

GREATERLONDONAUTHORITY

Emily Thornberry MP
[REDACTED]

[REDACTED]

Our Ref: MGLA201014-9918

Your Ref: FS/JOHN02023/02140233

17 February 2015

Dear Mrs Thornberry,

Request for information under the Environmental Information Regulations - Mount Pleasant Sorting Office Planning Applications

I write further to our correspondence of the 23rd January 2015 (our ref MGLA230115-7465) in relation to your request for information relating to the Mount Pleasant Sort Office Planning Applications.

I would like to apologise at the outset for the time it has taken us to provide you with a response to your request. As we have sought to explain in our correspondence since November 2014, your request covered a large quantity of complex information that necessitated careful consideration and extensive consultation with a number of external organisations before we were in a position to provide you with our response.

I appreciate that this delay will have undoubtedly caused frustration and I apologise that the time it has taken to provide you with our response has inconvenienced you. We can now provide you with our response to your request.

Your request for information on the 20th October 2014 asked for the release of the following information:

I therefore request under the Environmental Information Regulations 2004 that you provide the following information, as referred to in the GLA Hearing Report:

- 1. The Gerald Eve Viability Report (Paragraph 226)*
- 2. The applicant's revised updated appraisals (Paragraph 242)*
- 3. The councils' position note dated 12th September 2014 (Paragraph 249)*
- 4. The initial views of the GLA's viability consultant provided to the GLA in May 2014 (Paragraph 265)*
- 5. The GLA's viability consultant's finalised report of August 2014 (Paragraph 265)*
- 6. Any other material exchanged between the Royal Mail and the GLA that has not been shared with Camden and Islington Councils*

Your request has been handled under the Environmental Information Regulations (EIR) and I can confirm that the GLA holds information covered by your request. Please find enclosed with this letter the following documents that are in-scope of parts (1) to (5) of your request:

- Gerald Eve Viability Report; Position Notes 1-4
- Mount Pleasant draft Briefing Note - May 2014
- Mount Pleasant GVA Briefing Note - August 2014
- DVS Viability Assessment Report - September 2013
- BPS Financial Viability Independent Review; Joint Borough Instructions (draft) - October 2013
- Joint Borough Position Note – September 2014

After careful consideration, we have however decided that some of the information in these documents is exempt from release in to the public domain by virtue of the exception to our duty to release information found under regulation 12(5)(e) of the Environmental Information Regulations.

This provision provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

I have included the rationale behind our decision to withhold the specific information covered by this exception in the annex to this letter.

In accordance with our commitment to openness and transparency, and to meet the legitimate public interest in this matter, we have engaged this exception provision to withhold the bare minimum of information; the information that would be most prejudicial if released.

In reaching our decision, we acknowledge that in a number of instances, the balance of the public interest considerations for and against maintaining the exception provision were very finely balanced. In the interests of open Government and the Mayors commitment to openness and transparency, we decided that this this information should be released so as to meet the public interest in this matter without prejudicing the legitimate economic interests covered by the exemption.

In relation to part 6 of your request, we have not received a response to our letter of the 3rd November 2014 that asked for some additional clarification to the specific information being requested.

This letter explained that Regulation 9 of the EIR provides that, where we believe that a request, or part of it, has been formulated in “too general a manner”, we can ask the applicant to provide additional particulars to help identify the specific information being requested. This helps avoid requests being refused under Regulation 12(4)(c) as being “too general”.

We have therefore not considered this part of your request further.

I hope that the enclosed information is of interest and I would again thank you for your patience and understanding in this matter.

If you have any further questions relating to this matter, please contact me, quoting the reference at the top of this letter.

A copy of this letter has been sent to Jim Dunn at the Information Commissioner's Office in relation to your complaint reference FS50569930.

Yours sincerely



Principal Strategic Planner

If you are unhappy with the way the GLA has handled your request, you may complain using the GLA's FOI complaints and internal review procedure, available at:

<http://www.london.gov.uk/mayor-assembly/gla/governing-organisation/freedom-information>.

Annex A – EIR Exception Provisions

EIR exception provisions
EIR 12(5)(e) – A public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
How the exemption applies to this information
<p><u>Is the information commercial or industrial in nature?</u></p> <p>The information relates to ongoing affordable-housing viability studies between Greater London Authority (GLA) and the Royal Mail Group (RMG) regarding the potential development of the Mount Pleasant Sorting Office site</p> <p>The information covered by this EIR exception is commercial in nature as it relates to detailed reports relating the Mount Pleasant Sorting Office development, provided to the GLA by RMG. This condition of the exception is therefore satisfied.</p> <p><u>Is the information confidential under either the common law of confidence, contract, or a statutory bar?</u></p> <p>The information was passed to the GLA under a duty of confidence and consequently under the expectation that they would not be widely accessed, circulated or distributed.</p> <p>We would also argue that some of the information is also covered by common-law of confidence – it is not trivial in nature, has the necessary qualities of confidence, and was provided as part of process whereby it was expected by both parties that certain information would be held in confidence.</p> <p>We are however mindful of the views of the Information Commissioner (ICO) in regards to how this exception provision is engaged and applied, and we have also taken note of the recent decision by the Information Tribunal (EA/2013/0162)¹, in particular paragraph 42 which states:</p> <p><i>‘The legislature must be taken to intend that it is not always in the public interest for a public authority to choose to keep information confidential. There is no breach of trust when a public authority fulfils its statutory obligation under FoIA or EIR... They recognise in contracts that in an individual case, depending on the circumstances, the public authority may have a duty disclose.’</i></p> <p>In this case, we have decided that limited pieces of information are protected by a legitimate obligation of confidence.</p> <p><u>Is the confidentiality protecting a legitimate economic interest?</u></p> <p>We are strongly of the view that disclosure would cause harm to the commercial interests of RMG and those of the GLA; and that these can be considered to be legitimate economic interests. In relation to the legitimate economic interests, we would make reference to the Information Commissioner’s guidance, which states:</p>

¹<http://www.informationtribunal.gov.uk/DBFiles/Decision/i1279/London%20Borough%20of%20Southwark%20EA.2013.0162%20%2809.05.14%29.pdf>

'Legitimate economic interests could relate to retaining or improving market position, ensuring that competitors do not gain access to commercially valuable information, protecting a commercial bargaining position in the context of existing or future negotiations, avoiding commercially significant reputational damage, or avoiding disclosures which would otherwise result in a loss of revenue or income'.²

The information covered by this exception provision falls within the following categories:

- Information relating to internal costs borne by RMG in enabling the development of the scheme
- Information relating to potential costs incurred from the construction of the scheme, including rights-of-light and financing.
- Information relating to the potential values derived from disposable elements of the complete scheme, including projected sales rates and timing
- Information relating to the adopted Site Value for the purposes of viability
- Phasing information and associated timing information
- Financial appraisals including associated risk analyses and target rates of return
- Additional costs, such as marketing, disposal and rights-of-light cost estimates

The release of information falling within these categories could

- jeopardise and prejudice tendering negotiations;
- affect RMG's commercial negotiating position opposite contractors;
- affect the ability of RMG to secure competitive sales or leasing arrangements for the units that will be constructed; and/or
- potentially delay the implementation of the proposed development.

We therefore consider that the legitimate economic interests of RMG in this matter mirror the description provided in the Commissioner's guidance and that those could be harmed or prejudiced by the release of specific pieces of information covered by this request.

Public interest test (where applicable)

Considerations favouring disclosure

It is prudent to note the general, underlying rationale for the disclosure of environmental information, as outlined in Directive (2003/4/EC)³ which gave rise to the Environmental Information Regulations,

Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision making and, eventually, to a better environment.

We acknowledge that there is a general public interest in transparency in relation to planning and development matters, particularly in the decision making behind, and

² https://ico.org.uk/media/for-organisations/documents/1624/eir_confidentiality_of_commercial_or_industrial_information.pdf

³ <http://ec.europa.eu/environment/aarhus/legislation.htm>

progress of, developments of this size and impact. Disclosure of this information would enable the community affected by the development to understand more fully the decision making process.

We also consider that disclosure of information that would engage and improve public participation in, and understanding of, the decision making processes involved, carries particular weight.

The disclosure of this information would also inform discussions regarding the number of affordable homes to be provided by this development; an important local issue.

Furthermore, the public interest is served by the GLA being transparent and open to scrutiny to increase diligence and working to protect the public purse.

Considerations favouring non-disclosure

There is of course an inbuilt public interest in maintaining commercial confidences. As discussed in the aforementioned Information Tribunal decision (EA/2013/0162), the courts have recognised the enduring strength of the public interest in maintain the confidentiality of negotiations and bidding that take place in relation to public/private sector partnerships.

It is not in the public interest to cause economic harm to organisation operating in a competitive environment.

The best interests of the public are met by the GLA being able to foster relationships of trust with its partners, through which the sharing of confidential, sensitive financial information can be shared to support the development of sites such as the Mount Pleasant Sorting Office site.

Publishing sensitive financial information shared with the GLA under an expectation of confidentiality would deter these partners from sharing similar information with GLA in the future, particularly if they felt that the GLA would not treat information that could harm their economic interests with due care. This would ultimately hinder the ability of the GLA to deliver its stated objectives for London.

As noted in the same Information Tribunal decision:

Once you use private sector profit making organisations in order to help fund regeneration and to deliver infrastructure, social housing and other public goods, then inevitably considerations of commercial confidentiality and the need to avoid harm to commercial interests must be given full weight when assessing the public interests for and against disclosure

There is a strong public interest in protecting commercially sensitive decisions about price. There is also a specific public interest in preventing others obtaining a developer's knowledge or expertise, or expertise which a developer has paid for, for free.

It is also important to note the importance, and the reliance of local communities, on public/private sector partnerships to deliver affordable housing. There is a strong public interest in these developments succeeding and not being undermined.

Disclosure of the some of the information covered by these provisions would serve to prejudice relations between the GLA with the Royal Mail Group in a situation where that relationship exists to serve the best interest of the public.