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BY EMAIL ONLY

Mrs Newsom
Request-435299-
78cb52d7@whatdotheyknow.com

Date: 30 April 2018

**Internal Review outcome letter – FOI000890 & FOI000934 – Daedalus
Siting of Stockpiles and Information deemed out of scope**

Dear Mrs Newsom

Further to your email dated 7th March 2018, I am writing to tell you the outcome of my review of Homes England's handling of your request for information reference FOI000934. As this request is closely linked to your request for information with reference FOI000890, I can confirm that I have reviewed both requests.

Firstly I would like to confirm that I was not involved in any way in the handling of your original requests for information and am acting as an independent reviewer of them with authority to alter the response to the original requests if appropriate. I have conducted a review of how your original requests were handled and have specifically addressed the reasons you have asked for an internal review, which I refer to below.

Background

On 8th August 2017 you requested the following information from Homes England:

Please supply all information/communications (both of an internal/external nature) held in all HCA departments regarding the siting of demolition waste and stockpiles on the Daedalus, Lee-on-the-Solent site. This request to cover the period January 2011 to today's date".

This request was given reference number FOI000890 and Homes England responded to your request on 27th September 2017 and whilst it disclosed most of the information to you, some was withheld under the following Freedom of Information Act 2000 (FOIA) exemptions:



Homes
England

Section 40(2) – Personal data

Section 43(2) – Prejudice to commercial interests

Other information was not disclosed because it was considered to be out of the scope of your request and was redacted with grey colouring from the information disclosed to you.

On 2nd October 2017 you requested the following further information from Homes England:

"Please supply the information redacted in grey within the Agency's Response Ref: FOI000890. The justification for the redactions was that the information did not specifically relate to my FOI request. It is now realised many aspects are germane. Furthermore, these matters are of interest to and directly affect myself, neighbours and the general public".

This request was given reference number FOI000934 and Homes England responded to your request on 2nd November 2017. Whilst most of the information was disclosed to you, some was withheld under the following Freedom of Information Act (FOIA) exemptions:

Section 40(2) – Personal data

Section 43(2) – Prejudice to commercial interests

Some information was considered to be environmental information and was withheld under Regulation 12(4)(e) of the Environmental Information Regulations 2004 – Internal Communications.

You wrote to Homes England on 7th March 2018 and asked for a review of your request as follows:

"This Review is requested in view of the Internal Review finding relating to a different FOI ref. FOI000898 which found as unfounded the exemptions claimed in refusing to supply me with the information requested. I believe it quite possible that information has been withheld which should have been supplied to me.

Thank you for the information supplied but please note that questioned is not only the matter of page 51".

I have now considered both requests FOI000890 and FOI000934 and my findings are as follows:

Policy and procedure – time limits

In respect of request FOI000890, unfortunately Homes England was not able to comply with the timescales for dealing with an FOIA request in this instance. Your request was received on 8th August 2017, and whilst it was acknowledged the next day, indicating that you would receive a response on or before 6th September 2017, it was not until 27th September 2017 that you received a full



Homes
England

response to your request. I apologise on behalf of Homes England for this delay.

In respect of request FOI000934, your request was received on 2nd October 2017, and an acknowledgement on 5th October indicated that you would receive a response on or before 29th October 2017. A full response to your request was issued on 2nd November 2017 and as such was late. I apologise on behalf of Homes England for this delay.

Dealing with the requests under FOIA rather than the Environmental Information Regulations 2004 (EIR)

I have reviewed the information that is the subject of both requests and have concluded that it is "environmental information" as defined in the Environmental Information Regulations 2004.

Therefore, whilst part of your request under FOI000934 was considered under EIR, I have concluded that it would have been more appropriate for the whole of both of your requests to have been dealt with under EIR rather than FOIA. I understand that you have previously been provided with information about the EIR, but if you wish to see more please refer to the Information Commissioner's website at <https://ico.org.uk/>

I set out below my consideration of the information withheld from you under the EIR rather than FOIA.

Exemptions under FOIA and Exceptions under EIR

Personal Data

In relation to the personal data that was withheld from the information disclosed to you in response to both requests under Section 40(2) of the FOIA, I note that the Information Access Team considered that disclosure of the redacted information would be likely to breach the First Data Protection Principle, as it would exceed the Data Subjects' expectations as to how their information would be processed. I have reviewed the third party information (names and contact details) and am satisfied that this information should remain withheld, and that this is the case under EIR as well as FOIA. Under the EIR, Regulation 12(3) requires a public authority not to disclose personal data of a third party, except in accordance with Regulation 13. Regulation 13 prohibits disclosure of third party personal data where this would breach the Data Protection Act 1998. Regulation 12 (3) is not subject to the public interest test. Further, Regulation 5(3) provides that the duty to disclose environmental information shall not apply where it includes personal data of which the applicant is the data subject. There is a separate process for obtaining this (a "subject access request") under Section 7 of the Data Protection Act 1998. I am therefore of the view that the redaction of personal data from the information is not only authorised under EIR, but also required by it (as disclosure would breach data protection legislation), and I uphold my colleagues' decision not to disclose this information.



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Prejudice to commercial interests

In our response to both requests, cost estimates for works were withheld under Section 43(2) of the FOIA as the Information Access Team considered that, at the time of your requests, disclosure would be likely to affect the commercial interests of a third party. The commercial confidentiality of information may diminish over time and as such the redaction of such information has been reconsidered as part of this review. As part of this reconsideration, the third party concerned has been consulted and has consented to the release of the information. As such enclosed with this letter are further versions of documents numbered 49, 52, and the attachment to document 51, now disclosing the information which was withheld under Section 43(2) at the time of your requests. I am of the view that exceptions under the EIR should have been considered at the time of your requests rather than exemptions under the FOIA, but I do not propose to consider further the applicability or otherwise of the EIR exceptions as I have concluded that this information should now be released to you. Personal data remains redacted from these documents, because of the requirements of data protection legislation, which is specifically provided for in the EIR.

Internal Communications

Some information was withheld from the information disclosed to you under FOI000934 under Regulation 12(4)(e) of EIR as it is internal communications between an elected member and a council officer. Having reviewed the information and the public interest factors considered by the Information Access Team (as set out in the response letter to you dated 2nd November 2017), I agree that the balance of the public interest falls in favour of non-disclosure at this time as disclosure would be likely to be detrimental to the ability of Council members and officers to freely explore solutions to residents' complaints. In addition, I also consider that Regulation 5(3) as referred to in the 'Personal Data' paragraph above would also have applied to some of this information and as such it is not required to be released under EIR. As such I agree with the Information Access Team's decision to withhold this information.

Conclusion

1. In conclusion I partly uphold your complaint in this instance as your requests were not dealt with within the timescale prescribed by the EIR and I repeat my apologies set out above for this failure.
2. I also apologise that your request was dealt with under FOIA rather than EIR. However, in respect of personal data, the information that was redacted under FOIA would also have been redacted under EIR. Information previously considered to be commercially sensitive can now be released and that information is enclosed with this letter.
3. I have upheld my colleague's decision to withhold internal communications between a Council member and officer at Gosport Borough Council for the reasons set out above.



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Final Comments

I hope that this letter addresses your concerns and fully explains why I have only partly upheld your complaint in this instance.

This letter marks the end of the Homes England's internal review procedure. If you are dissatisfied with the outcome of this review, you may submit your case to the Information Commissioner for consideration at the following address:
Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely

Solicitor (Land)

