

GREATERLONDONAUTHORITY

[REDACTED]
[REDACTED]

Our Ref: MGLA020115-5772

18 February 2015

Dear [REDACTED]

I write further to our letter of the 30th January 2015 in relation to your request for the following information:

- *Any correspondence between the Greater London Authority and Wandle housing association between 1 June 2013 and 24 December 2014 relating to rules around the pre-sale valuation of shared ownership properties.*
- *Any correspondence between the Greater London Authority and Wandle housing association between 1 June 2013 and 24 December 2014 relating to the sale of shared ownership properties at the Streatham Hub development in South London.*

As discussed in our previous letter, your request has been handled under the Environmental Information Regulations and we can today provide you with our response to your request.

We can confirm that the GLA holds information that is in-scope of your request and that with the exception of making some minor redactions to withhold personally identifiable information relating to individual correspondents, this correspondence can be released to you in full.

We have however decided to withhold documents attached to an email of the 28th May 2014 under the exception provisions of regulation 12(5)(e) of the EIR. I have included an explanation of this decision in the annex to this letter, but this regulation 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 hope that you find this information of interest. If you have any further questions relating to this matter, please contact me, quoting the reference at the top of this letter.

Yours sincerely

Ian Lister
Information Governance Manager

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 – Exemption provisions

EIR Exception provision

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

Is the information commercial or industrial in nature?

The information relates to arrangements between the Greater London Authority (GLA) and Wandle Housing Association Limited (Wandle) regarding the development of a scheme known as the Streatham Hub at the south of Streatham.

The information covered by this EIR exception is commercial in nature as it relates to detailed valuation reports relating the Streatham Hub development, provided to the GLA by Wandle. This condition of the exception is therefore satisfied.

Is the information confidential under either the common law of confidence, contract, or a statutory bar?

The Valuation Reports were passed to the GLA under a duty of confidence and consequently under the expectation that they would not be widely accessed, circulated or distributed.

We would also argue that 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.

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:

‘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.’

In this case, we have decided that limited pieces of information are protected by a legitimate obligation of confidence and that disclosure of this information by the GLA into the public domain would constitute an actionable breach of that confidence.

Is the confidentiality protecting a legitimate economic interest?

We are strongly of the view that disclosure would cause harm to the commercial interests of Wandle 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:

‘Legitimate economic interests could relate to retaining or improving market position, ensuring that competitors do not gain access to commercially valuable information,

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

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

We consider that the legitimate economic interests of Wandle Housing Association Limited in this matter mirror the description provided in the Commissioner’s guidance and that those could be harmed or prejudiced by the release of this information.

Wandle operates in a competitive marketplace and it would be prejudicial to their commercial interests to release information into the public domain which Wandle had invested time and money in acquiring. This information, once released, could be used by third-parties or competitors of Wandle, in both the public and private sectors, to gain an unfair and unwarranted commercial advantage.

Furthermore, the disclosure of the Valuation Reports into the public domain at this time would be unjustly damaging to Wandle’s reputation and likely to undermine consumer confidence in Wandle as a provider, potentially leading to an adverse impact on Wandle’s future revenue streams.

The confidentiality will be adversely affected by disclosure

The disclosure of truly confidential information into the public domain would inevitably harm the confidential nature of that information by making it publically available. In turn, this will also harm the legitimate economic interests which are set out above, which the confidentiality is there to protect.

Public interest test (where applicable)

Considerations favouring disclosure

There is a 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 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.

There is a clear public interest in the work of the GLA being closely examined to encourage the discharging of public functions in the most efficient and effective way. The release of this information would help demonstrate how GLA achieved Best Consideration under Section 123 of the Local Government Act in regards to the Streatham Hub

Furthermore, the public interest is served by the GLA being transparent and open to scrutiny to

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>

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 Streatham Hub.

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

Disclosure of the information would serve to prejudice relations between the GLA with Wandle in a situation where those relationships exist to serve the best interest of the public.