dealt with. He apparently did so in an email, but again, despite references to it at various points (e.g as Document 8 attached to

an email from the Appellant to Eira Owen on 19 July 2016 [0047/230], and [0009/47 and several other locations] where it is again referred to as Document 8, and the email header is set out) the Tribunal has been unable to locate a copy of it in any bundle. It is clear, however, that in that email he used the reference number 714, the one assigned by RMBC in response to what had been his review request of 26 October 2015.

31. Linton Steele, a solicitor with RMBC, was appointed by RMBC to undertake an internal review on or about 11 December 2015. He conducted that review, and sent the results to the Appellant on or about 15 January 2016. His review document is at [0090/148 - 155]. This is entitled FOI - 714 - Internal Review Decision, but Mr Steele acknowledges that there has been some confusion over assigned FOI request numbers, and refers to FOI 600 as well. He reviewed the information that had been provided to the Appellant on 23 October 2015, and the Appellant's response to it of 26 October 2015, which was treated as further clarification of his original request, though also assigned number 714 by RMBC.
32. He confirmed his provisional view, expressed to the Appellant on 17 December 2015, that RMBC had indeed failed to comply with the Appellant's request, within the statutory deadline, and substantively, in that RMBC had not provided the Appellant with, at the very least, a copy of the "expert appraisal" as it was termed that the Appellant had asked for.
33. He went on, however, [0090/150 - 151] to set out the results of his enquiries with Jean Imray, the Interim Deputy Strategic Director of CYPS. He relayed her account of how she had received the expert opinion by telephoning a sexual violence practitioner, and had asked for his or her comments on the Voices publication. This person agreed to provide comment, but on the strict basis that he or she would not be identified.
34. Jean Imray had explained to Linton Steele how these comments had been received by her on her personal iPad device, and how she then forwarded the same to herself at her RMBC email address. This was on 2 August 2015, and Linton Steele included in his Internal Review document the email of 2 August 2015 that Jean Imray had sent to herself [0090/150 - 151].
35. Linton Steele went on to consider whether non - disclosure of the identity of the expert who had provided these comments would be justified under the statutory exemptions under s.40(2) and 41 of FOIA. He concluded that disclosure would not be just and lawful, and that the

absolute exemption under s.40(2) was engaged. Nothing in these appeals challenges that view.

36. The Appellant thus received, by way of this Review, more information, and became aware of Jean Imray's involvement, what information she received, and how she had received it. He emailed Jean Imray directly on 15 January 2016 [0047/77] to ask her some further questions. She, by email of 15 January 2016 [0047/77] told Linton Steele, and others in RMBC that she had no intention of replying to the Appellant.
37. On 29 January 2016 Kelly Harrison of RMBC sent an email to a number of RMBC colleagues, including Jean Imray and David McWilliams, referred to the Appellant's FOIA request no. 714, and asking for all information generated (the metadata) when processing the first FOI request. After some initial querying as to whether this had not already been done, but was confirmed as being outstanding, Jean Imray said on 31 January 2016 that she was pretty sure this had been done and she had nothing to add [0047/86-87].
38. On 29 June 2016 [0090/205] the Appellant sought an internal review of the decision made in respect of part of his request of 26 October 2015, communicated to him on 7 December 2015, in these terms:

"I am requesting an internal review of the decision about my request for metadata on 26.10.15. I hope the review will consider the conflicting information shared with me, the numerous delays and the fact a final decision was communicated to me on 16.5.16 about a request for information on 26.10.15."
39. Sumera Shabir, a solicitor with RMBC, was appointed as the reviewing officer, and wrote to the Appellant on 14 July 2016 to inform him of this.
40. After some discussion, however, this, and other issues raised by the Appellant, was dealt with by a proposal that a meeting be held, under an alternative, extra - FOIA protocol, known as Business as Usual ("BAU"). The Appellant agreed, and therefore withdrew the request for an internal review that he had made on 29 June 2016.
41. He attended a meeting on 18 July 2016, and a further one on 12 August 2016 with Sumera Shabir, Eira Owen, and Christine Hotson.
42. On 15 September 2016 the Appellant made a specific request under BAU to Linton Steele for copies of any notes or email exchanges he had as part of his internal review, referred to above.

43. The Appellant subsequently withdrew from this alternative process, and on 26 October 2016 reinstated his request for an internal review [0090/206].
44. The Appellant then made a further request, dated 30 September 2016, which was in four parts. It is not the subject of this appeal.
45. This request (i.e all of it) was given the reference number 740-16 by RMBC. RMBC's response was sent on or about 1 November 2016 [0009/49 - 50].
46. In their response RMBC responded to part 1 of the request by referring to an email provided to the Appellant on 3 October 2016, to part 2 by referring to the Appellant's three previous FOIA requests, referenced as 600, 714 and 989 , and the email exchanges disclosed pursuant to those requests, and, in response to part 4 by reference to a response from RMBC sent to the Appellant on 16 May 2016, and to the meeting held between the Appellant and RMBC on 18 July 2016.
47. The Appellant subsequently made a further FOIA request on 2 February 2017 [0090/204], which is the subject matter of this appeal. Its terms were (Appellant's emphasis):
- "Please can I have all of the email exchanges and any other written information arising from my Request for an Internal Review on 29 June 2016 and the reinstatement of this request on 26 October 2016.*
- It is particularly important to have any email exchanges that involved **Sumera Shabir, Eira Owen, Christine Hotson and Ian Thomas**. It is not necessary to include any emails sent to me."*
48. The Appellant then set out in this document a summary of the background to his request. This request was assigned reference number 1124 - 16 by RMBC.
49. Thus, the information requested by the Appellant relates to a period between 29 June 2016 and 2 February 2017, and relates particularly to information passing between the four named individuals, and relates to how RMBC proposed to deal with the Appellant's request for an internal review of what had been its decision in relation to his request of 26 October 2015, given reference no. 714 (or sometimes 600) by RMBC.
50. RMBC (though precisely who is not apparent) replied to this request (i.e the one subject of this appeal) on 1 March 2017, from the handwritten note on the front of the document in the bundle, to the effect that it could not provide the information requested, because the legal

professional privilege exemption under s.42 of FOIA applied [0090/208-209].

51. The Appellant sought an internal review of this response by letter of 5 April 2017 [0090/210]. He referred to the reasons given for refusing his request, but focussed in this letter on the public interest issues, picking up on RMBC's justification for not disclosing the information. He did not specifically address the issue of whether s.42 was properly being applied, save in the case of communications with Ian Thomas.
52. RMBC carried out an internal review, which was then communicated to the Appellant on 3 May 2017 [0090/211-214], again with no date or authorship attributed. The first two and a half pages merely recite the original request, RMBC's response, then the Appellant's request for a review (somewhat curiously with Ian Thomas' name redacted, when it was contained in the document that the Appellant himself submitted). The findings of the review appear on the last two pages. The reviewer sets out the nature of legal professional privilege and what it protects. He or she continues:

"It is essential that the Council safeguards openness in all communications with legal advisors to ensure access to full and frank legal advice which is in turn fundamental to the administration of justice."

53. The reviewer goes on to refer to the information within the scope of the review not being considered to further public debate and/or to impact upon a large number of people or public spending. Finally, he or she states that the public interest test had been applied, and the result was in favour of withholding of the information.
54. The Appellant referred the matter to the ICO by letter of 14 August 2017 [0090/216]. To that letter he attached the request, the response, the request for the internal review, and the internal review. He stated at the end of this letter his view that the denial of this information by RMBC was part of a wider context of an attempt to deny him other related information.

The ICO investigation.

55. The ICO acknowledged the Appellant's referral on 27 October 2017 [0090/217], and wrote to RMBC the same day [0090/217-218]. That was then followed by a letter, on 1 February 2018, from Deborah Clark of the ICO to RMBC, introducing herself as the investigator, and requesting the authority to explain why it had applied the s.42 exemption, and, further, seeking clarification of whether RMBC was also stating in its response of 1 March 2017 that the information had already been

provided. She sought further details of how the public interest test had been applied, and what factors had been taken into consideration.

56. The same day, 1 February 2018, Deborah Clark also wrote to the Appellant [0090/225-226], confirming the scope of her investigation. The appellant replied [0090/227] acknowledging her letter, and enclosing further material by way of background relating to his previous requests.
57. On 1 March 2018 RMBC replied to the ICO's questions [0090/229 - 233]. In relation to question 1, in which the ICO asked RMBC why it believed that the withheld information attracted (legal) advice privilege, RMBC replied [0090/229 -230] that the requested information related to communication between a Legal Advisor, an RMBC solicitor and the CYPs Directorate Lead, as the client. It was broken down into three categories:
 - a) Client seeking legal advice
 - b) Legal Advisor requesting further information from the client to ensure a full understanding of the advice requested
 - c) Legal Advisor providing legal advice to the client.
58. In relation to the second aspect to this enquiry, whether the communications were made for the sole or dominant purpose of obtaining legal advice, the response was that the Appellant had at the time of the request made a number of FOIA requests, and the legal advice was sought as to how to answer them in the most effective and efficient manner, to avoid the need for him to make any new requests. The "client" had sought legal advice throughout the process.
59. Finally, in relation to the third element of this question, whether the information had been communicated in a legal adviser's professional capacity, RMBC implicitly said that it had, as any information that did not falling within this category had been disclosed.
60. After two other questions, which are not at issue in this appeal, RMBC was asked to address the public interest test. It did so by setting out the arguments in favour of disclosure that it considered, and the arguments again that it considered. The former was that disclosure would be in keeping with the spirit of openness and transparency in which RMBC operated, the latter was that there was a strong public interest in maintaining the concept of legal professional privilege and preserving the confidentiality of client - lawyer communications. It went on to refer to the need for a "safe space" in which to discuss such issues, and how disclosure may affect the quality of advice exchanged in the future.

61. In conclusion, RMBC explained that its weighting exercise considered that there was no general public interest in the subject, against the importance of maintaining confidential legal advice, and the need for clients to trust that this information is not disclosed.
62. By email on 2 March 2018 RMBC provided the ICO with copies of the disputed material [0090/241 - 242], with the email containing a cast list of the various persons involved in the information.

The Closed material.

63. This has been viewed by the Tribunal, and runs to some 132 pages. It has an Index, which is hardly worthy of the name as it simply describes the contents as "Withheld information - various dates". Sadly, yet again, the Tribunal's task has not been made any easier by the party producing this bundle. Someone, however, without attribution, has made handwritten annotations atop each document, saying either "Info gathering", "Personal data" (on occasion both), "legal advice provided", or "customer seeking legal advice". This is the closest that RMBC or the ICO (the Tribunal has not been informed whose annotations these are - they are presumed to be RMBC's) have come to making any form of closed submissions upon the closed material.
64. Without revealing the content of the emails, the Tribunal can summarise the communications passing between the various RMBC officers, and in some instances, the Appellant, between 29 June 2016 and 2 February 2017, as follows (Unless otherwise stated, all communications are by email, or attachments thereto).
65. At the time, mid - 2016, Eira Owen was the Interim Information Manager for RMBC. Christine Hotson was the Senior Access to Information Officer for RMBC. She received the Appellant's request for an internal review of 29 June 2016 (in fact the Appellant sent a second one to replace his first which contained some typographical errors).
66. This request was referred to other senior RMBC officers, and Sumera Shabir, an RMBC Planning Solicitor, was in mid - July 2016, asked to deal with it. By email of 14 July 2016 to the Appellant she informed him that she had been appointed to undertake the internal review.
67. In late July 2016 Eira Owen was involved in enquiries relating to communications from Jean Imray, and reported her findings to Dave Sissons, Security and Compliance officer of RMBC. What she found upon a search of Jean Imray's laptop was subsequently disclosed to the Appellant.

68. On 19 July 2016, following an email from Eira Owen, the Appellant confirmed to her that he was withdrawing his request for a review, as he wanted to proceed under BAU (this is not a closed document, it came from the claimant, as is the reply which was sent to him, and will be the case in respect of all other documents whose contents are referred to in this summary).
69. A meeting was held, under the auspices of the BAU arrangement on 12 August 2016, at which the appellant, Sumera Shabir, Christine Hotson, and Eira Owen were present.
70. On 15 September 2016 the appellant wrote to Linton Steele, the RMBC solicitor who had carried out the review referred to above, asking about email exchanges with Jean Imray and any notes he had when he had carried out his review. He asked for this under the BAU procedure.
71. Linton Steele informed RMBC colleagues of his view as to how the Appellant's request should be dealt with, and how he proposed to respond to it.
72. Gary Walsh became the Information Governance Manager in or about September 2016.
73. Sumera Shabir contacted RMBC colleagues around 20 September 2016 seeking to gather information about the Appellant's requests and previous communications.
74. In September 2016 Eira Owen supplied Sumera Shabir with copies of emails from the Appellant to her, leading up to, and in the aftermath of, the meeting of 12 August 2016 (again, although in the closed bundle, known to the Appellant as he sent them).
75. Sumera Shabir also made enquiries of Justin Homer, Head of Policy, Improvement & Partnerships, as to any email communications with the Appellant, but he had not personally made any.
76. All of the foregoing, at pages 1 to 37 of the closed bundle, containing information in the form of emails between 29 June and 21 September 2016 (save that they have been reproduced as attachments or in the body of later emails between Chistine Hotson and Sumera Shabir on 7 or 8 February 2017) are marked "information gathering"
77. Other communications in this material relate to the discussions between Sumera Shabir and other RMBC officers about whether to have a meeting with the Appellant, as, of course was then the course of action which was decided upon. Whilst these communications have been

annotated “legal advice provided”, the Tribunal cannot see how they can be so characterised. They merely record an internal discussion within RMBC as to whether the best way forward may be a meeting with the Appellant. This was not legal advice, but rather practical advice, and led to the BAU approach being adopted. Further Sumera Shabir was the person who was appointed to carry out the internal review at this stage. Whilst she did, it is true advice others as to, for example, the wording of communications to the Appellant, it is hard to see what “legal advice” she was giving anyone.

78. Other communications in this section of the closed material are with the Appellant, about the proposed meeting, and what he wanted it to deal with.
79. There are communications between Sumera Shabir and Eira Owen before this meeting, but these again are not the giving of any legal advice, but a discussion of what questions the Appellant wished to address in that meeting.
80. Additionally, Linton Steele’s advice (given the same day) to other RMBC officers as to how he was going to deal the Appellant’s request to him of 15 September 2016 is contained in this material.
81. There is also an email from Sumera Shabir on 15 September 2016 to other RMBC officers at this time. That is marked “Legally privileged”. It does contain advice, and goes further than discussing any proposed response to any FOIA request, or request for a review, that Sumera Shabir was herself to make. It also does not relate to the Appellant’s request for a review, and is broader in terms of the advice it gives.
82. In late September 2016 there were further exchanges, as the Appellant was making further requests, either under FOIA or out with it. These communications merely discuss who will lead in terms of the response, and cannot amount to legal advice.
83. The Appellant was in direct email communication with Dermot Pearson (Head of Legal Services) and others in September 2016. On 14 September 2016 he emailed Dermot Pearson stating that there were two important issues to resolve, one of which was “evident dishonesty”, which he said was for Legal Services to deal with.
84. Further, there is communication from Ian Thomas (or his PA) informing Sumera Shabir of how he proposes to respond to an email sent directly to him by the Appellant. This is in our view not Ian Thomas seeking any legal advice, it is provided merely for information.

85. On 30 September 2016 Christine Hotson sought advice as to how to deal with the Appellant's further FOIA request of that date. Sumera Shabir did respond to that with some brief advice that day.
86. A number of documents in the closed material are annotated "customer seeking legal advice", but on analysis they are not. Many are merely procedural, and relate, for example to arrangements for the meeting in August 2016, and the questions that the Appellant wanted addressing.
87. Two documents, the Tribunal agrees, can be categorised as seeking legal advice, in respect of a proposed course of action as to dealing with the Appellant. This is so in mid September 2016, following the Appellant's request to Linton Steele on 15 September 2016.

Discussion and Findings.

88. The first issue to be determined is whether the exemption under s.42(1) is engaged at all. That requires an analysis of the nature of the material in respect of which the exemption is claimed. A central feature of this appeal, it seems to us, is that there has been much weight afforded to the fact that much of the material involves communications to and from Sumera Shabir, who is a solicitor with RMBC. To that extent RMBC, and to some extent the ICO, have approached communications to and from her as being legally privileged, almost by virtue of that very fact.
89. What it seems to us has been overlooked is that she was, from mid - July not merely advising others, as her "client", as to how to respond to the Appellant's internal review request, she was the person who was carrying out that review, or rather, was going to do so until the suspension of the review during the BAU phase.
90. Indeed, this is a case where it is hard to discern a line between the legal advisor and the client. Sumera Shabir was not, for the most part, providing advice to RMBC as a client, she was formulating how she, as the reviewer, or indeed, as part of her role in the BAU exercise, was going to review RMBC's response the Appellant's request, or answer his questions in the meetings in July and August 2016.
91. To a large extent therefore, most of the internal communications passing between her and other RMBC officers from late June to October 2016 do not in our view attract legal professional privilege at all. They are part of the process by which RMBC, and Sumera Shabir in particular, determined how they were going to respond to the Appellant's internal review request, for which Sumera Shabir was the appointed officer.

92. We can see only two documents in the closed material which could be potentially considered to fall out with this categorisation, one is from Linton Steele, and relates to his response to the Appellant's request made directly to him, and which he acted upon and responded in precisely the same way as this document said he would do. Again, however, it is hard to see how this is "advice" to any "client", it was Linton Steele informing colleagues of how he, (and he too had been the reviewer appointed), was going to respond to the Appellant's request which was related to the review he had carried out.
93. One email from Sumera Shabir to two other members of the Legal Department on 15 September 2016 does, we agree attract legal professional privilege, and is so marked in its header (though that, of course, does not make it so). It goes further than discussing Sumera Shabir's response as a reviewer, it discusses wider issues relating to the Appellant's FOIA requests. This, we consider is truly a discussion of legal advice, and crosses the threshold of privilege.
94. We must therefore consider whether the public interest test for not disclosing it is satisfied.
95. In doing so, we have considered, and apply the principles set out in Bellamy v The Information Commissioner and the DTA (EA/2005/0023) and DBERR v O'Brien and The Information Commissioner [2009] 164 QB.
96. Doing so, in our view the balance of the public interest tips against disclosure. This is indeed legal advice being discussed between three members of the Legal Department, in respect of the Appellant's FOIA requests in general, indeed, whether his requests are indeed FOIA requests, and how senior members of RMBC, including the Chief Executive should be advised. We do consider that the general wider public interest in maintaining client - legal advisor confidentiality, the need for a safe space, outweighs the rather narrower public interest in this particular subject matter.
97. Not all of the closed material, it should be noted, in our view falls within the scope of the Appellant's request, which relates to "*email exchanges and any other written information arising from my Request for an Internal Review on 29 June 2016 and the reinstatement of this request on 26 October 2016*".
98. This is very narrow in its scope, and the original request of which a review was sought related only to the request for metadata, made as part of the request submitted on 26 October 2015. Accordingly material which relates, for example, to the Appellant's further FOIA request

made on 30 September 2016, and how RMBC were to respond to it, falls out with this request in our view. Only some of the documentation in the closed material before the Tribunal therefore can be said to fall within the scope of the request. In particular, we do not consider that communication passing between Linton Steele and Eira Owen, which relates to the Appellant's next FIOA request of 15 September, a new request, falls within the scope of the Appellant's request.

99. The Tribunal accordingly allows the appeal, and substitutes for the decision notice issued by the ICO that set out above.

Signed:
Judge of the First-tier Tribunal
Dated: 1 May 2019.