



Response to Request for Information

Reference EIR 081529
Date 06 August 2015

Himley Crescent

Request:

Could you please disclose all correspondence, emails, decisions and minutes of meetings where you discussed the disposal of 14 Himley Crescent, WV4 over any time period but particularly around 27th June 2014, before and afterwards.

I am interested in any documentary evidence you hold relating to the decision to dispose of this building.

Response:

In response to your request, our response is based on the assumption that you are referring to the intended disposal of the property during 2014/ 2015. An application was submitted to the Minister under a letter dated the 27th June 2014.

Interested parties who had logged an interest were advised by Council Officers under a letter of the 13th August 2014 that title checks were still being completed and required before proceeding with the proposal to commence with the tender process for sale.

The case was reviewed in September 14 with the new case officer appointed in August 2014.

The case was withdrawn from the disposal process. Specific surveys were then requested in relation to the proposal of granting a short term lease via an informal tender process. Ministerial approval to the application submitted for disposal has yet to be received.

Regarding the disclosure of certain discussions and correspondence, the Council is of the view that this would constitute the disclosure of information covered by a claim of legal professional privilege and that the exception at Regulation 12(4) (e), relating to the disclosure of internal communications is engaged.

The Council considers that there is a strong element of public interest inbuilt into such privilege itself and equally strong countervailing considerations would need to be adduced to override that inbuilt public interest.

In considering the public interest for and against disclosure in this case, the Council has considered that the public interest in disclosing details of legal advice received and allowing of scrutiny of actions of public officials acting on that advice, is in this instance outweighed by the public interest in allowing the Council to seek advice from its legal advisers in confidence, without fear of it being disclosed to the wider world (which is how any disclosure under EIR must be considered).

In addition, certain other information, comprising correspondence, emails and other documentation regarding this matter will not be disclosed. This is because the Council is of the view that the disclosure of the requested information would be likely to prejudice the confidentiality of commercial and industrial information of both the Council, individuals and organisations taking part in the process and that if it was in the public domain it would affect their ability to negotiate a competitive price for the scheme.

On that basis, the Council considers that the exception to disclosure contained at Regulation 12(5) (e) is engaged, where disclosure would, or would be likely to prejudice the confidentiality of commercial or industrial information interests where such confidentiality is provided by law is provided by law to protect a legitimate economic interest.

In applying this exemption the Council has balanced the public interest in withholding the information against the public interest in disclosure. In the case of the above cited information, the Council considers that the public interest in withholding this information for the reasons cited outweighs the benefits of demonstrating openness and transparency of process at this stage.

The Council always seeks value for money and makes every effort to promote fair competition. However, the Council considers that by disclosing this information to the world-at-large, organisations or individuals that are not able to demonstrate at least the same level of innovation and initiative may benefit by claiming to undertake particular activities that they are either not able to fulfill or even have no intention to fulfill on contract implementation.

In respect of information relating identities and contact details of Council officers and others such as third parties (applicants and their representatives) involved in this process, the Council considers that this meets the definition for personal data set out in Section 1(1) of the Data Protection Act 1998 ("DPA") as:

"data which relate to a living individual who can be identified - (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual"

The Council thus considers that the requested information is caught by the exception to disclosure contained in Regulation 13 EIR, which relates to personal data.

[NOT PROTECTIVELY MARKED]

To explain further, a disclosure made under the provisions of the EIR is judged to be a disclosure to the wider world and here the Council must consider disclosure of personal information in line with the provisions of the DPA.

In this instance it is judged that the personal data relating to these named individuals is being processed by the Council for the purposes of providing property management services and not for any wider disclosure purposes.

Individuals involved, with the exception of named council officers involved would also have no reasonable expectation that their details would be disclosed to the world-at-large.

Any disclosure of this information would be judged in this instance to breach DPA principles, notably the first principle – that of fair and lawful processing and the second principle-that of processing for specified and not-incompatible purposes.

Names and direct contact details have thus been redacted (removed) in this instance.