



HM Revenue
& Customs

Kieran Foster

By email:

request-818679-f634b918@whatdotheyknow.com

Freedom of Information Team
S1715
6 Floor
Central Mail Unit
Newcastle Upon Tyne
NE98 1ZZ

Email foi.request@hmrc.gov.uk

Web www.gov.uk

Date: 8 February 2022

Our ref: IR2022/01023

Dear Kieran Foster

Environmental Information Regulations 2004

Thank you for your email of 20 January 2022, which seeks a review of our original response to your information request.

Original request

On 30 December 2021, you asked for the following information:

"I am writing to request, under environmental information regulations, copies of the "heritage landscape management plans" or "heritage management plans" for the following properties:

Bolton Abbey Estate (Yorkshire)

Chatsworth Estate (Derbyshire)

Firle Estate (East Sussex)

Raby Castle (Co. Durham)

Alnwick Castle (Northumberland)"

Our response

We replied on 20 January 2022. We refused to provide the information requested as we consider it exempt from disclosure under [regulation 12](#) of the Environmental Information Regulations 2004 (EIR).

Internal review request

On 20 January you asked us to review our decision to refuse your request:

"I believe, firstly, that this exception has been incorrectly applied

Regulation 12(5)(d) provides that an authority "may refuse to disclose information to the extent that its disclosure would adversely affect"

(d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;

I believe that concerns over confidentiality could be addressed by appropriate redactions of confidential information (contact details etc.) rather than blanket refusal. I contend that

Information is available in large print, audio and Braille formats.
Text Relay service prefix number – 18001



12(5)(d) does not permit blanket refusal, only refusal of provision of information that could reasonably be seen as confidential. Regulation 11 specifically states that “Nothing in these Regulations shall authorise a refusal to make available any environmental information contained in or otherwise held with other information which is withheld by virtue of these Regulations unless it is not reasonably capable of being separated from the other information for the purpose of making available that information”

I also believe that the reliance on confidentiality is significantly diminished by the fact that the existence of conditionally exempt tax agreements for all the identified properties is an existing matter of public record, and advertised on HMRC website:

www.hmrc.gov.uk/gds/heritage/lbsearch.htm

HMRC justify their refusal based on principle that “The CRCA imposes a statutory duty on us not to disclose taxpayer information. This creates an expectation of confidentiality. Disclosing the information requested would undermine this expectation and could adversely affect our ability to carry out our statutory functions”

However, HMRC has already brought the existence these agreements, and the identity of the taxpayers involved, into the public realm. Following HMRC’s inferred principle of ‘complete confidentiality’ applying to taxation/taxpayer information then the existing release of this information via HMRC website would in itself constitute a breach of HMRC’s legal duties. After releasing this information themselves, they cannot continue to claim that there is an enduring “expectation of confidentiality” on any and all information that flows from these agreements.

In effect the ‘general duty of confidentiality’ regards these agreements and their contents (rather than protection of specific confidential details such as personal information, which I have already stated that I understand may need to be subject to appropriate redactions) has already been dispensed/put aside through their publication on HMRC website.

As a result of bringing the existence of these agreements into the public realm, the public interest is clearly therefore engaged to an extent whereby knowledge not only of the existence of these agreements is in the public interest, but also the details of the undertakings entered into as a result. Otherwise how can the public verify that the conditional agreements entered into on their behalf are being upheld? The very nature of a *conditional* agreement is that specific conditions are entered into in return for tax relief. If those conditions are not being upheld then it is clearly a matter of public interest, and in order to assess that it is clearly also therefore a matter of public interest that those conditions should be available to the public. Similarly, it is important for the public to be able to ascertain whether any monitoring arrangements and/or assessment criteria were entered into as part of the agreement in order to assess whether an effective regime was in place to ensure that those conditions were being fulfilled.

As such, I believe the decision to completely withhold information in these cases is not justified and fails to overcome the regulation 12(2) presumption in favour of disclosure.”

Internal review

The purpose of this review is to assess how your request was handled and to determine whether the original decision given to you was correct.

We received your request on 30 December 2021 and issued our refusal notice by email on 20 January 2022. This was within the statutory deadline in compliance with [regulation 14](#) of the EIR.

The response also set out our review procedure and your right to complain to the Information Commissioner, as required by [regulation 11](#) of the EIR.

Background

In all heritage cases where either conditional exemption has been granted or where a maintenance fund (a special trust designed to contribute towards the costs of repairing and preserving heritage property) has been created we require the parties, normally the owner of

the heritage property, to provide an undertaking – see [section 30\(1\)\(b\)](#) of the Inheritance Tax Act 1984 and paragraph 3(2)(b) of [Schedule 4. Section 31](#) sets out what an undertaking should contain, which is basically the steps the owner must take to (a) maintain, preserve and repair the heritage property and (b) provide a measure of public access to it.

Before 1998, section 31 contained no provision relating to the publication of the terms set out in an undertaking. The Finance Act 1998 substantially altered section 31 and introduced several new provisions including 31(4FB) which states:

Subject to subsection (3) above, where the steps that may be set out in any undertaking include steps for securing reasonable access to the public to any property, the steps that may be agreed and set out in that undertaking may also include steps involving the publication of—

- (a) the terms of any undertaking given or to be given for any of the purposes of this Act with respect to the property; or
- (b) any other information relating to the property which (apart from this subsection) would fall to be treated as confidential;

and references in this Act to an undertaking for access to any property shall be construed as including references to so much of any undertaking as provides for the taking of steps involving any such publication.

This provision applies to all undertakings given after 30 July 1998. Although it did not make publication mandatory it has been our practice in all cases to seek inclusion of a publication clause in undertakings given since then. We obtain the owners' consent to publish reasonable details and then either include an anonymised version of the undertaking on the website entry for each property on GOV.UK: www.hmrc.gov.uk/gds/heritage/lbsearch.htm, or agree with the owner that they will provide an anonymised copy of the undertaking to any member of the public that requests it, or agree with the owner that an anonymised copy of the undertaking will be on display at the property when it is open to the public.

Although the above applies to undertakings given after 30 July 1998 there are many undertakings in existence that were given before that date, so did not include a publication clause.

Another amendment introduced by the Finance Act 1998 was the ability to vary an existing undertaking by mutual consent – [section 35A](#) of the Inheritance Tax Act 1984. Following this change we engaged with all our existing owners to negotiate aligning historical undertakings with the new requirements, which then allowed us to publish anonymised versions of undertakings in some cases. As mutual consent is required, we were not able to obtain an agreement to publish for all pre-1998 undertakings.

Environmental information

The [Environmental Information Regulations 2004](#) (EIR) give people a right of access to information about the activities of public authorities that relate to or affect the environment, unless there is good reason for them not to have the information. Part 3 of the EIR lists exceptions to the duty to disclose environmental information. These exceptions are explained under [regulation 12](#).

You requested the heritage management plans for five properties. We consider this information to be exempt from release under regulations 12(5)(d).

[Regulation 12\(5\)](#) provides that:

- (5) For the purposes of paragraph 1(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—
- (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law.

Exception 12(5)(d)

As explained in our original response, we consider regulation 12(5)(d) is engaged because we hold undertakings and heritage management plans in connection with the exercise of our statutory functions, as derived from the Inheritance Tax Act 1984.

The [Information Commissioner states](#) environmental information may be exempt from disclosure under regulation 12(5)(d) if disclosing it would adversely affect the confidentiality of a public authority's proceedings where the confidentiality arises from statute or common law.

The Commissioner goes on to explain that:

“the fact that the confidentiality of the proceedings must be “provided by law” supports the view that the proceedings must have a certain level of formality to be covered by regulation 12(5)(d). An authority cannot simply decide for itself that the proceedings of a particular meeting are confidential; there must be a legal basis for this.”

The Commissioner further states:

“Regulation 12(5)(d) is about the confidentiality of proceedings, rather than the confidentiality of information, but if there is a prohibition on disclosing information in other legislation, then depending on the wording and purpose of that legislation, this may indicate that there are proceedings whose confidentiality is provided by law.”

Our position is this confidentiality of proceedings is the statutory prohibition on disclosure at [section 18\(1\)](#) of the Commissioners for Revenue and Customs Act 2005 (CRCA):

“Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.”

[Section 19\(1\)](#) of the CRCA then explains that it is an offence to disclose information relating to a person who is identified or whose identity could be deduced from that information:

“A person commits an offence if he contravenes section 18(1) by disclosing revenue and customs information relating to a person whose identity—

- (a) is specified in the disclosure, or
- (b) can be deduced from it.”

[Paragraph 110](#) of the CRCA explanatory notes state ‘person’ means both living individuals and legal entities such as companies, charities and trusts.

Our decision-making process is based on this legal duty to protect taxpayer information. Our consistent position is to not release information that identifies individual taxpayers. It is not possible to redact content to anonymise the information as that would require removing all references to the estates themselves, and that would render the information meaningless.

[Section 18\(2\)](#) of the CRCA does list circumstances that allow for the disclosure of Revenue and Customs information. For example, 18(2)(b) allows for disclosure which is made in accordance with [section 20](#) (public interest disclosure) or [section 21](#) (disclosure to prosecuting authority). However, section 18(2) does not offer an avenue that allows us to release taxpayer specific heritage management plans.

Public interest considerations

Where information is exempt from release under other legislation, this does not in itself prevent disclosure, as [regulation 5\(6\) of the EIR](#) states “any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply”. Instead, these regulations provide an exception to the duty to disclose, subject to public interest considerations.

Although we must determine whether the information requested can be released under the EIR, even if that information is exempt from disclosure under other legislation, the Information Commissioner accepts that public authorities should consider carefully the

existence of another legal barrier as it suggests there is a strong public interest in maintaining an exception.

In the case of regulation 12(5)(d), the public interest argument for the exception relates to the need to protect the confidentiality of proceedings – as described at section 18(1) of the CRCA. There is always a general public interest in protecting confidential information. Breaching an obligation of confidence undermines the relationship of trust between confider and confidant, regardless of whether the obligation is based on statute or common law. For this reason, the grounds on which confidences can be breached are normally limited.

The fact that the confidentiality is ‘provided by law’ also implies that there is a public interest in protecting it. So, where the exception is engaged there is always some inherent public interest in maintaining it.

We must ensure that our statutory duty of confidentiality is rightly applied to all our customers. The CRCA imposes a statutory duty on us not to disclose taxpayer information. This creates an expectation of confidentiality. Disclosing the information requested would undermine this expectation and that would affect our ability to carry out our statutory functions.

While we recognise the public interest in transparency and accountability of environmental activity, and regulation 12(2) of the EIR states that a public authority should apply a presumption in favour of disclosure, we consider there is an overriding public interest in not disclosing the information requested for the reasons explained.

We do accept the clear public interest in transparency concerning undertakings with heritage properties. As explained earlier, amendments to legislation have strengthened our ability to publish reasonable details of agreed undertakings. The information we release on the GOV.UK page is facilitated by this provision within law.

Publishing the terms of an undertaking does not necessarily equate to publishing the heritage management plan. Those plans set out, sometimes in great detail, the steps owners need to take to maintain, preserve and repair their heritage property. They are not exclusive to conditionally exempt properties or to properties supported by a maintenance fund but over the years they have been adopted as a useful tool for recording what steps owners have to take for those purposes. Until recently, the steps were included in the undertaking document itself, but as the amount and level of detail grew that became impractical. In addition the maintenance, preservation and repair requirements constantly change, especially for large landed estates, so undertakings given many years ago increasingly failed to reflect the current position. It was better to have these details in a separate document which could be reviewed and updated as necessary, and simply to refer to this separate document in the undertaking. That has become our standard practice and is the document we consider carries a public interest in publication.

We do not publish heritage management plans on our website as it would be administratively burdensome to do so (some run to several volumes, hundreds of pages and include many photographs and large maps).

Regarding the specific properties referred to in your request, the undertaking for Bolton Abbey and Chatsworth were given prior to 1998. Neither contain a publication clause and the undertakings do not appear on our website. The undertakings for Firle, Raby Castle and Alnwick were given after 1998. These three contain a publication clause. The website entry for Firle records that an anonymised copy of the undertaking is on display at the property. The entry for Alnwick Castle includes a summary of the terms of the undertaking. The website entry for Raby Castle records that an anonymised copy of the undertaking is on display at the property.

We consider publishing undertakings through the legal gateway provided by the Inheritance Tax Act 1984 satisfies the public interest in disclosing undertakings agreed with conditionally exempt properties.

Conclusion

We have examined our response to your original request. While we aim to release information requested under the Environmental Information Regulations 2004, we cannot set aside our duty of confidentiality as prescribed in the Commissioners for Revenue and Customs Act 2005. We must therefore factor the absolute prohibition against disclosure contained in section 18(1) when considering requests that seek environmental information relating to identifiable taxpayers. Having applied this consideration when we first reviewed your request, we are satisfied that we dealt with your request correctly and we uphold the decision to issue a refusal under regulations 12(5)(d) of the EIR.

Appeal process

If you are not content with the outcome of this internal review you can [complain to the Information Commissioner's Office](#).

Yours sincerely,

HM Revenue and Customs