

Peter Silverman  
Via email  
<mailto:request-53737-3fde03ef@whatdotheyknow.com>

Our ref: NE25883MR

Date: 7 January 2011

Dear Mr Silverman

Thank you for your enquiry.

Requests for information that is recorded are generally governed by the Freedom of Information Act 2000 (FOIA). The information you have requested is environmental and it is therefore exempt from the provisions of FOIA by FOIA s.39(1). We have therefore considered your request under the provisions of the Environmental Information Regulations 2004 (EIR). EIR regulation 12 allows a public authority to refuse to disclose environmental information if an exception to disclosure applies under paragraphs (4) or (5) and in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. A public authority shall apply a presumption in favour of disclosure.

#### **Information enclosed and notice**

Please find attached communications between us and the London Borough of Hillingdon regarding Ruislip Lido including, but not limited to, those covering issues of water levels and flood risk. This includes emails, letters and minutes of meetings as well as our comments on planning applications. Please note that under our retention schedule, we only hold records of requests for information for a period of one year.

Please see the attached Standard Notice (non-commercial), for details of permitted use.

#### **Information available to view in our office**

We hold a copy of the Flood Risk Assessment (FRA) and documents relating to the flood modelling data that was used in the FRA. We consider this to be the intellectual property of a third party, in this case Halcrow. Therefore, FOI/EIR Regulation 12(5)(c) applies:

***"For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect - intellectual property rights."***

However, you may view these documents by visiting our office. You will not be able to take away copies of any of these documents. Please contact me to arrange a mutually convenient time.

### **Information withheld**

We have withheld communications between us, Halcrow and the London Borough (LB) of Hillingdon where they have requested pre-planning advice. In this case Regulation 12(5)(f) of EIR applies:

***"Disclosure would adversely affect the interests of the person who provided the information where that person was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority, did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it and, has not consented to its disclosure."***

In relation to the application of EIR Regulation 12(5)(f), it is clear that the London Borough of Hillingdon and Halcrow were providing sensitive information to us in a situation where they were seeking assistance from us. The information was of a confidential nature and was provided in circumstances where there was a legitimate expectation on our part that discussions and information submitted were confidential. Therefore a common law duty of confidence arises between the parties that we would breach if the information is disclosed.

### **The Public Interest Test**

We have weighed the public interest factors in favour of maintaining the exceptions and find that they outweigh the public interest factors in disclosing the information. In carrying out the public interest test we have considered:

#### **1. Factors in favour of releasing the information:**

We would only withhold information if we are sure that disclosure would cause substantial harm. There is a public interest in releasing information about our input into the most recent Ruislip Lido planning application. Some parts of the information, such as our comments on the flood risk modelling data used in the FRA does not add to public understanding of potential impact on the environment and public health and safety. Furthermore they do not aid understanding of factors taken into consideration when making our decision.

We recognise your particular concerns regarding LB Hillingdon's current planning application involving the Ruislip Lido and that the requested information is not already public. There is an element here of questioning whether the most appropriate decisions are being taken in the public sector in relation to changes in water levels around Ruislip Lido. We must ensure that the best and sustainable environmental options are being selected in relation to flood risk around Ruislip Lido.

## **2. Factors in favour of withholding the information:**

There is a public interest in ensuring that public authorities do not breach their legal obligations even where we, as a public body, are subject to the overriding effect of the EIR and the need always to consider requests for information in accordance with that legislation. In considering the application of EIR 12(5)(f), this confidentiality is relevant because if not for the EIR, we would not be entitled to disclose this information. This is because we did not require Halcrow to produce it, and the information was volunteered.

We also refer to the adverse effect of misleading information being released, leading to inappropriate criticism. There is a public interest in ensuring that any documents we disclose are factually correct and not likely to be misleading to the public. This factor is relevant to the release of pre-planning advice given by us to the LB Hillingdon.

We find that the factors in favour of withholding any pre-planning advice outweigh the public interest factors in disclosing the information.

### **Rights of appeal**

If you are not satisfied with our response to your request for information, you can contact us to ask for our decision to be reviewed. If you are still not satisfied following this, you can make an appeal to the Information Commissioner, who is the statutory regulator for Freedom of Information. The address is: Office of the Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF .

Tel: 01625 545700.

Fax: 01625 524 510.

E-mail: [xxxx@xxx.xxx.xxx.xx](mailto:xxxx@xxx.xxx.xxx.xx).

Website: <http://www.informationcommissioner.gov.uk>

If I can be of any further help, please contact me.

Yours sincerely

**Michelle Robbins**

**External Relations Officer**

Direct dial 01707 632319

Direct fax 01707 632610

Direct email [thnortheast@environment-agency.gov.uk](mailto:thnortheast@environment-agency.gov.uk)