

Mr Dominic O'Hooley

By email only: request-674067-3136f481@whatdotheyknow.com

27 August 2020

Dear Mr O'Hooley,

Internal review of your request

I write following your email of 30 July 2020 requesting a review of the GDC's response to your request under the Freedom of Information Act 2000 (the FOI Act) for the rent the GDC pays for its Colmore Square offices in Birmingham and information relating to the GDC's negotiation of that agreement.

I have looked again at how we handled your FOI request, the response we provided and the reasons we gave for our decision. I set out my conclusions below. First, for completeness, I will set out the background.

Background

Your request

On 2 July 2020 you emailed via the whatdotheyknow website to request:

- 'The current yearly rental value for your offices within the sixth floor of the aforementioned property [*Colmore Square*] owned by LGIM Real Assets (Legal & General).'
- 'The rent the GDC has paid per accounting year for said rental property.'
- 'The rateable value for your offices and the rates paid by the GDC per accounting year to date.'
- 'Advisory written (including emailed) communication between the GDC and GVA (your advisors on said property rental), pertaining to the market rental value of your Birmingham offices, and any reduction in said rental valuation negotiated for or by the GDC for their occupation (15 year lease) of the site.'
- 'Whether attempts were made to secure a below market rental agreement for your Birmingham offices.'
- 'Whether any rental or rates relief has been attained by the GDC, due to the COVID-19 crisis, for this office.'

The GDC's response to your request

The GDC responded to your request on 30 July 2020. We provided you with the headline rent for the floor in Colmore Square and the rateable value of the property. Colmore Square is a new development and the GDC only moved into the premises last year which means that the information we hold is current and much more likely to be commercially prejudicial for some time. We also explained that we did negotiate a lower rent than the headline figure and that the GDC had not attempted to obtain rent relief with reference to the COVID-19 crisis.

We withheld the actual rent negotiated with the landlord under Section 43(2) of the FOI Act, concluding that disclosure would prejudice the commercial interests of both the GDC and LGIM Real Assets.

The GDC also withheld details of our discussions with our advisors in relation to negotiating the rent of Colmore Square. We said that disclosure of this information would not only prejudice the GDC's commercial interests such that section 43(2) of the FOI Act applied, but that as it also contained LGIM Real Assets' negotiating position, disclosure would be a breach of confidence such that section 41(1) of the FOI Act applied.

Your request for internal review

In your email of 30 July 2020, you requested the GDC review its decision to withhold this information from you. You explained that, as the GDC had previously made public the fact it pays a peppercorn rent in respect of its lease of its Wimpole Street office in London, it should be able to disclose the same information in relation to Colmore Square. You said that withholding the information prevented registrants *'who provide you with your liquidity, indeed with all your finances, from performing due diligence on your financial outgoings here.'*

In your view it *'would show bias, for a perhaps, less financially advantageous rental arrangement in Birmingham, to be withheld. Bias of this nature, is unacceptable for a holder of senior accountability within the GDC.'*

Finally, you said that the arguments put forward for why the GDC would not be able to negotiate best value in future, if the information were disclosed, *'fails to take into account your absolute requirement to negotiate for best value with 'public' (rather, GDC registrant ARFs) monies, and thus show such fiscal rectitude via full disclosure.'*

Internal review

Having considered the approach we took to responding to your request and the arguments made for releasing the information, I have concluded that the GDC has correctly applied section 43(2) and section 41(1) of the FOI Act.

I have seen that in responding to you we appropriately obtained the information in scope of your request and consulted with LGIM Real Assets about the impact disclosure of the rental value and negotiations would have on them. We also consulted with GDC managers responsible for the contract management and GDC finances. Having done so, we established that the GDC's contract contains specific confidentiality provisions in relation to the information contained there, due to its commercial sensitivity.

Under the circumstances, I agree with our original conclusions that disclosure of information you have requested relating to the rent of Colmore Square and the negotiations of that rent, would not only prejudice the GDC's commercial interests, but would leave it open to legal action for breach of confidence. Both of these outcomes would result in a severe financial, and reputational, cost to the GDC. Therefore, the public interest in the GDC continuing to act lawfully, and within the bounds of the contracts it has negotiated, far outweigh the public interest in those details being made public.

We fully accept that public bodies should be subject to scrutiny and that the public should be able to hold them to account. As a public body, the GDC publishes its accounts and figures in relation to its revenue and expenditure on an annual basis. This enables the public to be able to see how the GDC spends its money and doing so promotes transparency and accountability. The GDC's accounts are not only scrutinised prior to publication by the GDC's Committees and Council, but they are also reviewed and agreed by the National Audit Office.

Turning to the specific points you have made in your internal review request, we do not accept that because the GDC has referenced its peppercorn rent on its building in Wimpole street in London, that it must now disclose to you the rent it pays on the commercial property in Colmore Square, negotiations regarding which are much more recent, as we only moved in last year, and the building is not yet fully occupied, so the landlord is currently in rental negotiations with prospective tenants. As I hope will already be clear, they are very different agreements bound by very different terms.

It is not the case that the GDC is choosing to withhold information that it considers unfavourable. Instead, the GDC cannot disclose the information you have requested without consequences, consequences which would be costly to the GDC, and its reputation, and which would harm its ability to negotiate with suppliers in the future.

As you rightly say, public sector bodies are required to negotiate best value. However, we are of the view that the GDC becomes much less attractive to do business with, if it starts disclosing information in breach of contract and becomes known for its willingness to disclose information which harms its own commercial interests, and those of its suppliers. In those circumstances, while the GDC may still be obliged to secure best value, it becomes harder to do that if fewer parties are willing to do business with you. We do not see that this will achieve the value for money on expenditure that the GDC and its registrants want and expect.

This approach is entirely consistent with the Information Commissioner's guidance ([here](#)) which recognises that it is appropriate to apply the exemption where *'disclosure of information may cause unwarranted reputational damage to a public authority or another organisation whose information it holds, which may in turn damage its commercial interests.'*

Conclusion of internal review

Although we appreciate your positive motivation for requesting this information, section 43(2) and section 41(1) of the FOI Act have been properly applied to your request.

Should you remain dissatisfied with the handling of your request or this decision, you have a right to appeal to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Tel: 01625 545 745
Website: www.ico.org.uk

Yours sincerely,



Lisa-Marie Williams
Executive Director, Legal and Governance