IN THE FIRST-TIER TRIBUNAL **Case No.** [EA/2009/0095]
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

ON APPEAL FROM:

The Information Commissioner's
Decision Notice No: FS50241934
Dated: 4 November 2009

Appellant: William Thackeray

Respondent: Information Commissioner

Additional Party: The Common Council of the City of London

On the papers

Date of hearing: 15 April 2010

Before
Melanie Carter
(Judge)

and

Steve Shaw
Jenny Thomson

Subject:
FOIA Legal professional privilege s.42

Cases:

R v Derby Magistrates Court ex parte P [1996] 1 AC487
DBERR v O'Brien & Information Commissioner [2009] EWHC

Bellamy v Information Commissioner EA/2005/0023
DFES v IC EA/2006/0010
DBERR v Information Commissioner & Friends of the Earth EA/2007/0072
FCO v Information Commissioner EA/2007/0092
Calland v Information Commissioner & FSA EA/2007/0136
Fuller v Information commissioner & Ministry of Justice EA/2008/0005

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal decided to uphold the decision of the Information Commissioner and dismiss the appeal.

Although this appeal started as an appeal to the Information Tribunal, by virtue of The Transfer of Tribunal Functions Order 2010 (and in particular articles 2 and 3 and paragraph 2 of Schedule 5) we are now constituted as a First-tier Tribunal.

REASONS FOR DECISION

Introduction

1. This appeal arises from a letter of request from Mr Thackeray under the Freedom of Information Act 2000 ("FOIA") to the Common Council of the City of London ("the Council"), dated 4 February 2009, in the following terms:

   "*Please provide a copy of the legal advice which led to the Corporation charging business rates at a reduced rate to the Church of Scientology Religious Education College Inc, a US corporation".*

2. This followed a decision by the Council, on 19 October 2006, that the Church of Scientology Religious Education College ("COSREC") enjoyed mandatory rate relief (80% reduction) under the Local Government Finance Act 1988, on the basis that the ratepayer for the property in question was a charity or the

trustees of a charity and was used "wholly or mainly for charitable purposes" within the meaning of that Act.

3. The Council refused Mr Thackeray's request under FOIA on the grounds that it was not obliged to disclose the information as it was subject to the exemption under section 42 of that Act, legal professional privilege. In his request for an internal review of this decision, Mr Thackeray wrote:

> *"I therefore request that the legal reasons behind this decision be released in a summary, paraphrased or redacted form which will not inhibit the free and frank exchange of views between the CoL and its legal advisors in the future."*

4. The Council maintained its refusal on the same grounds in an email dated 1 April 2009. Mr Thackeray complained to the Information Commissioner ("IC"). Following his investigation, the IC served a Decision Notice dated 4 November 2009 upholding the Council's refusal to disclose the information ("the disputed information"). Mr Thackeray appealed to the Information Tribunal, which, on 18 January 2010, became the First Tier Tribunal (Information Rights) ("the Tribunal"). The grounds of appeal in the Notice of Appeal concerned the application of the so-called public interest test. Specifically, Mr Thackeray argued in this Notice of Appeal that:

   (a) The IC had given insufficient weight to the public interest in disclosure;
   (b) The IC did not take into account that no litigation was contemplated;
   (c) No account was taken of the alleged criminal activities of COSREC;
   (d) There had already been partial disclosure of the disputed information;
   (e) The IC had erred in according a public interest against disclosure to a general consideration of legal professional privilege rather than that which arose in relation to the disputed information alone.

5. Mr Thackeray sought to extend his grounds of appeal in his written submissions such that questions in relation to the scope of the request and whether section 42 was engaged were raised in the last few weeks before the paper hearing. As the Appellant is a litigant in person and the directions

provided a right of reply by the Council and IC to Mr Thackeray's written submissions (such that there could be no prejudice to those parties), the Tribunal decided to allow these late arguments and they are dealt with in this decision.

6. Thus, the Tribunal proceeded on the basis that the essential questions are:

   a. What is the scope of the request?
   b. Is section 42 exemption engaged?
   c. If so, did the IC err in his approach to section 42, in concluding that the public interest in maintaining the exemption outweighed the public interest in disclosure?

<u>Evidence</u>

7. The Tribunal was provided with a copy of the disputed information. This was not however disclosed to Mr Thackeray during the proceedings as to have done so would have been to defeat the purpose of the appeal.

8. In addition, the Tribunal was provided with a witness statement from Carla-Maria Heath, Head of Revenues. Part of this statement was provided in the open bundle available to all parties and part in closed session available to only the Tribunal, the Council and the IC. This was on account of the fact that the closed witness statement referred to the contents of the disputed information. There was, in addition, a closed witness statement from Loretta Jennings, Assistant City Solicitor similarly not available to Mr Thackeray on account of its contents.

9. Mr Thackeray had added to the open bundle a significant amount of material which related to the Church of Scientology and which concerned the propriety of the Church's conduct, both domestically and abroad. It was unclear to the Tribunal as to the exact legal relationship between the Church and COSREC but, given that it was Church representatives and lawyers interacting with the Council, it was assumed that any relationship was a close one. That said, much of the material put before the Tribunal was either very old (in one case,

a report dating back to the early 1970s) and therefore commanded less weight or post-dated the letter of request. It was important to clarify at the outset that the factors to be considered in the application of the public interest test were only those in existence at the relevant time, that is the letter of request, 4 February 2009, or at the latest the date of the internal review, 1 April 2009. The Tribunal agreed with the approach of previous, differently constituted, Information Tribunals, summed up in the case of *DBERR v Information Commissioner & Friends of the Earth* EA/2007/0072 at paragraph 110 that *"the timing of the application of the test is at the date of the request or at least by the time of the compliance with ss. 10 [time limits] and 17[letter of refusal] FOIA".* Thus, the Tribunal proceeded on the basis that the relevant date for the purposes of the public interest test was 1 April 2009, that of the internal review refusal letter.

10. It was also important to clarify at the outset that, as the Tribunal was sure all parties understood, it was beyond the Tribunal's jurisdiction to form any view on the question whether COSREC was or was not entitled under the Local Government and Finance Act 1988 to mandatory rate relief or whether the Church of Scientology was rightly a charity in law. The Tribunal's jurisdiction is set out below.

<u>The Law</u>

11. This Tribunal's jurisdiction in relation to appeals is pursuant to section 58 of FOIA. For the purposes of this appeal, the Tribunal must consider whether the Decision Notice is in accordance with law. The starting point is the Decision Notice itself but the Tribunal is free to review findings of fact made by the IC and to receive and hear evidence which is not limited to that before the IC. In cases involving the so-called public interest test in section 2(2)(b), as here, a mixed question of law and fact is involved. If the Tribunal comes to a different conclusion under section 2(2)(b) on the same or differently decided facts, that will lead to a finding that the Decision Notice was not in accordance with the law.

12. Section 42, which is contained in Part II of the Act, provides:

"(1) Information in respect of which a claim to legal professional privilege….could be maintained in legal proceedings is exempt information".

13. In determining whether the section 42 exemption is engaged, the Tribunal had regard to the scope of legal professional privilege. A differently constituted Information Tribunal in the case of *Bellamy v ICE & Secretary of State for Trade and Industry EA/2005/0023* provided the following guidance as to the scope of legal professional privilege, which we gratefully adopt:

"9. In general, the notion of legal professional privilege can be described as a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, or its lawyers, as well as exchanges which contain or refer to legal advice which might be imparted to the client, and even exchanges between the clients and their parties if such communications or exchanges come into being for the purposes of preparing for litigation. A further distinction has grown up between legal advice privilege and litigation privilege. Again, in general terms, the former covers communications relating to the provision of legal advice, whereas the latter, as the term suggests, encompasses communications which might include exchanges between those parties, where the sole or dominant purpose of the communications is that they relate to any litigation which might be in contemplation, quite apart from where it is already in existence".

14. It is not in dispute in this appeal that only legal advice privilege is relevant to the disputed information – there was no litigation ongoing or in contemplation. After forming a view on whether legal professional privilege applies and section 42 is engaged, our task is to consider the public interest balancing test in section 2(2) of the Act. Section 2(2), provides:

"In respect of any information which is exempt information by virtue of any provision of Part II section 1(1)(b) does not apply if or to the extent that –

…….

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing information".

15. To this end, the Tribunal must consider *"all the circumstances of the case"* and to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure. The Tribunal reminded itself that the way in which the public interest test in section 2(2) is set out creates a presumption in favour of disclosure. Thus the burden of proof remains on the public authority to satisfy the Tribunal that the public interest in maintaining the exemption outweighs the public interest in favour of disclosure (*DFES v IC* EA/2006/10 paragraphs 61 & 64).

16. Mr Justice Wynn Williams in the High Court case of *DBERR v O'Brien & Information Commissioner [2009] EWHC* upheld the Tribunal's approach in recognising that there is a significant in-built weight of public interest in maintaining the exemption under section 42. This is on account of the strong constitutional importance attached to legal professional privilege and thereby the protection of free and frank communications between lawyers and their clients. This was summed up in the case of *R v Derby Magistrates Court ex parte P [1996] 1 AC487*, where Lord Taylor stated, at page 507D:

> *"Legal professional privilege is much more than an ordinary rule of evidence, limited in its application to the facts of the particular case. It is a fundamental condition on which the administration of justice as a whole rests".*

Mr Justice Wynn Williams in the High Court hearing of the *O'Brien* appeal stated at paragraphs 41 and 53 of his judgement:

> "*It is also common ground, however, that the task of the Tribunal, ultimately, is to apply the test formulated in section 2(2)(b). A person seeking information from a government department does not have to demonstrate that "exceptional circumstances" exist which justify disclosure. Section 42 is not to be elevated "by the back-door" to an absolute exemption. As [counsel for the IC] submits in her Skeleton*

Argument, it is for the public authority to demonstrate on the balance of probability that the scales weigh in favour of the information being withheld. That is as true of a case in which section 42 is being considered as it is in relation to a case which involves consideration of any qualified exemption under FOIA. Section 42 cases are different simply because the in-built public interest in non-disclosure itself carries significant weight which will always have to be considered in the balancing exercise once it is established that legal professional privilege attaches to the document in question.

………………………………..

The in-built public interest in withholding information to which legal professional privilege applies is acknowledged to command significant weight. Accordingly, the proper approach for the Tribunal was to acknowledge and give effect to the significant weight to be afforded to the exemption; in any event; ascertain whether there were particular or further factors in the instant case which pointed to non-disclosure and then consider whether the features supporting disclosure (including the underlying public interests which favoured disclosure) were of equal weight at the very least".

Thus, whilst it was not necessary for there to be "exceptional" factors in favour of disclosure, the in-built weight in the legal professional privilege exemption was such that it was "*more difficult to show the balance lies in favour of disclosure" ("Pugh v Information Commissioner & MOD EA/2007/0055).*

17. Whilst not binding, the Tribunal found useful the indications from differently constituted Tribunals of the sorts of factors that might constitute a public interest in favour of disclosure that equalled or outweighed the significant in-built public interest arising in section 42 cases. Thus, in the case of *Fuller v Information Commissioner & Ministry of Justice* EA/2008/0005, it was said at paragraph 12:

> *"There will be some cases in which there could be stronger contrary interests; for example, if the privileged material discloses wrongdoing by or within the authority or a misrepresentation to the public of the advice received or an apparently irresponsible and wilful disregard of advice, which was merely uncongenial".*

A differently constituted Tribunal in the case of *Calland v Information Commissioner & FSA* EA/2007/0136 stated that *"some clear, compelling and specific justification for disclosure must be shown, so as to outweigh the obvious interest in protecting communications between lawyer and client, which the client supposes to be confidential".*

Scope of the request

18. In his written submissions, Mr Thackeray sought to argue that what he had been seeking went wider than just a copy of any legal advice and that further to his email seeking an internal review (see paragraph 3 above), he was requesting the 'reasons' giving rise to the grant of rate relief.

19. The Tribunal was satisfied, from the plain English meaning of the words used in his letter of request and his follow up email asking for an internal review, that the Council had read the request correctly. What Mr Thackeray had been seeking were the legal reasons for the decision, not the wider reasons which would likely have gone beyond a mere consideration of the law and its application to the decision in question. That this was the case was supported in part by the fact that in the months following the refusal of this request, Mr Thackeray made further FOIA requests asking for information which would have formed the factual basis for the decision to grant rate relief.

20. The Tribunal agreed with the IC and the Council that the disputed information could not sensibly be redacted, summarised or paraphrased without disclosing the majority of the contents subject to legal professional privilege.

Is section 42 engaged?

21. The Tribunal satisfied itself from a consideration of the disputed information that this was legal advice provided by a lawyer to his client. As such, subject

to the question of waiver, it had no difficulty determining that section 42 was engaged. Indeed in his Notice of Appeal, Mr Thackeray seemed to accept that this was the case. By the stage of his written submissions however, he sought to raise arguments that section 42 may not be engaged if the disputed information contained material which would be more properly viewed as facts taken into account in forming a legal view, statements of policy or a recital of COSREC's application. The Tribunal was able to determine from its own reading of the disputed information that other than inconsequential introductory and concluding remarks, all the information consisted of legally privileged material.

22. Mr Thackeray also raised the question of waiver at this stage of the proceedings. During 2006 when there had been media interest in the granting of rate relief to COSREC, the Council had issued the following, in response to a FOIA request:

> *"Following the application for mandatory rate relief in April 2005, entitlement to the relief was granted on 19 October 2006. It was granted following a meeting on 30 August 2006 between legal representatives of the Church of Scientology and the City of London ("the CoL") to discuss the Church's appeal following two refusals by the CoL of mandatory rate relief. In deciding, after all, to grant the relief, reliance was placed inter alia on an earlier decision of the European Court of Human Rights concerning a challenge by the Church of Scientology against Sweden, which the Church of Scientology drew to the attention of the CoL. Following consideration of this decision as to the Court treating the Church and its members as having religious rights and taking all factors into account, in particular commentary contained in explanatory notes in the Employment Equality (Religion or Belief) Regulations 2003 published by the DTI, the matter was reconsidered, and it was decided that the statutory criteria set out in the Local Government Act 1988 were met such that the Church qualified for mandatory relief."*

23. The Council provided a copy of this document to Mr Thackeray in May 2009 (after refusal of the request in this appeal) in response to a subsequent FOIA request by Mr Thackeray.

24. The question arose whether release of this information might lead to there having been a waiver of legal professional privilege. The Tribunal noted that waiver did not, as a matter of law, apply to legal advice privilege (as here) – its application was restricted to litigation privilege *(FCO v Information Commissioner EA/2007/0092)*. The release of this information was however relevant to the application of the public interest test and is considered below.

The Public Interest Test

25. The Tribunal reviewed the public interest factors considered by the IC and put forward during the appeal by the parties in order to assess whether a lawful decision had been made.

Factors against disclosure

26. The factors in favour of maintaining the exemption, taken into account by the IC in his Decision Notice and supported by the Council were, in summary :

(i) the inbuilt public interest accorded to legal professional privilege and thereby:

- the protection of the Council's ability to communicate freely with legal advisors to obtain advice regarding business rates and more generally
- ensuring that decisions are made on the basis of fully informed and thorough legal advice.
- the preservation of the ability of the City of London to defend its decisions in the event of legal challenge
- the preservation of the general concept of legal professional privilege.

(ii) the fact that the disputed information consisted of legal advice which was considered still to be ‘live’.

Factors in favour of disclosure

27. The factors in favour of disclosing the requested information taken into account by the IC were, in summary

(i) disclosure would inform public debate about which organisations should benefit from reductions in their business rates and on what basis.

(ii) disclosure would help the public to understand the legal basis for awarding mandatory relief to COSREC and to challenge the decision from more informed position.

(iii) disclosure would promote accountability and transparency for the decision in respect of COSREC which results in a cost to the public purse

(iv) the sum of money involved, in the year of account in question, was £274,000 and therefore a not insignificant amount; this is met from central government funds and therefore affects a wider group people than just the residents of the Council area.

28. Mr Thackeray argued in addition that the public were particularly interested to understand the decision to grant rate relief on account of, what he characterised as the improper and/or criminal activity of the Church of Scientology.

29. The Tribunal accepted that all the above factors were relevant to this case, subject to the comments below.

Application of the public interest test

30. The Tribunal gave careful consideration to where the public interest lay. It noted that there were significant factors operating on both sides of the balance. The Tribunal was particularly concerned, whilst acknowledging the significant in-built public interest in maintaining the exemption in section 42, not thereby to, in effect, treat this exemption as absolute.

31. It considered cases where disclosure had been ordered by previously constituted Tribunals, in particular *Mersey Tunnel Users Association v Information Commissioner & Mersey Tunnel* EA2007/0052, paragraph 45, where it was said:

> *"Routine disclosure might lead to those consequences [reluctance to seek advice, poorer quality of decision making etc.].. But disclosure under FOIA can never be routine. The public interest balance, with its inbuilt weight in favour of maintaining the exemption, must be struck in the particular circumstances of each case. Each will have to be decided on its individual merits and disclosure will only occur if a heavy hurdle – the inbuilt weight – is overcome".*

32. Further to the High Court decision in the case of *O'Brien* (see paragraph 16 above), the Tribunal's approach was to acknowledge the in-built weight to be accorded to the legal professional privilege exemption and then to consider whether there were any further specific factors to be weighed in the balance against disclosure. Before doing so, the Tribunal considered Mr Thackeray's argument that the IC had erred in taking into account the public interests against disclosure that arose from a general view of legal professional privilege rather than those factors that related to the disputed information alone. So for instance, the IC had taken into account that disclosure of the disputed information could have a wider damaging effect on the operation of legal professional privilege and thereby the Council's ability to obtain legal advice, not just in relation to the issue of rate relief. The Tribunal considered that Mr Thackeray was incorrect on this point as the consequences of, in effect overriding legal professional privilege, as attested to by the Council's

witnesses, would be likely to go beyond any impact that might be felt in relation to this particular case of rate relief.

33. In addition to the in-built weight to the public interest in maintaining the exemption under section 42, a specific further factor against disclosure was the assertion that the legal advice was, at the relevant time, 'live'. The Council argued to the Tribunal that this was 'live' in the sense of being relied upon by the Council at the relevant time and also at the date of the hearing. This was on the basis that the decision to grant rate relief is an annual one. Mr Thackeray argued that as there was no actual litigation ongoing or contemplated then or now, the legal advice in question should not be treated as 'live' and the public interest against disclosure should be accordingly weakened.

34. The Tribunal noted that the legal advice was relatively recent and was of the view that the Council and the IC in turn had been correct to treat this information as still relied upon at the relevant time on the simple ground that the Council would be taking the same decision again in a year's time. We consider this aspect further in the Confidential Annex at Rider A.

35. The Tribunal was of the view that insofar as there was any risk of litigation, release of the disputed information would, in the event, be unlikely to prejudice the Council's ability to defend itself in this particular case. Legal advice was after all just that. Any court determining the issue of whether rate relief ought properly to have been given would make its own mind up on the basis of the relevant facts and applying the relevant law. That said, the Tribunal was satisfied that the public interest in preserving legal professional privilege generally would encompass the need for public authorities to have a free and frank source of legal advice in order to best defend itself in any litigation which might arise. Thus, although the question of litigation did not specifically arise in this case, it was a factor to be taken into account via the in-built weight to be accorded to the public interest in maintaining the exemption in section 42 cases.

36. Mr Thackeray argued that the position was different depending on whether the potential litigation was civil or public law in nature. The public interest in a local authority coming to sound, lawful decisions outweighed, he argued, the public interest in legal professional privilege being preserved. In other words, there should be disclosure of information such as is in dispute here, in order to potentially assist in the lodging of a judicial review and the ensuring thereby of lawful decision making.

37. The Tribunal considered that whilst there was some merit in this argument, it did not take into account that the in-built weight to the public interest in maintaining the legal professional privilege exemption was based partly on the generalised benefit of public authorities being able to defend themselves regardless of the content of the legal challenge and the merits to a particular case. As was attested to in the witness statements, a concern that legal advice might be disclosed to the public subsequently ran the risk that instructions and legal advice on a range of issues in the future would become less full and frank, such that the result may be poorer decision making. Whilst the Tribunal accepted that disclosure under the FOIA is never routine in the sense that it will depend on the particular circumstances of each case, it would be fanciful not to acknowledge that frequent disclosure of information subject to legal professional privilege would inevitably have some impact on those officers seeking and those lawyers providing legal advice. As the Tribunal's jurisprudence has reflected, there needs to be some "compelling, specific justification" countervailing the in-built public interest in maintaining the section 42 exemption, for disclosure to be ordered.

38. In favour of disclosure, the Tribunal noted that there was a considerable public interest in understanding the legal reasons for the Council's decision to grant rate relief. This was on the basis that the Church of Scientology attracted controversy (the Tribunal was shown a body of information raising issues as to nature of the organisation and in particular alleged criminal/improper activity by the Church). While making no finding on the veracity or otherwise of these issues, the documents produced by Mr Thackeray to the Tribunal which it took into account (ie: only those which were relatively recent, concerned activities within this jurisdiction and did not

post date 1 April 2009) did go some way to indicating a general public interest in the affairs of the Church of Scientology. Whilst not all that is of interest to the public is in the public interest to disclose, in this case, the Tribunal was of the view that given this was public funds at issue and sectors of Government had clearly been concerned as to the Church's conduct, a public interest factor in favour of disclosure definitely existed.

39. It has been argued by Mr Thackeray that the granting of rate relief was contrary to a previous decision of the Charity Commissioners not to grant the Church charitable status. The Tribunal noted first, that these two decisions were under completely different legislative regimes. The application before the Charity Commissioners was, moreover from a different body in law, the Church of Scientology and not COSREC. That decision had been based, essentially, on issues surrounding the charitable head, the 'advancement of religion'. It appeared from the Tribunal's reading of the disputed information, that the Council's granting of rate relief had been based upon different considerations. Thus, whilst the superficially contrary decision was a factor to be taken into account in assessing the public interest in disclosure (that is, disclosure assisting in understanding this), the Tribunal did not give this significant weight.

40. The Tribunal took into account the more general considerations as to the public interest in public authorities acting with transparency and accountability and noted in this particular case that the decision in question had been taken under delegated powers. The decision had been taken by an officer, not the Council or even a Committee of the Council such that there would have been less scrutiny by elected officials and little or no publication of reports/minutes. Given that the Council was reversing two previous refusals of rate relief, the Tribunal was of the view that increased the need for transparency and accountability. The Tribunal did not accept that external audit of such decisions would provide a ready answer to this need, as it understood that audit checks of individual cases were likely to be carried out on a random basis and in any event, there had been no evidence before it that the Audit Commission had made such a check in this case.

41. Mr Thackeray argued that the release of the information set out in paragraph 22 above, operated to increase the public interest in disclosure on a number of grounds. First, he argued that if the press release represented the substance of the legal advice he had requested, then it was already in the public domain and there could not be any significant public interest in refusing disclosure. He asserted that the public statement raised more questions than it answered.

42. The Tribunal considered the public statement as against the disputed information. In its view, the disputed information is consistent with the public statement of the Council's legal reasons for granting rate relief. There is no evidence before the Tribunal to suggest that the public has been misled in anyway. The Tribunal was also of view that the disputed information went significantly beyond that contained in the public statement such that, the mere fact that there had been some information of this nature put into the public domain did not lead to an operative factor in favour of disclosure of the remainder. Conversely, some information as to the legal reasons had been released via the public statement such that the public interest in understanding the decision had been partially met. Its comparison of the two documents is set out in more detail in the Confidential Annex at Rider B.

43. The outstanding questions raised by Mr Thackeray, in the Tribunal's view went way beyond the legal reasons and extended to the more general considerations (both factual and issues of judgement) which no doubt underlay the Council's decision to grant rate relief. Information as to the wider decision went beyond the scope of the letter of request (see paragraph 1 above).

44. After much consideration the Tribunal was of the view that this case lacked the clear compelling factor that would be required to outweigh the in-built weight accorded to maintaining the legal professional privilege exemption.

45. In all the circumstances, the Tribunal was of the view that the public interest in maintaining the exemption outweighed the public interest in disclosure.

Conclusion

46. The Tribunal upheld the IC's Decision Notice and dismissed the appeal. It noted that Mr Thackeray sought an understanding of the reasons behind the decision taken by the Council that COSREC was entitled to rate relief. In the Tribunal's view, this would be better satisfied by disclosure of the underlying facts taken into account by the Council. In its view the case for disclosure was likely to be stronger in relation to material that was not legally professionally privileged given the significant public interests that arise in this case. The Tribunal was aware however that the Council had refused disclosure of such information in response to Mr Thackeray's further requests under FOIA. The Tribunal wished to recommend to the Council that it reconsider its position in the light of this Tribunal's assessment of the public interests in favour of disclosure.

47. Our decision is unanimous.

Signed

Melanie Carter
Judge Date 14 May 2010