



# Pubs Code Adjudicator

By Email

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**Reference:** xxxx

2 August 2019

Dear xxxx,

Thank you for your email of 9 July 2019 requesting an internal review of the Pubs Code Adjudicator's (PCA) decision in relation to your Freedom of Information request dated 6 May 2019, (which you clarified on 10 May 2019).

Following your clarification, I understand your request to be for the following information:

- (a) correspondence and meeting notes both internal and external, in connection with the agreement with POBs referred to at paragraph 3.3 of the PCA's Advice Note<sup>1</sup>;
- (b) any correspondence, meeting and discussion notes, both internal and external, considering whether POBs may trigger rent dispute clauses during the MRO process in circumvention of Regulation 39(4)(g) of the Pub's Code Regulations 2016.

I have undertaken an internal review of the original response to your request, considering afresh the information within the scope of your request and whether any relevant exemptions apply to that information.

As previously set out the Freedom of Information Act 2000 (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 confirm that the PCA does hold information in relation to part (a) of your request.

In relation to part (b) of your request, you request information considering 'whether POBs (ie pub-owning businesses) may trigger rent dispute clauses during the MRO (ie Market Rent Only) process in circumvention of regulation 39(4)(g) of the Pubs Code'. Regulation 39(4)(g) describes a circumstance in which the MRO procedure is brought to an end. The reliance on a rent review clause in a contract between a tied pub tenant and their landlord is not an action in and of itself that falls within reg 39(4)(g) and to that extent is not circumvention of that regulation. As a result, information relating to this request is not held. I have however considered in addition whether your request relates to information about whether POBs may trigger a rent dispute clause during the MRO procedure in relation to the production of the Advice Note referred to in part (a) of your request. I confirm that the PCA does hold information relating to that matter.

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<sup>1</sup> PCA Advice Note - Tied rent contractual dispute resolution clauses and Calderbank dated July 2017 (withdrawn)



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In relation to the information that falls within the scope of your request (as defined above) Mr Newby, the qualified person for the purposes of section 36 of the Act, has reviewed the information and continues to consider that the information falls within section 36(2)(b)(i)(ii) and/or (c) of the Act. This is because it is information the disclosure of which would or would be likely to inhibit the free and frank provision of advice, or the free and frank exchange of views for the purposes of deliberation, or would otherwise prejudice, or would be otherwise likely to prejudice, the effective conduct of public affairs.

I have considered again whether in all the circumstances the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In making this decision, I have taken into account the views of those whose information is held by the PCA and falls within the scope of your request.

In this case I consider that the public interest lies in favour of maintaining the exemption and withholding the information.

This is because the information relates to discussions between the regulator and the regulated POBs, undertaken at that time for the purpose of considering whether there were circumstances which would justify regulatory action by the PCA. This was not a formal consultation required pursuant to section 61 of the Small Business, Enterprise and Employment Act 2015. No such formal consultation is required prior to the PCA exercising the power to issue Advice pursuant to section 60 of the 2015 Act.

As the regulator there is a need to ensure there is space to enable free and frank exchange of views between the regulator and those they regulate, to be as open and honest in how the Pubs Code is being applied. It is in the public interest that this space be preserved. The disclosure of those discussions may be likely to have a chilling effect on the candid nature of discussions between the regulator and POBs in the future.

This is particularly important at this time, where new advice has been issued by the PCA in connection with the recovery of tied rent during the MRO procedure, and where the PCA has indicated that the PCA is seeking a wider understanding of industry views and practice to inform what further steps may be appropriate to support the rent assessment and MRO processes in accordance with the core Code principles and further work in this area is continuing.<sup>2</sup>

The PCA is engaging with industry about the operation of tied rent reviews with the MRO process. That work is ongoing, and it is in the public interest that it can continue that regulatory activity without inhibition.

There is a reduced public interest in disclosing the internal communications between the regulator and the POBs in circumstances where the outcome of the regulatory discussions was a published Advice Note, where the outcome of that regulatory consideration is therefore known to all and where that advice has since been withdrawn and replaced with updated Advice.

I note that you refer in your correspondence to potential legal proceedings in this area where disclosure would be required in any event. Any disclosure required for the purpose of litigation would be for that purpose alone. Disclosure under the Act would not limit the purpose to which the

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<sup>2</sup> See PCA's latest Bulletin <https://www.gov.uk/government/news/pubs-code-adjudicator-pca-bulletin-july-2019>



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information was put. I therefore do not consider this is a valid reason for disclosure of the information requested under the Act.

I therefore consider that the information held relating to your request is exempt under section 36(2)(b)(i)(ii) and (c) of the Act and that the public interest continues to favour withholding it.

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,

**xxxx**

**Office of the Pubs Code Adjudicator**