

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 December 2023

Public Authority: Tees Valley Combined Authority
Address: Teesside Airport Business Suite
Teesside International Airport
Darlington
DL2 1NJ

Decision (including any steps ordered)

1. The complainant has requested information contained within an appendix which forms a draft valuation report. Tees Valley Combined Authority (TVCA) redacted some of the information citing section 43(2) (Commercial interests) of FOIA to do so.
2. The Commissioner's decision is that the withheld information engages section 43(2), and the balance of the public interest lies in maintaining the exemption.
3. The Commissioner does not require any steps as a result of this decision.

Background

4. Teesworks is Europe's largest brownfield site. It is currently being redeveloped for a range of industrial and business uses.
5. According to its website¹, TVCA is a partnership of five authorities; Darlington, Hartlepool, Middlesbrough, Redcar & Cleveland, and

¹ <https://teesvalley-ca.gov.uk/about/our-region/faqs/>

Stockton-on-Tees, working closely with the Local Enterprise Partnership, wider business community and other partners to lead economic development of the Tees Valley area.

Request and response

6. On 27 April 2023, the complainant wrote to TVCA and requested information in the following terms:

“Please let me have a copy of appendix 3 to the report to the STDC board by the chief executive dated 18 August 2021. I understand the appendix concerns land valuations.”

7. TVCA responded on 30 May 2023. It refused the request, stating:

“Appendix 3 to the 18th August 2021 STDC Board papers is commercially sensitive and therefore exempt from disclosure in the context of the public interest considerations under Section 43(2) of the Freedom of Information Act 2000.”

8. The complainant requested an internal review on 31 May 2023. TVCA provided the review outcome on 26 July 2023 and maintained its reliance on section 43(2).

Scope of the case

9. The complainant contacted the Commissioner on 8 August 2023 to complain about the way their request for information had been handled. During the investigation, they expressed the view that TVCA had over redacted the personal information within the report and felt the balance of the public interest favoured disclosure of the withheld information under section 43(2) of FOIA.
10. During the Commissioner’s investigation he asked TVCA to revisit the redactions contained within the report, it provided a revised version to the complainant disclosing names of senior staff but maintained the redactions under section 43(2).
11. The complainant has said: “It does not follow that because the information contains commercially sensitive material that it is exempt. You have completely failed to address the public interest test to which the exemption is subject. Given Mr Houchen's repeated reference to the land value at both this point in time and others, the public interest must have swung decisively to disclosing the information so that his assertions can be scrutinised.”

12. What remains for the Commissioner to consider is whether section 43(2) FOI has been correctly applied to the withheld information.

Reasons for decision

Section 43(2) – commercial interests

13. Section 43(2) states that information may be withheld if its disclosure would, or would be likely to, prejudice the commercial interests of any legal person (including the public authority holding the information).
14. In order to engage section 43(2), it's not sufficient to argue that because information is commercially sensitive, its disclosure would, or would be likely to, prejudice commercial interests. There must be a causal link between disclosure and the prejudice envisaged.
15. In this case TVCA is concerned that disclosure would have a prejudicial effect on the future value of the land in question arguing: "The land valuation requested relates to the former SSI Steelworks Site in Redcar, now branded as Teesworks. This is a unique site, which has undergone significant change over recent years – the removal of redundant steelwork assets and significant remediation, with much still to do. The unique nature of this site means there are very few comparable sites across the country against which to benchmark land value."
16. TVCA has continued to withhold certain information for the following reasons:
 - The withheld information includes actual values placed on the land and disclosure would reveal these to future prospective lettings and potential purchasers.
 - As the withheld information contains actual values disclosure would be likely to prejudice TVCA's ability to achieve value for money in the future.
 - Disclosure would be likely to prejudice the disposal of assets themselves which would require TVCA to look for other means of disposal and/or effectively have to let/sell at a lower price thus reducing funds being returned to the public purse and the future redevelopment of the site.
 - Disclosure would damage the relationship between TVCA, and the third parties involved which would compromise TVCA's ability to form similar relationships in the future. In turn, this would be likely to increase costs to TVCA and affect the funds it receives in the future to be reinvested in the redevelopment of the site.

17. The Commissioner has considered each of TVCA's arguments, bearing in mind that for the causal link referred to in paragraph 15 to exist, the prejudice claimed must at least be possible, i.e. there are circumstances in which it could arise.
18. The Commissioner has also considered the content of the information that is actually being withheld. Having done so, he's satisfied that a causal link exists and that the prejudice described would be likely to occur in this case.
19. The Commissioner accepts TVCA's, arguments that the withheld information details the valuations received for letting/disposal of its assets and that in order to achieve this a process has taken place to ensure that the best outcome is achieved within the process. The Commissioner accepts that disclosure could lead to the replication of the third parties' historical approach and techniques, especially in similar consultations which would be likely to affect the third-parties ability to operate in a commercially competitive field – therefore the exemption is engaged.
20. Section 43(2) is a qualified exemption; the Commissioner will now go on to consider where the balance of the public interest lies.

Public interest test

Arguments in favour of maintaining the exemption

21. The Commissioner has accepted that disclosure would be likely to prejudice the commercial interests of the parties involved in the valuation and disposal of TVCA's assets, on the basis that competitors and future prospective buyers/tenants could benefit from the actual valuations being placed into the public domain.
22. In its response to the Commissioner's investigation, it was stated that: "The Teesworks project generally is at a pivotal stage. Large parts of the site have been remediated and are ready for development. The Company and its public sector partners have worked tirelessly to make that happen, with negotiations for the onward letting and development of plots within the estate at an advanced stage." It further stated "the site is unique. It is effectively its own market, and much work has been done to maximise returns on investment by setting and maintaining rental values based upon land that is 'development ready' as a result of the remediation work that has been, and will continue to be, undertaken (previously at the public sector's cost and, going forward, at the private sector's cost)."

23. To add context, it was also explained that the valuation was undertaken at a particular point in time in the early stages of developing the Teesworks vision. That snapshot is no longer accurate, and, without the relevant context, it paints a picture that is not supportive of the current position and would serve only to undermine the work that has been done to date.

Arguments in favour of disclosure

24. There is always a public interest in public authorities being transparent about their work and opening up their decisions for scrutiny.
25. TVCA acknowledges that the public have an expectation that public bodies will always seek to obtain value for money and spend money responsibly. Furthermore, the public also expect transparency from public bodies, particularly when public bodies are involved in potentially contentious issues. Disclosure of the information concerned could provide this assurance.
26. At the time of raising their complaint with the Commissioner the complainant said: "In defending the deal, regional mayor and chair of the combined authority Ben Houchen has said repeatedly that the site had a large negative value because of its contamination. It is clear that the land value at certain key points in the project is a critical factor. My request concerns a valuation prepared at one such time, when the joint venture was extended to create more favourable terms for the private partners. I believe there is a strong public interest in its disclosure and cannot see how any commercial harm would arise from disclosing it."

Balance of the public interest

27. TVCA has explained to the Commissioner that: "it is recognised that there is public interest in achieving value for money for publicly owned assets, we have demonstrated that releasing the information requested would have a prejudicial effect on the ability to achieve best value in future transactions. With the public interest in mind, and the need to achieve best value and drive commercial sales in a commercial market." It also explained "safeguards are in place to ensure that it is doing all it can to achieve best value, it will continue to be subject to internal and external audit processes." Its position is that much more reassurance can be found in reports of qualified auditors with a statutory duty, than the public being provided with out-of-date information which is out of context and may not be understood, drawing conclusions from it.

The Commissioner's conclusion

28. In this instance, the Commissioner has determined that the balance of the public interest lies in maintaining the exemption. Given the report contains details of leases and rental amounts for both current and historic tenants, these could clearly influence any potential future tenants when negotiating a lease, therefore, likely to cause commercial harm. The report also contains information about funding that has been secured or is required in order to carry out further renovation and reinstatement works at the site, these works are ongoing and sensitive by their very nature, concerning the reclamation and regeneration of the site.

Other Matters

29. TVCA's initial disclosure contained a number of redactions of personal information, which the complainant highlighted to it. The Commissioner reminded TVCA of its obligations to ensure that, with regard to personal information, senior and public facing staff should have a higher expectation that this may be disclosed in such documentation. If there is any doubt, it should consult the Commissioner's guidance which has been specifically designed to assist public authorities in these areas.
30. It was also brought to the Commissioner's attention by the complainant that a number of the appendices within the report were mislabelled and not disclosed with the report. This was raised with TVCA during the Commissioner's investigation, TVCA explained that as the report was in 'Draft' format, it was incomplete and had not been updated since its drafting.

Right of appeal

31. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF