



Gareth Dennis
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9th October 2018

Dear Mr Dennis

Information request

Reference number: FOI2018/01218

Thank you for your email of 11th September 2018 in which you requested the following information:

'I am writing to request the total income (rental and otherwise) from the 5200 properties recently sold to Telereal Trillium and Blackstone Property Partners for the last ten years, or the longest period the data is available for.'

'I am writing to request the list of around 5200 properties sold to Telereal Trillium and Blackstone Property Partners.'

I have processed your request under the Environmental Information Regulations 2004 (EIR) as the information requested is environmental according to the definition in regulation 2(c)¹ of the EIR. Please note section 39 of the Freedom of Information Act 2000 (FOIA) exempts environmental information from the FOIA, but requires us to consider it under the EIR.

I can confirm that we hold the information you have requested – it is, however, exempt from disclosure under Regulation 12(5)(e) of the EIR which is intended to protect the confidentiality of commercial information. This Regulation states:

*'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.'*²

¹ The requested information relates to a programme to sell property and land, which constitutes "measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors" of the environment. For the full wording of the legislation, please see: <http://www.legislation.gov.uk/ukxi/2004/3391/regulation/2/made>

² See http://www.legislation.gov.uk/ukxi/2004/3391/pdfs/ukxi_20043391_en.pdf for more information.

The Information Commissioner's guidance sets out four requirements necessary for this exception to apply. These are:

- The information is commercial or industrial in nature.
- Confidentiality is provided by law.
- The confidentiality is protecting a legitimate economic interest.
- The confidentiality would be adversely affected by disclosure.

In this instance I am of the view that in relation to parts one and three of your request all four requirements are met because:

1. The information is commercial in nature because it relates to the sale of property and land which constitutes a commercial transaction.
2. Confidentiality is provided by law as there is an external and internal non-disclosure agreement attached to the transaction.

Moreover, confidentiality is provided by the common law of confidence as the information is not trivial as it relates to still live commercial process for selling property assets and is considered to be commercially sensitive by the parties concerned. The information is not in the public domain nor has it been previously disclosed. In conjunction with this, the information has not been shared within Network Rail beyond those requiring access to the information for relevant business purposes.

3. Confidentiality is protecting a legitimate economic interest because the requested information relates to live, ongoing matters and the request has been made at a time where we have exchanged contracts but have not yet completed the sale. In the Information Commissioner's terms this amounts to the protection of 'a commercial bargaining position in the context of existing or future negotiations.'³
4. On consideration of the above comments I have concluded that disclosure of the withheld information would adversely affect the confidential nature of the documents. The ICO guidance provides that:

*'Although this is a necessary element of the exception, once the first three elements are established the Commissioner considers it is inevitable that this element will be satisfied.'*⁴

The public interest test

Whilst I believe that I have demonstrated that Regulation 12(5)(e) is engaged (i.e. I have shown that disclosure would have an adverse effect on the confidentiality of commercial relations) this is not sufficient for us to withhold the information, we must also establish that the public interest lies in maintaining the exception. Our findings are set out below.

³ See para 38 https://ico.org.uk/media/for-organisations/documents/1624/eir_confidentiality_of_commercial_or_industrial_information.pdf

⁴ https://ico.org.uk/media/for-organisations/documents/1624/eir_confidentiality_of_commercial_or_industrial_information.pdf

Public interest factors in favour of disclosure

As with any request for information there is a general presumption in disclosure to promote openness and transparency since this allows for greater scrutiny and accountability of public authority's activities.

In this instance there has been a large amount of media and public interest in the sale of our commercial estate and it has been considered a contentious issue. Disclosure would be of particular interest to those currently renting space from Network Rail and would foster public confidence in our processes, procedures and decisions.

Public interest factors against disclosure

Set against this, providing the information at the present moment, when we have only exchanged contracts and not yet completed the sale would not be in the public interest. This is because as a publicly funded organisation, money received from the sale of the commercial estate is money that will go directly into the public purse and disclosure of this type of information could compromise the completion of the sales transaction.

In direct terms, putting commercially confidential information which is protected by law into the public domain when the sale has not completed would affect buyer confidence and Network Rail's reputation as a trustworthy commercial partner. This would potentially compromise our ability to receive the maximum value for the public purse.

Considering the arguments above, I have concluded that the public interest favours maintaining the exception in this case, and that the information should be withheld. While I recognise the force of the arguments in favour of increased transparency and accountability, I am ultimately of the view that the public interest is best served by protecting our revenues (and taxpayers' money) and ensuring that we and our partners are able to operate commercial enterprises within the standard bounds of commercial confidentiality.

I would add that the conclusions we have reached have been informed by the fact that the transaction is still live. It may be the case that we would be able to disclose information in response to a new request made after the transaction has been completed.

If you have any enquiries about this response, please contact me in the first instance at FOI@networkrail.co.uk or on 01908 782405. Details of your appeal rights are below.

Please remember to quote the reference number at the top of this letter in all future communications.

Yours sincerely

Anisha Pandya
Information Officer

Appeal Rights

If you are unhappy with the way your request has been handled and wish to make a complaint or request a review of our decision, please write to the FOI Compliance and Appeals Manager at Network Rail, Freedom of Information, The Quadrant, Elder Gate, Milton Keynes, MK9 1EN, or by email at foi@networkrail.co.uk. Your request must be submitted within 40 working days of receipt of this letter.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF