

Mr

By email: request-
9d618121@whatdotheyknow.com

Ref:

Date: 2 August 2019

Dear Mr

REQUEST FOR INTERNAL REVIEW DATED 17 JUNE 2019

I write further to your request for an internal review dated 17 June 2019. I have been appointed to complete the review as a Senior Officer of the Council. I confirm that I was not involved in the original FOIA request.

Background

On 15 April 2019 you emailed the Council and requested:

"Dear Harrogate Council,

I am writing to you under the Freedom of Information Act 2000 to request the following information that I expected can be provided via Amy Wai from the Place-shaping and Economic Growth team as per the below.

- Documents from Network Rail and any other body used to generate the new costings implemented by HBC in 2018*
 - Details of all garden licenses that incurred increases in 2018 to include original cost, new cost and size of area included within the license*
 - Details for each license to confirm if the revised license has been accepted or declined*
 - Details of any plots where an amended amount has been agreed as part of the license agreement*
 - All correspondence with new or previous license holders regarding acceptance of the new license*
- Please provide the information in electronic form.*

If it is not possible to provide the information requested due to the information exceeding the cost of compliance limits identified in Section 12, please provide advice and assistance, under your Section 16 obligations, as to how I can refine my request to be included in the scope of the Act. In any case, if you can identify ways that my request could be refined please provide further advice and assistance to indicate this.

I look forward to your response within 20 working days, as stipulated by the Act.

If you have any queries please don't hesitate to contact me via email and I will be happy to clarify what I am asking for, my details are outlined below.

Regards,

Hind Consultancy Services Ltd"

On 16 May 2019, the Council responded stating:-

"De

Thank you for your email received by the Council on 15th April 2019 requesting information under the Freedom of Information Act 2000 ('FOIA') relating to:

- 1. Documents from Network Rail and any other body used to generate the new costings implemented by HBC in 2018*
- 2. Details of all garden licenses that incurred increases in 2018 to include original cost, new cost and size of area included within the license*
- 3. Details for each license to confirm if the revised license has been accepted or declined*
- 4. Details of any plots where an amended amount has been agreed as part of the license agreement*

5. All correspondence with new or previous license holders regarding acceptance of the new license

In response, please find below the information from Harrogate Borough Council:

Your request has been considered under the Environmental Information Regulations 2004 as we consider the subject matter to relate to information that has an effect on the elements of the environment.

1. Please see attached documents.

Network Rail information is contained within document "Garden Calc.xls" Please note: The figures included in this document are just to illustrate the process and how the calculation works.

Other supporting information used contained within "Gayle, Hawes, North Yorkshire Farm land for sale - £85,000", "Huddersfield", "Allotments", "Diamond Grove Overview", "JB to Bradford" and "Bradford MDC to JB". One piece of documentation has been exempted from disclosure under regulation 12(5)(e) as this information was provided in confidence to Harrogate Borough Council.

2, 3 and 4 Information is contained within the attached spreadsheet named "Licence Details Ref 1920 – 29.xls". Information classed as personal data has been removed as it is exempt under regulation 13.

5. Correspondence with license holders constitutes personal information and is therefore except from disclosure under regulation 13.

If you are not satisfied with the way your request has been handled, please contact -

Freedom of Information Officer, PO Box 787, Harrogate, HG1 9RW

or email foi@harrogate.gov.uk

The Council has an internal review procedure. If your complaint is about the decision which has been made you will usually be entitled to have your case reviewed by a senior officer from a department which has not been involved in the decision previously. Your request for internal review must be received by the Council within 40 working days from the date that the response to your initial request is issued.

If, after their decision, you are still not happy, you may appeal to-

The Information Commissioner
Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
Tel: 0303 123 1113
website: <https://ico.org.uk/>

For the avoidance of doubt the provision of council (and other) officer names and contact details under FOI or EIR does not give consent to receive direct marketing via any media and expressly does not constitute a 'soft opt-in' under PECR.

Yours faithfully

Liz Sandell
Systems, Information & Support Manager
Place-shaping & Economic Growth
Harrogate Borough Council
PO Box 787
Harrogate
HG1 9RW

email: elizabeth.sandell@harrogate.gov.uk
Tel: 01423 500 600 (Ext 58282)
www.harrogate.gov.uk

On 17 June 2019, you wrote to the Council requesting an internal review in the following terms:-

"Hi,

I would like to appeal this FOI response for the following reasons:

1 - Not all relevant information has been supplied. On a meeting with HBC officers on 31st May it was confirmed that data from around 10 local authorities was used to inform/benchmark the figures HBC have used. Although Bradford was provided the other 9 weren't. Can these please be provided.

2 – The “licences agreed” information has been incorrectly withheld. There is no impact on GDPR or Data Protection that can be identified. This is not personal data and a simple indication for each area of land if the licence has been accepted, returned or still to be agreed.

3 – If point 2 is not agreed to - can a summary of the number of licences accepted/declined and pending be provided.

Thanks,

Hind Consultancy Services Ltd”.

On 20 June 2019, the Council responded stating:

“

Your request for an internal review was received on 17th June 2019. The Council will endeavour to complete the review within 20 working days.

The review will be carried out by a senior Council Officer who has not been involved with your original request. You will be informed of the decision of the review as soon as possible once the review has been completed.

If you remain unsatisfied after the findings of the review you then have the right to complain to the Information Commissioners Office; details will be provided in the review response.

Yours sincerely,”

Review

Before setting out my conclusions on the review I think it is important to highlight that whilst your request for information and for an internal review are made subject to the Freedom of Information Act 2000, the response made clear that the request had been considered pursuant to the Environment Information Regulations 2004 (“**EIR**”) as the subject matter relates to information that has an effect on the elements of the environment. I have considered this matter further and agree that it is correct for it be considered pursuant to the EIR, and my review has been conducted in line with that conclusion.

I also wish to make clear that an Internal Review requested under the EIR involves consideration of the Council's handling of the request for information in respect of its obligations under the EIR alone.

I have considered all the documentation set out above, the EIR, and the ICO guidance. My conclusions are set out below:-

1. The Council requested information from a number of other Council's however it only received responses from 3. It has provided the information received from Bradford and withheld the information received from one other. With regard to the third response this is no longer held. The email was unfortunately lost due an ICT issue and it has not been possible to retrieve it. The Council has therefore disclosed all the information which it holds, with the exception of the information which it has withheld because it was provided in confidence.

It is not clear from your request for an internal review whether you dispute that that information should have been withheld. For completeness however I have reviewed that information and I agree that it should be withheld on the basis of Regulation 12(5)(e) “Confidentiality of commercial or industrial information and/or Regulation 12 (5)(f) “Interest of the person who provided the information to the public authority”. I have set out my reasons below.

Regulation 12(5)(e) – Confidentiality of commercial or industrial information

To refuse information pursuant to this regulation public authorities will need to establish that:-

- **The information is not on emissions** – *it is not*
- **The information is commercial or industrial in nature** – Yes
- **It is confidential under either the common law of confidence, contract or a statutory bar** – *Yes, the information has the necessary quality of confidence and was shared explicitly in circumstances creating an obligation of confidence.*
- **The confidentiality is protecting a legitimate economic interest** – *Yes, paragraph 38 of the ICO guidance states that 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..”*
- **The confidentiality will be adversely affected by disclosure** – *Paragraph 49 of the ICO guidance states that once the first 3 elements are established the Commissioner considers it is inevitable that this element will be satisfied. “Disclosure of truly confidential information into the public domain would inevitably harm the confidential nature of that information by making it publicly available, and would also harm the legitimate economic interests that have already been identified”.*
- **The public interest in maintaining the exception outweighs the public interest in disclosing the information** - Although there is always some public interest in disclosure of information to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation in environmental decision making, all of which contribute to a better environment, I consider that is outweighed by the public interest in maintaining the exception. In particular, should the Council disclose the information third parties would be discouraged from confiding in it if they did not have some assurance that confidences would be respected. More particularly it would undermine the relationship of trust between the Council and other Councils who provide information, the sharing of information between Councils is in the public interest and to breach confidence would affect the likelihood that such information would be shared in the future.

Regulation 12(5)(f) – Interests of the person who provided the information to the public authority.

To refuse to provide environmental information under the exception in regulation 12(5)(f), public authorities will need to establish that:

- **The information is not on emissions** – *it is not*
- **The interests of the person providing the information to the public authority will be adversely affected on disclosure** – *the interests of the authority providing the information will be adversely affected by disclosure because their commercial position would be disadvantaged in future negotiations.*
- **The person providing information was not under any legal duty to provide it** – *There was no legal duty to provide the information.*
- **The public authority is not entitled to disclosure of the information provided** – *As set out above the information was provided in confidence and therefore a duty of confidence would exist.*
- **The person providing the information has not consented to disclosure** – *they have not consented to disclosure.*

- **The public interest in maintaining the exception outweighs the public interest in disclosing information** - The ICO guidance states that in considering the public interest the starting point should be that there is an inherent public interest in the prevention of adverse effects on the interests of the third party provider of information and the principle of confidentiality. The Council also must consider the effects upon it of not maintaining the voluntary supply of information to it if it could not maintain the confidentiality that suppliers of the information would expect. Having considered this I conclude that the public interest in maintaining the confidentiality of the information outweighs that of disclosure.
2. The Council has removed all information from the spread sheet which is personal information, for the avoidance of doubt this was not the information contained in the final column of the spreadsheet headed "*licence agreed*". The information requested has been provided in that column. Where the position is confirmed or finalised this has been indicated with "Accepted" or "Declined". Where the position is not yet confirmed or finalised this is indicated by "N/A".
 3. As clarified above, this information is available within the spread sheet provided.

I hope that this clarifies matters. If however you are not content with the Council's review of this matter you may complain to:-

The Information Commissioner
Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
Tel: 0303 123 1113
Website: <https://ico.org.uk/>

Yours sincerely



Simon Kent
Major Projects Director
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Email: simon.kent@harrogateconventioncentre.co.uk