

Annex

12. - (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if -

(a) an exception to disclosure applies under paragraphs (4) or (5); and

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that -

(a) it does not hold that information when an applicant's request is received;

(b) the request for information is manifestly unreasonable;

(c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;

(d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or

(e) the request involves the disclosure of internal communications.

(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 -

(a) international relations, defence, national security or public safety;

(b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;

(c) intellectual property rights;

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

(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;

(f) the interests of the person who provided the information where that person -

(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

(iii) has not consented to its disclosure; or

(g) the protection of the environment to which the information relates.

Factors for withholding

- ◆ Confidentiality of legal advice exchanged in respect of the authority's deliberations on the risk sharing agreement.
- ◆ Commercial confidentiality of legal advice received by Sovereign Housing, and likelihood of prejudice to the commercial interests of Sovereign Housing from release of this information.

Factors for disclosure

- ◆ Transparency of the Council's process for discussing a risk sharing agreement

Reasons why public interest favours withholding information

- ◆ Release of this advice would breach the confidentiality of the Council's position in respect of legal advice provided for determining the provisions of the risk sharing agreement, and would adversely affect the authority.
- ◆ It would also breach the commercial confidentiality owed to Sovereign Housing, and their legal advice regarding the provisions of the risk sharing agreement, and would adversely affect their commercial interests.
- ◆ While the public interest favours open and transparent processes, it is our view that this is fulfilled by provision of the supporting information (minutes and reports, and some emails) relating to the agreement. The risk sharing agreement was never finalised, approved or signed, and there is therefore no public interest in it as a document formulating Council policy or determining the Council's actions.
- ◆ However, the legal advice received may be relevant if the authority seeks to enter into a similar agreement in the future. Case law provides for legal professional privilege to apply to legal advice where the client considers this is necessary to protect their interests, and it is our view that this applies in this case.
- ◆ In addition we are refusing the Pre-Construction Agreement agreed between Sovereign Housing and Leadbitter's. While included with the one of the emails exchanged in respect of the risk sharing agreement, the authority is not partner to this Pre-Construction Agreement and accepts that to provide it would be a breach of the commercial confidentiality of Sovereign Housing and Leadbitter's which could be actionable, and would adversely affect the two organisations. As the risk sharing agreement was never finalised or approved there is no public interest in the Pre-Construction Agreement, which is peripheral to this matter.
- ◆ We therefore consider that the public interest favours withholding this information.

Information withheld:

Legal advice provided by Sovereign Housing's legal advisers.

Legal advice provided by West Berkshire Council's legal advisers.

Pre-construction Agreement between Sovereign Housing and Leadbitters