



Pubs Code Adjudicator

Office of the Pubs Code Adjudicator
Victoria Square House
81 New Street
Birmingham
B2 4AJ
Email: office@pca.gsi.gov.uk

23 June 2017

Dear XXX

Thank you for your email received on 25 May 2017 in which you requested information from the office of the Pubs Code Adjudicator (PCA) under the Freedom of Information Act 2000 (the Act).

The Act entitles you to:

- know whether the information you have requested is held by the PCA; and
- be provided with that information, subject to any exemptions in the Act which may apply.

I can confirm that the PCA does hold information relevant to your request; however, some of the information is exempt pursuant to sections 40 (personal data), 41 (information provided in confidence) and 43 (commercial interests) of the Act. I have responded to each of your requests below, providing relevant information where this can be shared or explaining why information cannot be shared. Please note that your request was incorrectly dated 25 June 2017. I have therefore provided information, where I am able to, up to and including 25 May 2017, the date your request was received.

1. *The number of queries received through the Adjudicator's online enquiry form.*

Since the Pubs Code came into force on 21 July 2016 up to and including 25 May 2017, the office of the PCA received 138 online enquiries.

2. *The number of queries received through the Adjudicator's telephone enquiry line (0800 528 8080).*

Since the Pubs Code came into force on 21 July 2016 up to and including 25 May 2017, the office of the PCA received 372 telephone enquiries.

In addition to online and telephone enquiries, the office of the PCA also received enquiries by email and by letter.



Pubs Code Adjudicator

3. *The number of referrals for arbitration, received from pub tenants by the Adjudicator, broken down by the pub owning business of the pub tenants.*

Information within the scope of this request is exempt under section 43 of the Act because release of the information would, or would be likely to prejudice the commercial interests of the pub-owning businesses regulated by the PCA.

In applying the public interest test, the PCA has considered whether public interest lies in disclosing the information or whether the public interest favours maintaining the exemption and withholding it. The PCA recognises the public interest in transparency, which assists people in understanding the impact of the Pubs Code since it came into force. The PCA also recognises the importance of holding his public role to account. However, the PCA considers there to be a greater public interest in preserving the confidentiality of arbitration proceedings so that tied tenants and pub-owning businesses can continue uninhibited to refer Pubs Code disputes to the PCA in the knowledge that such information will be held confidentially (unless both parties agree otherwise) and arbitrated in accordance with the law. The PCA also considers the information to be market and time sensitive, and that the release of this information, at this point in time, may have an effect on one or more of the pub-owning businesses through the impact on confidence of their customers, suppliers and/or investors. For these reasons the PCA considers that the exemption should be maintained and the information not disclosed.

4. *The number of referrals for arbitration, in relation to dilapidations, received from pub tenants by the Adjudicator.*
5. *The number of referrals for arbitration, in relation to business support, received from pub tenants by the Adjudicator.*
6. *The number of referrals made in relation to Market Rent Only disputes which were referred by the pub owning business.*
7. *The number of referrals made in relation to Market Rent Only disputes which were referred by a tied pub tenant.*
8. *The number of referrals made in relation to Market Rent Only disputes which were referred by a tied pub tenant, broken down by the pub owning business of the tied tenant.*

Information within the scope of requests 4, 5, 6, 7 and 8 is exempt under section 41 of the Act. This is because information pertaining to these requests was received by the PCA from third parties and disclosure of this information would constitute an actionable breach of confidence. Referrals and subsequent arbitration proceedings are confidential between the parties to the case. The information you have requested is held by the PCA only by virtue of being provided by third parties to the PCA in his capacity to act as arbitrator in disputes



Pubs Code Adjudicator

relating to the Pubs Code.

The PCA is, however, mindful of the need to be as transparent as possible. The PCA therefore does provide information relating to the top topics for arbitration, where those data sets are sufficiently large so as not to identify individual cases. Our [December 2016 bulletin](#) provides information about some of the key topics in arbitration.

In addition, the information held in respect of request 8 is exempt because it is information that would, or would be likely to prejudice the commercial interests of the pub-owning businesses regulated by the PCA. For the same reasons as set out above, the PCA considers that the public interest favours maintaining the exemption and withholding the information.

9. *The number of cases referred for arbitration which on conclusion have been awarded in favour of the pub owning business.*
10. *The number of cases referred for arbitration which on conclusion have been awarded in favour of the tenant of the pub owning business.*
11. *The number of cases referred for arbitration which have been concluded due to the parties reaching a decision between themselves.*

Information within the scope of requests 9, 10 and 11 is exempt under section 40(2) of the Act because it constitutes personal data, the disclosure of which would contravene the first data protection principle, namely the fair and lawful processing of personal data where none of the conditions in Schedule 2 to the Data Protection Act 1998 apply. This is because information relates to a relatively small data set and, when considering information already published by third parties, for example the media, the PCA is of the opinion that individuals and/or pub-owning businesses in arbitration proceedings may be identified as a result.

Information within the scope of requests 9, 10 and 11 is additionally exempt under section 41 of the Act. This is because the information was received by the PCA from third parties and disclosure of this information would constitute an actionable breach of confidence. Referrals and subsequent arbitration proceedings are confidential between the parties to the case. The information you have requested is held by the PCA only by virtue of being provided by third parties to the PCA in his capacity to act as arbitrator in disputes relating to the Pubs Code.

It is important that the PCA upholds the confidentiality of arbitration proceedings, including referrals, to ensure that tied tenants and pub-owning businesses refer Pubs Code disputes to the PCA and know that such cases will be arbitrated in accordance with the law.



Pubs Code Adjudicator

12. *The number of referrals which were rejected for arbitration due to lack of clarity or the provision of insufficient information.*

The PCA cannot accept referrals which do not fall within his jurisdiction, as set out in the Pubs Code framework (which includes the provisions of Part 4 of the Small Business, Enterprise and Employment Act 2015, the Pubs Code etc. Regulations 2016 and the Pubs Code (Costs, Fees and Penalties) Regulations 2016). It is the responsibility of the referrer to make a valid referral which falls within the PCA's jurisdiction, including the appropriate fee. Where a referral is received which requires further information or clarification in order to determine jurisdiction, the PCA requests this from the referrer.

Since the Pubs Code came into force on 21 July 2016 up to and including 25 May 2017, 16 referrals were received which did not fall within the PCA's jurisdiction and could not therefore be accepted; of these, six were due to the referral fee not being paid.

13. *The number of referrals which were rejected for arbitration due to being found vexatious.*

Vexatiousness is not a ground for rejecting a referral for arbitration. As detailed above, the PCA cannot accept referrals which do not fall within his jurisdiction, as set out in the Pubs Code framework. The PCA considers all referrals to ascertain if it has jurisdiction to consider the case.

14. *The number of referrals accepted for arbitration, where the cases were opened in:*

- a. *July 2016*
- b. *August 2016*
- c. *September 2016*
- d. *October 2016*
- e. *November 2016*
- f. *December 2016*
- g. *January 2017*
- h. *February 2017*
- i. *March 2017*
- j. *April 2017*
- k. *May 2017*
- l. *June 2017*

Since the Pubs Code came into force on 21 July 2016 up to and including 25 May 2017, the office of the PCA has accepted 151 referrals for arbitration. Valid referrals could not have been made before August 2016 given the timescales in the Pubs Code framework that could only apply following the Pubs Code coming into force on 21 July 2016. No referrals were accepted in August 2016; 12 referrals were accepted in September 2016; 35 referrals were accepted in October 2016; 33 referrals were accepted in November 2016; 11 referrals were



Pubs Code Adjudicator

accepted in December 2016; 15 referrals were accepted in January 2017; 7 referrals were accepted in February 2017; 17 referrals were accepted in March 2017; 9 referrals were accepted in April 2017, and 12 referrals were accepted in May 2017 (up to 25 May).

15. *The number of referrals accepted for arbitration, where the cases were concluded in:*

- a. *July 2016*
- b. *August 2016*
- c. *September 2016*
- d. *October 2016*
- e. *November 2016*
- f. *December 2016*
- g. *January 2017*
- h. *February 2017*
- i. *March 2017*
- j. *April 2017*
- k. *May 2017*
- l. *June 2017*

Information within the scope of request 15 is exempt under section 40(2) of the Act because it constitutes personal data, the disclosure of which would contravene the first data protection principle, namely the fair and lawful processing of personal data where none of the conditions in Schedule 2 to the Data Protection Act 1998 apply. This is because information relates to a relatively small data set and, when considering information already published by third parties, for example the media, the PCA is of the opinion that individuals and/or pub-owning businesses in arbitration proceedings may be identified as a result.

It is important that the PCA upholds the confidentiality of arbitration proceedings, including referrals, to ensure that tied tenants and pub-owning businesses refer Pubs Code disputes to the PCA and know that such cases will be arbitrated in accordance with the law.

The PCA does, however, publish information including the total number of arbitration awards issued at www.gov.uk/pca. The latest figures were published on 21 April 2017 and updated figures will be published shortly. Again, please note that valid referrals could not have been made before August 2016 given the timescales in the Pubs Code framework that could only apply following the Pubs Code coming into force on 21 July 2016.

16. *The total number of open cases for arbitration that have not been concluded as of 25th June 2017.*

Up to and including 25 May 2017, 111 accepted cases for arbitration had not yet been concluded. I have provided information up to and including 25 May 2017, the date your request was received.



Pubs Code Adjudicator

17. *Of the current cases for arbitration that have not been concluded, the number of each that have been open for:*
- a. *1 month*
 - b. *2 months*
 - c. *3 months*
 - d. *4 months*
 - e. *5 months*
 - f. *6 months*
 - g. *7 months*
 - h. *8 months*
 - i. *9 months*
 - j. *10 months*
 - k. *11 months*
 - l. *12 months*

It may be helpful to explain the timings associated with arbitration. The object of arbitration is to obtain settlement without undue delay or expense; however, there is no set time that a case will take. The time taken to complete an arbitration is dependent on one or more of a number of different reasons. These may include how many people are involved, how quickly the parties agree to procedures and provide relevant information and evidence, how complicated the case is, and the nature and extent of evidence as well as whether other applications are made within the proceedings (for example for preliminary hearings/references to the High Court). Cases can often be stayed for a period of time or deadlines extended at the request of the parties involved in order to address particular matters. This will impact on the length of time a case remains open.

You may wish to refer to the PCA's factsheets and flowcharts which provide further information about the Pubs Code, including the arbitration process. These are available at www.gov.uk/pca

The following data includes open cases that are currently, or have been, stayed at the request of the parties.

Since the Pubs Code came into force on 21 July 2016 up to and including 25 May 2017, the office of the PCA had nine cases which were open for 1-2 months; 16 cases which were open for 2-3 months; five cases which were open for 3-4 months; 11 cases which were open for 4-5 months; seven cases which were open for 5-6 months; 23 cases which were open for 6-7 months; 20 cases which were open for 7-8 months, and eight cases which were open for 8-9 months. No cases were open for more than nine months.

As noted above, valid referrals could not have been made before August 2016 given the timescales in the Pubs Code framework that could only apply following the Pubs Code coming into force on 21 July 2016.

In addition to your request, it may be helpful to note that the office of the PCA had a further 12 cases which were open for less than one month up to 25 May 2017.



Pubs Code Adjudicator

If you are not content with this response, you are entitled to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original request and should be made in writing, quoting the above reference, to office@pca.gsi.gov.uk or:

PCA
Lower Ground
Victoria Square House
Victoria Square
Birmingham
B2 4AJ

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, Cheshire, SK9 5AF.

Yours sincerely,

Laura Campbell
Stakeholder and Communications Manager
Office of the Pubs Code Adjudicator