



Pubs Code Adjudicator

Office of the Pubs Code Adjudicator
Lower Ground
Victoria Square House
Victoria Square
Birmingham
B2 4AJ
Email: office@pubscodeadjudicator.gov.uk

8 January 2020

Dear [REDACTED],

Thank you for your email, received on 12 November 2019, 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.

You have requested the following information:

- *“Under and (sic) FOI please send copies of all correspondence related to stocking requirements between July 2018 and July 2019 between Star Pubs & Bars and the PCA office.”*

We write further to our initial response of 10 December 2019, where we confirmed that the office of the PCA does hold information relevant to your request but that the information was exempt under certain sections of the Act. My initial response set out that the PCA was extending the statutory time limit in order to consider the balance of the public interest, and that it would further respond regarding its conclusions and with additional reasoning regarding the application of the relevant exemptions. Please find these details below.

The Pubs Code Adjudicator, Mr Paul Newby, in his capacity as the ‘qualified person’ under the Act is of the opinion, having examined the particular circumstances of this case, that the exemptions under section 36(2)(b)(i)(ii) and (c) of the Act applies to the information falling within the scope of your request. This is because disclosure would:

- inhibit the free and frank provision of advice,
- inhibit the free and frank exchange of views for the purposes of deliberation, and/or
- otherwise prejudice the effective conduct of public affairs.

Some of the information requested is exempt under section 31(1)(g) and 31(2)(c) of the Act (law enforcement) because disclosure of this information would be likely to prejudice the exercise by the PCA of its statutory function to ascertain whether circumstances exist or may arise which would justify regulatory action in pursuance of the Pubs Code legislation.



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Further, some of the information requested is exempt under section 43(2) of the Act (commercial interests) as it is commercially sensitive information relating to Star Pubs & Bars and their parent company and which forms part of the material that the PCA is examining as part of its investigation and its disclosure would be likely to prejudice the commercial interests of a (in this case, legal) person, namely Star Pubs and Bars. .

The PCA has now completed its examination of the balance of the public interest and is of the opinion that the public interest favours maintaining the exemptions and withholding the information you have requested. In making this decision, the have taken into account the views of those whose information is held by the PCA and falls within the scope of your request.

The PCA recognises that there is a legitimate public interest in transparency in respect of the implementation of the Pubs Code and the operation of the PCA as regulator. It also appreciates the importance of holding to account those who enforce and operate under the Pubs Code.

In assessing the balance of the public interest, I consider the timing of this request to be an important consideration. The PCA is currently undertaking an investigation into Star Pubs & Bars' use of stocking requirements. The PCA needs a safe space at the present time to fully explore all aspects of the investigation without concern that its early considerations will enter the public domain before the conclusion of the investigation. Such concerns would hinder the efficient running of the investigation by discouraging PCA staff from recording and sharing their considerations regarding whether circumstances exist or may arise which would justify regulatory action, ahead of the conclusion of the investigation.

Additionally, the disclosure of information which has been provided by Star Pubs & Bars, would discourage this business and other pub-owning businesses from cooperating with the PCA and supplying it the information its needs to carry out its role as a regulator in the future. The findings of the investigation will be published at a later date when they represent the fully considered conclusions of the PCA.

Disclosure of some of the information at this time could distort competition as it relates to the commercial interest of Star Pubs & Bars and its parent company in the market at a time when the regulator is considering whether the Code has been breached, which would not be in the public interest.

I consider that the arguments for disclosure are outweighed by the public interest in preserving the confidentiality of its regulatory discussions with the pub-owning businesses subject to the Pubs Code. Releasing information that was not intended for disclosure is likely to inhibit the ability of the PCA and pub-owning businesses to express themselves openly, honestly and completely, or to explore options, when providing advice or giving their views as part of the process of deliberation in the future. This would damage the quality of advice and deliberation and therefore impair the quality of decision making by the PCA on future issues.

It is essential that the PCA is able to conduct full and frank discussions with its advisors and pub-owning businesses and that it is free to use these to explore and test issues relating to Pubs Code compliance. Preserving the safe space in which to debate questions of compliance is consistent with both the PCA's published statutory guidance on its approach to regulatory enforcement of the Pubs Code and wider principles of regulatory best practice to which the PCA, as a responsible regulator, is committed. This is particularly important at this time given the Pubs Code is a new legal framework, and as such the PCA and pub-owning

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Website: www.gov.uk/pca



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businesses need a safe space to develop ideas, debate live issues, and for the PCA to reach decisions away from external interference and distraction.

In the light of the above I consider the public interest weighs in favour of maintaining the exemptions and withholding the information requested.

If you do not believe that the office of the PCA has provided an appropriate response to your request, as set out above, 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@pubscodeadjudicator.gov.uk or:

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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,

[Redacted Signature]

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