

FOI request - Reference: FOI-222267966
Title: London Borough of Sutton Pension Fund Investments

Your request:

Dear Sutton Borough Council,

I would like to request the following information:

- 1) The full details of what the London Borough of Sutton Pension Fund currently invests in, including the name and amounts of each asset class or investment being held.
- 2) The investments broken down into different categories/types of holding, including: Index Linked Securities, Unit trust Property, Cash Instruments, Unit Trust Equities, Infrastructure, Fixed Interest Securities, Equities Segregated Unlisted, Equities Segregated UK, Equities Segregated Foreign as well as any other investments that the Pension Fund holds.
- 3) The industrial sector of each investment e.g. Aerospace & Defense, Oil & Gas Producers, Pharmaceuticals & Biotechnology, Media, Banks, Mining, Government, Automobiles, Financial Services, Housing and any other sectors that the Pension Fund holds investments in. Examples of Pension Funds which have previously included this data in their publicly released investments include Buckinghamshire and Derbyshire. (i)
- 4) A full list of all the companies which the Pension Fund currently invests in (this should be covered in the above requests). This list should include the names of each company and the amount invested in each company.
- 5) Can you clearly specify the total value of all investments that the Pension Fund holds in sterling.
- 6) I would like to receive this information in an unlocked excel sheet without protected cells (.xls). If you have to password protect the excel sheet, can you also provide the password to the excel sheet. When considering the request for this data in excel format, please refer to *Innes v Information Commissioner* [2014] EWCA Civ 1086 (ii), which allows a requestor to express a preference for communication by a particular means, specifically: "an applicant's right to choose to have information provided to him in electronic form extends to a right to choose the software format in which it is embodied." (iii)

I would like to receive the information in electronic format. If one part of the request can be answered sooner than others, please send that information first followed by any subsequent data. If you need further clarification, please contact me by email.

Many public authorities release their contracts, minutes and other information of interactions with private vendors in line with the Freedom of Information Act. The exemption for commercial interest under the Act (section 43) is a qualified exemption, which means information can only be withheld if it is in the public's interest. The public have an interest in knowing what the Pension Fund is investing in, the terms of contracts and the minutes of meeting with public authorities, whether or not public money changes hands immediately.

If you are relying on section 41 (the exemption for legal breach of confidence) then I would like to know the following:

- * When these confidentiality agreements were agreed
- * All correspondence and email in which these confidentiality agreements were discussed
- * The precise wording of the confidentiality agreements.

I ask these questions because guidance issued by both the Lord Chancellor (draft guidance on FOI implementation) and the Office of Government Commerce (Model terms and conditions for goods and services) specifically state that public authorities should not enter into these types of agreements; they go directly against the spirit of the laws of disclosure. I would also point to the Information Commissioner's guidance on accepting blanket commercial confidentiality agreements: 'Unless confidentiality clauses are necessary or reasonable, there is a real risk that, in the event of a complaint, the Commissioner would order disclosure in any case.' (iv)

Finally, within the law of confidence there is also a public interest test. Therefore, the information should be disclosed in full. If any parts are redacted they must be for information that can be proven to be a legal breach of confidence in court, and only then where secrecy can be shown to be in the public interest. These are difficult positions to argue when public money is at stake or where a public authority is offering a private company a monopoly to charge its stakeholders.

I reserve the right to appeal your decision to withhold any information or to charge excessive fees, and understand that under the act, I am entitled to a response within 20 working days. I would be grateful if you could confirm in writing that you have received this request.

Yours faithfully,

Edward Jones

(i) Buckinghamshire https://www.whatdotheyknow.com/request/201516_pension_fund_investment_d_9 Derbyshire https://www.whatdotheyknow.com/request/201516_pension_fund_investment_d_19

(ii) Innes v Information Commissioner [2014] EWCA Civ 1086 <http://www.bailii.org/ew/cases/EWCA/Civ/2014/1086.html>

(iii) Section 11 FOIA and the Form of a Request <https://panopticonblog.com/2014/08/01/section-11-foia-and-the-form-of-a-request/>

(iv) 'Freedom of Information Awareness Guidance 5: Commercial Interests' Office of the Information Commissioner, Page 10, https://www.humanrightsinitiative.org/programs/ai/rti/implementation/applying_law/guidance_note_applying_exemption_commercial_interest.pdf

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Date of request: 29/06/2020

Any attached files: No