

# GLA 35/8.2 External Communications Policy Annex A

17 October 2012

## 1. Introduction

1.1. This policy covers the GLA's position on release of information in the following situations

- Intelligence
- Sharing information with law enforcement, other Government Departments, and regulatory authorities (including overseas authorities) Inspections
- Criminal investigations
- Refusals to grant a licence
- Revocations of a licence
- Information issued to the press on a refusal or revocation
- Release of information concerning appeals
- Appeal results
- Freedom of Information
- Data Protection requests
- Advice and guidance
- Active checks
- Complaints
- Research

1.2 The GLA's approach to the release of information has regard to:

- Relevant statutory obligations

## 2. Better regulation principles of being accountable and **Intelligence**

2.1 The GLA receives information from a range of sources, including workers, labour users, other labour providers, etc. Where possible the GLA will acknowledge receipt of that information, in the form received (e.g. email response to an email), and where the information is not from an anonymous source.

2.2 The GLA cannot provide information on how it is using that information, whilst it may form the basis for an inspection or investigation as such disclosure may "tip off" those who are being investigated and be counter-productive to identify criminality and non-compliance.

- 2.3 At the conclusion of the inspection or investigation the GLA may provide a response to the informant where that person's identity is held. Such release of information will be subject to the information that would be released, for example to the press, in the circumstances below.

### **3 Sharing information with law enforcement, other Government Departments, and regulatory authorities (including overseas authorities)**

- 3.1 The GLA may share information with law enforcement, other Government Departments, and regulatory authorities (including overseas authorities) where the information is considered relevant to the other body's enforcement responsibilities. This may occur during the criminal or civil process, and after any prosecution or appeal decision. For example, information after a GLA appeal decision may be disclosed to the Insolvency Service. This can include access to any documents or copies of documents held by the GLA.
- 3.2 Such disclosures will be covered by section 19 of the Gangmasters (Licensing) Act 2004, or the information exchange provisions and powers to request information in another enforcement bodies own legislation. Disclosures undertaken through these legal gateways do not breach the Data Protection Act 1998, and are covered by the exemption in section 35 of that Act.

### **4 Inspections**

- 4.1 When the GLA decides to undertake an inspection it will normally give a labour provider notification of its intention to do so, indicating when it will visit.
- 4.2 In certain circumstances, dependant on the information received by the GLA, it will not be appropriate to provide advance notification, where to do so may result in evidence of non-compliance being hidden.
- 4.3 If the inspection is to be notified the inspector who will undertake the inspection will send a letter to indicate the date of the inspection. It will be accompanied by the Inspection information sheet. A copy of that document can be found [here](#).
- 4.4 If the inspection is not notified the inspector should issue a copy of the inspection information sheet on arrival to conduct the inspection.
- 4.5 The inspector:
- Will review a labour provider's compliance against the licensing standards
  - May need to interview labour users and workers (who may subsequently ask the labour provider or the GLA about the inspection as a result of their interviews)
  - Ask the Principal Authority to explain any issues that indicate potential non-compliance
  - Explain areas of concern at the end of the inspection, if this has not been done during the inspection

- Explain what happens next, in terms of the submission of the report to the licensing section to make a decision on the inspection report
  - Include any evidence obtained, or additionally represented by the labour provider, together with any explanations given, as part of the submission of the report
  - Will explain that time will be allowed to correct minor issues within 48 hours, with confirmation that the labour provider has done so, but that such matters will still be reported
  - Will **not** make a decision on whether the licence is to continue unchanged, or be revoked, or have additional licence conditions added (this is a matter for a formal decision)
  - Will be responsible to advise on progress after completion of the report up to its submission to the licensing section, if there is to be any delay
  - Will not discuss the potential outcome of an inspection with a labour user (any such questions should be addressed directly to the GLA Head office)
- 4.6 When the inspection is submitted to the licensing section the licensing section will advise the labour provider that they have ownership of the report going forward. From that point any questions regarding the progress of the report should be addressed to the licensing section at: [licensing@gla.gsi.gov.uk](mailto:licensing@gla.gsi.gov.uk)
- 4.7 When the inspection is submitted to the licensing section it triggers the active check process. A labour user, or anyone who has registered an active check interest in a particular labour provider, will receive a notification that an inspection has occurred.
- 4.8 When the inspection is submitted to the licensing section it will be added to the public list of inspected labour providers. The list is normally updated on a monthly basis. The list, ordered by year, can be found [here](#)
- 4.9 The GLA will not usually issue a press release on an inspection. If information is sought from third parties it will normally be considered superficially under the procedures relating to Freedom of Information requests (see below). But in any such consideration the GLA will take account of the public interest, and the need to correct any misunderstanding or misinformation.

## **5 Criminal Investigation**

- 5.1 The nature of criminal investigation means that labour providers or labour users who are subject to such investigations will not be notified of them. They will become aware during a GLA visit to conduct the investigation.
- 5.2 GLA criminal investigations, and disclosure in relation to them, will follow the Codes of Practice issued in relation to the Police and Criminal Evidence Act 1994, and the

Criminal Procedures and Investigation Act 1996, in England and Wales, and the guidance that covers those issues in Scotland and Northern Ireland.

- 5.3 When a criminal investigation results in an arrest or otherwise comes to the attention of the public and press the GLA may issue a press statement. Such statements will be brief and confirm whether the GLA has undertaken an investigation and whether that has resulted in an arrest. It will not normally give any particulars that might identify the identity of the person arrested.
- 5.4 Where investigations and operations are carried out the GLA will not name labour providers or labour users.
- 5.5 The GLA will not name any labour provider or labour user who are faced with prosecution action.
- 5.6 At the conclusion of a prosecution the GLA will publicise the outcome. It will place a press release on its website. It may also proactively contact members of the press to alert them to it where the GLA considered that greater public awareness is in the public interest and assists in its prevention and deterrence messages.

## **6 Refusal to grant a licence**

- 6.1 The GLA will consider press releases, and contact with the press where appropriate (in line with paragraph 5.6), where a licence is refused.
- 6.2 If the applicant does not appeal the decision the GLA may consider it appropriate to issue a press release. It may do so, for example, where the evidence resulting in the refusal indicated significant non-compliance, and exploitation of the workers, or where the applicant was previously revoked. Each case will be considered on its merits, with regard to public interest.
- 6.3 If the applicant does appeal the GLA will not normally consider a press release until the outcome of the appeal. At the conclusion of the appeal the GLA will consider whether a press release is appropriate, considering issues covered in paragraph 6.2. It will also consider whether the appeal outcome identifies issues are considered to be novel or cover a contentious issue of interest to GLA stakeholders, or set a precedent in the GLA's approach, on which the GLA needs to raise awareness.

## **7 Revocations**

- 7.1 Where the GLA revokes a licence with immediate effect, a press release is usually issued immediately.
- 7.2 Where the GLA revokes without immediate effect and the labour provider can continue to trade, the GLA will not normally issue a press release until the time for an appeal has elapsed or the appeal has been lost by the labour provider.

- 7.3 The exception to (7.2) is where the justification for the revocation is already in the public domain or there are exceptional public interest reasons to publicise the decision, and it is in the public interest to be open about the GLA decision.
- 7.4 Where information is already in the public domain it is important for the GLA to clarify matters so that there was no misunderstanding or misinformation.
- 7.5 The GLA may consider exceptional public interest reasons, for example, where revocations that are based on licensing standards score of 120 or more points or in circumstances where the business is no longer trading (for example, if the principal authority is on remand).
- 7.6 Where press releases are not issued for revocations without immediate effect, at the time of the decision, the GLA will continue to:
- issue press releases at the end of the appeals process (subject to the appellant losing), and
  - add an entry to the GLA list of revoked licences (which also states if a business has successfully applied for a new licence).
- 7.7 The GLA will generally not issue a press release for businesses who have been revoked without immediate effect and who successfully apply for a new licence (unless there are the exceptional circumstances mentioned in paragraph 7.3 - 7.4 above). This is on the grounds that if a business shows willing to get themselves up to standard, it would be counterproductive to 'name and shame' them.

## **8 Information issued to the press on a refusal or revocation**

- 8.1 The following list sets out the information the GLA will normally provide in a press release:
- List of licensing standards breached
  - Name of principle authority of revoked or refused labour provider business.
  - Contact details of the labour provider business that is subject to revocation or refusal (including business address and business telephone number).
  - Sector the labour provider supplied to (e.g. fresh produce, food processing), or whether the applicant was a specialist labour provider (e.g. payroll company).
  - Crop picked or packed (e.g. carrots, potatoes, salads, ready meals, etc.).
  - Number of workers involved (if the information is available).
  - Nationalities of workers involved (if the information is available).

- Notification of labour users connected to the revocation (if the information available and has been confirmed).

## **9 Release of information regarding appeals**

- 9.1 Documents to be disclosed to an appellant in an appeal will be subject to the rules on civil disclosure and the GLA's appeal regulations. More information on appeals can be found [here](#)
- 9.2 Requests for any other document by the labour provider, or third parties, will be considered under the procedures for Freedom of Information requests.
- 9.3 Information on appeals will not otherwise normally be issued. In considering such requests the GLA will weigh up the public interest considerations, and whether doing so may adversely affect a labour provider's ability to trade during an appeal, and the impact it may have on ensuring a fair hearing.
- 9.4 However, there are circumstances when releasing information as early as possible would be beneficial. Equally, some refusal decisions present a similar necessity to release information early. There have been a number of cases that have been subject to revocation without immediate effect but the basis of the decision is extremely serious, particularly where the decision was borderline for revoking with immediate effect. In such cases, there is a more compelling public interest in issuing a press release at the time of the decision.
- 9.5 While publicising information earlier would improve the openness of the GLA's decision making, there is clearly a balance to be struck with respecting someone's ability to trade legally during the period running up to an appeal. The GLA will consider the merits of disclosure on a case by case basis, and in particular whether it is required to do so under its obligations under the Freedom of Information Act where a public interest test may outweigh the application of an exemption, in accordance with the Information Commissioner's Office guidance.
- 9.6 Furthermore, it should be noted that a GLA appeal hearing is a public hearing which anyone may attend or report on. If such reports were then in the public domain there may be a compelling justification for the GLA to respond to such publicly available statements to ensure that there is no misinformation or incorrect information. It may do so in a press release or statement at the GLA Board, or both.
- 9.7 As a courtesy the GLA may advise the other party of its intention to do so but it is the GLA's prerogative what such statements will say, where appropriate.
- 9.8 During the preparation for an appeal it may be necessary for the GLA or its legal representatives to contact third parties (e.g. labour users or workers) to obtain witness statements that it intends to rely on in the defence of its decision. The GLA recognises that this may result in such parties effectively obtaining information on the state of a labour provider's licence, and may result in them disclosing such information to third parties. Nonetheless, whilst recognising such risks may arise, the

GLA will undertake such action where it is necessary to the proper development of its appeals.

## **10 Appeal results**

- 10.1 At the conclusion of the appeal the GLA will consider the issue of a press release. It will cover the issues set out in section 8 above.
- 10.2 The GLA will also publish the appeal decision on its website

## **11 Freedom of Information**

- 11.1 Where the GLA receives a request for information from the press, or other party, on the action the GLA may be taking, which may include a request for an inspection report or licensing decision, the GLA will consider whether an exemption applies. This may normally be under sections 30 (Investigations and proceedings conducted by public authorities), section 31(Law enforcement), of the Freedom of Information Act (FOIA).
- 11.2 Generally, the GLA will not release information that specifically relates to an ongoing compliance or criminal investigation matter. However, where an absolute exemption does not apply the GLA will consider whether release in the public interest outweighs any consideration to exempt. This is in accordance with Information Commissioner's Office guidance.
- 11.3 An FOIA request will be acknowledged within 5 working days, and responded to within 20 working days. If there are reasons for delay the requestor will normally be notified of such delay, with an indication of the likely response date.
- 11.4 In accordance with the duty to assist FOIA requests the GLA will point to any general advice, and where it can be found (for example on the GLA website) that is pertinent to the request.
- 11.5 If the request relates to information, for example about a specific labour provider, a courtesy letter will be issued to the labour provider to notify them of the request, that the identity of the requestor cannot be disclosed, and of the proposed response. In such circumstances the labour provider may wish to submit observations on the GLA's intended response. Where appropriate the GLA will consider such submissions, but the final response is the GLA's decision alone. However, the GLA's response will not be delayed by such considerations where it can appropriately meet the required timescales to respond.
- 11.6 The GLA will not issue courtesy letters to the subjects or FOIA requests where such notification may act as a "tip off" that there is an active criminal investigation, but the GLA would consider the release of information would normally be exempt from release in such circumstances.
- 11.7 If a requestor is seeking general information which requires information on a number of different labour providers (e.g. details of all labour providers where a refusal identified non-compliance with a specific licence standard) the GLA will not issue



such courtesy letters. However, the information provided will be re-dacted before issue – for example the names of a labour provider will be removed from any licence decision or other document issued to meet the request.

- 11.8 If a general request, as above, is used to narrow down a requestor's interest to a specific company or individual, which results in a subsequent FOIA request, a courtesy letter will be issued to that person, as above.
- 11.9 If the nature of the request, though framed generally, results in the identification of only one or two labour providers, from which their identities may be determined, the GLA will consider issuing a courtesy letter as set out above.
- 11.10 If the request relates to a matter that is not in the public domain, and is subject to GLA compliance action, the GLA will consider release of the information to be exempt and rely upon "neither confirm nor deny" procedures.
- 11.11 If the matter that is in the public domain (for example knowledge of a labour provider's inspection exists because it has been added to the public inspection list) the GLA will not rely on the "neither confirm nor deny" procedures. Instead, it will consider whether an exemption under section 30 or section 31 applies.
- 11.12 For example, if the request relates to whether an inspection has occurred, which is being compiled, the GLA will rely on the exemption in section 31(3), neither confirming nor denying whether an inspection has occurred. If the inspection has been submitted to licensing, and the fact of an inspection appears on the GLA's website list of inspected companies the GLA may rely on section 31(1)(g) until such time as a licensing decision is made. However, although the GLA will not normally issue a press release on revocations without immediate effect, once a decision has been made and communicated to the labour provider, the GLA will not normally exempt information from that point going forward if an FOIA request is received. It will consider whether any other exemption applies, for example section 43 on prejudice of commercial interests, but as this is not an absolute exemption it will assess whether the balance of the public interest test is in favour of disclosure.
- 11.13 A request for details of information that the GLA has provided to another Government Department, where there may be ongoing compliance or criminal investigation by the GLA or the other Department will normally be subject to exemption from release to the requestor. Each case will be considered on its merits, and whether the matter has come to conclusion (e.g. an appeal outcome or prosecution decision).

## **12 Data Protection requests**

- 12.13 A labour provider might make a request for information held by the GLA about themselves. Such requests are "subject access requests" in accordance with the Data Protection Act 1998, and will be dealt with under the requirements of that Act. Further information can be found on the Information Commissioner's website.

## **13 Advice and guidance**

- 13.1 The GLA will issue guidance to clarify its approach to determine compliance, and explain changes using the GLA Brief series, which can be found [here](#)
- 13.2 The advice and guidance available on the GLA website will be reviewed to make sure it is easy to access and understand. Where possible, information will be consolidated to avoid repetition. Translating relevant information for labour providers based outside the UK will also be considered.
- 13.3 The GLA will also work with industry to produce appropriate best practice guidelines in order to raise compliance levels (for example, the minimum charge rates guidance).

#### **14 Active checks**

- 14.1 Anyone can subscribe to the active check process which allows an individual to receive notifications about changes to a labour provider's licence. Further information on that process can be found [here](#)

#### **15 Complaints**

- 15.1 A complaint may be received concerning the GLA procedures, or the actions of its staff. It may set out concerns regarding disclosure of information about a labour provider or labour user, which may have occurred in the circumstances above.
- 15.2 A complaint may be made by writing to the GLA at [complaints@gla.gsi.gov.uk](mailto:complaints@gla.gsi.gov.uk) or by post to PO Box 10272, Nottingham, NG2 9PB.
- 15.3 If a complaint is simple it may be responded to within 5 working days. More complex complaints may take longer, and the GLA will aim to respond within 15 days of receipt of the complaint by the complaint investigator. If the complaint cannot be completed within 15 days the GLA will write to the complainant to indicate that the 15 day period cannot be met, and indicate when it is likely to be concluded.
- 15.4 If a complainant is dissatisfied with the response provided by the complaint investigator they may appeal against the decision by writing to the GLA Chief Executive. The timescales highlighted in 15.3 above will also apply to the response provided by the Chief Executive.
- 15.5 The GLA recognises that longer periods may be required where the investigation of a complaint requires interviews with various individuals. The circumstances of the complaint may necessitate interviews with third parties, such as (but not limited to) labour users and workers.
- 15.6 The GLA recognises that interviews with third parties concerning a complaint may inadvertently create a release of information. The GLA will be sensitive to this risk, and only interview third parties where this is considered essential to the proper investigation and conclusion of a complaint. It will not normally comment on the circumstances of the complainant in those situations. Nonetheless, the GLA recognises

that the person interviewed may use such information which will then be beyond the control of the GLA.

## **16 Research**

- 16.1 The GLA receives numerous requests for assistance on research on forced labour, and related subjects by academics, and for Government reports. Where possible, subject to resources, the GLA will assist with requests for information. Such information will normally be volumetric (e.g. numbers of cases of revocation involving specific standards) and anonymised where it relates to particular situations.