



Our Reference:

BY EMAIL ONLY

4 July 2016

Dear

**Request for Information**

Thank you for your email dated 6 June 2016 requesting information on Treloar Heights, Alton. We have now had an opportunity to investigate your request and are writing to respond to your questions. We have considered your request for information under the Environmental Information Regulations 2004 (EIR), which is an alternative access to information regime. EIR is similar to the Freedom of Information Act 2000, but where the information relates to environmental information. We have provided you with a summary of the EIR legislation to aid your understanding below:

**EIR Summary**

The Environmental Information Regulations 2004 provide public access to environmental information held by public authorities.

The Regulations do this in two ways:

- Public authorities must make environmental information available proactively;
- Members of the public are entitled to request environmental information from public authorities.

The Regulations cover any recorded information held by public authorities in England, Wales and Northern Ireland.

The Regulations apply only to the environmental information held by public authorities. The Freedom of Information Act gives people access to most other types of information held by public authorities.

An extract from the legislation is also provided to further assist in your understanding of why this access regime was used:

“environmental information’ has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material on—

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements.”

More information on the Regulations, including the full text of Regulation 2(1), can be found at the Information Commissioner’s website [here](#).

We have answered each of your questions in turn, below:

**1. A copy of the tenancy or license or suchlike under which the land is currently let out by the Agency.**

A copy of the Farm Business Tenancy agreement is attached alongside this letter. Redactions have been made to the document where the information is the personal data of a third party in line with Regulation 12(3). Regulation 12(3) requires that we do not disclose that personal data, except in accordance with Regulation 13. Regulation 13 prohibits disclosure of third party personal data if this would breach the Data Protection Act 1998 (DPA). In this instance we believe that breach Principle 1 of the DPA would be breached as disclosure would be unfair to the individuals concerned. Regulation 12(3) is not subject to the public interest test.

The rental fee for the land has also been redacted due to the confidentiality of commercial information attributed to this information in line with Regulation 12(5)(e). Below is further information on this exception from disclosure, along with the public interest arguments regarding the use of this exception.

**Regulation 12(5)(e) - Confidentiality of Commercial or Industrial Information**

Regulation 12(5)(e) states:

12.—(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—  
(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

To refuse environmental information under the exception in regulation 12(5)(e), public authorities need to establish that:

- the information does not relate to emissions;
- the information is commercial or industrial in nature;
- it is confidential under either the common law of confidence, contract, or a statutory bar;
- the confidentiality is protecting a legitimate economic interest;
- the confidentiality will be adversely affected by disclosure; and
- the public interest in maintaining the exception outweighs the public interest in disclosing the information.

All exceptions within EIR are subject to a Public Interest test to weigh the balance of disclosure versus non-disclosure.

### **Public Interest Test – Factors in favour of disclosure**

The HCA recognises that there is a legitimate public interest in the disclosure of official information held by any public authority. Disclosure helps promote the principles of transparency and accountability, which are central to the effective operation of information access legislation.

We appreciate that in order for the public to be appropriately equipped to understand and challenge the decisions and activities of public authorities and demand greater accountability and better value for money for the public purse, they need to be properly informed. The disclosure of information under the statutory regime can go a long way to helping promote this empowerment.

### **Public Interest Test – Factors in favour of non-disclosure**

The interests of the HCA would be harmed by the disclosure of the redacted information as release would release to the world at large the value the HCA places on the land in question. This would give potential future tenants an unfair advantage by gaining knowledge of the current agreement the HCA has in place. This could then be used in future to inform their negotiations accordingly which could lead to the HCA being less competitive when negotiating a new agreement for this or other similar land. This would not be in the public interest as it would damage HCA's ability to obtain the best value for money.

After carefully considering the relevant factors, we have decided that the balance of public interest falls in favour of non-disclosure at this time. However, the concept of the public interest is ever changing and in the future the public interest arguments may be different regarding this information.

For completeness, if this information were to be considered under the Freedom of Information Act 2000 (the Act) rather than EIR, similar public interest arguments would apply to this information under s43(2) of the Act.

### **2. A copy of the Agency press release or other communication that the press article linked to was quoting from.**

A copy of the media statement released by the HCA on 1 June 2016 regarding this matter is also attached alongside this letter.

### **3. Copies of any and all correspondence in whatever format relating to the allowing or permitting the use of herbicide at the site.**

We can confirm we do not hold correspondence or other recorded forms of information in regard to this question. The information concerning the use of herbicides was communicated to the HCA via a phone call. However, this was not in order to seek permission, as such permission is not required as part of the tenancy agreement in place. Of particular relevance is Clause 3.7(b) which states the Tenant is "*To keep the Holding free from weeds and pests and to farm the Holding in accordance with the rules of good husbandry as defined in the Agriculture Act 1947 and not merely to keep the Holding in good agricultural and environmental condition*".

### **3. Details of the herbicide used including quantities used, dilutions etc.**

HCA were advised by the Tenant that the product Headland Polo was used. However HCA does not hold recorded information in relation to quantities and dilutions used as this information was not required to be provided.

### **4. Details of professional advice sought from suitably qualified persons, such as an entomologist, before (apparently) claiming that you can destroy the habitat and food source of dozens of insects without harming said insects.**

As above, the Tenant advised Headland Polo was used, which contains the ingredients 2,4-D and MCPA. The following data sheet for the product was consulted in the production of the media statement: <http://headland-ag.co.uk/image/catalog/pdf/Polo.pdf>. In-house knowledge of these ingredients was also relied upon with regards to the statement of the herbicide does not affect insects or orchids. This is because these ingredients are effective against dicots, while orchids are monocots (against which these ingredients are not effective). The second section of the media statement also provides background information on the herbicide used.

If you have any questions regarding this response or any further queries you can contact us at the following addresses and quote your unique reference number found at the top of this letter:

**Email:** [mail@homesandcommunities.co.uk](mailto:mail@homesandcommunities.co.uk)

**Mail:** Information Access Officer  
Homes and Communities Agency  
Fry Building  
2 Marsham Street  
London  
SW1P 4DF

If you are unhappy with the way Homes and Communities Agency has handled your request you may ask for an internal review. You should contact

Head of Legal Services  
Homes and Communities Agency  
Fry Building  
2 Marsham Street  
London  
SW1P 4DF

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow

Homes and Communities Agency  
Fry Building, 2 Marsham Street, London, SW1P 4DF

0300 1234 500  
[homesandcommunities.co.uk](http://homesandcommunities.co.uk)

Cheshire  
SK9 5AF  
Online: <https://ico.org.uk/concerns/getting/>

Yours sincerely

Naomi McMaster  
Information Access Officer  
Homes and Communities Agency