



# Pubs Code Adjudicator

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Email: [office@pubscodoadjudicator.gov.uk](mailto:office@pubscodoadjudicator.gov.uk)

Reference: [REDACTED]

10 February 2020

## Sent via email only

Dear [REDACTED]

Thank you for your email of 13 January 2020 requesting an internal review of the decision in relation to your Freedom of Information request dated 12 November 2019.

You have requested the following information:

- all correspondence related to stocking requirements between July 2018 and July 2019 between Star Pubs & Bars and the PCA office.

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 your request.

In relation to the information that falls within the scope of your request I, Mr Newby the qualified person for the purposes of section 36 of the Act, have reviewed the information requested and reconsidered the reasonable opinion given previously and continue to consider that the information falls within section 36(2)(b)(i)(ii) and (c) of the Act. This is because it is information the disclosure of which would 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. In particular I consider that 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 would be 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. This would damage the quality of advice and deliberation and therefore impair the quality of decision making by the PCA on future issues.

Pubs Code enquiries to: 0800 528 8080 or [enquiries@pubscodoadjudicator.gov.uk](mailto:enquiries@pubscodoadjudicator.gov.uk)

Website: [www.gov.uk/pca](http://www.gov.uk/pca)



## Pubs Code Adjudicator

I consider it essential that it 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 given the Pubs Code is a new legal framework, and as such the PCA and pub-owning businesses need a safe space to develop ideas, debate live issues, and for the PCA to reach decisions away from external interference and distraction.

Some of the information requested is also exempt under section 31(1)(g) and 31(2)(c) of the Act (law enforcement) because the disclosure of this 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.

In this case, an investigation has been launched as a result of information, which falls under the scope of the request. The PCA needs a safe space 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. The findings of the investigation will be published at a later date when they represent the fully considered conclusions of the PCA.

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 which forms part of the material that the PCA is examining as part of the investigation and its disclosure would be likely to prejudice the commercial interests of a (in this case, legal) person, namely Star Pub & Bars.

I have considered again whether in all the circumstances the public interest in maintaining the exemption/s outweighs the public interest in disclosing the information. In this case I consider that the public interest lies in favour of maintaining the exemptions and withholding the information.

I have taken into consideration your request to redact information which is considered commercially sensitive, including laying out a record of contact, however as this information is relevant to the ongoing investigation I consider that the same public interest arguments apply as per the reasoning set out in our previous response and in this letter. The information relates to discussions between the regulator and the regulated pub - owning businesses, undertaken at that time for the purpose of considering whether there were circumstances which would justify regulatory action by the PCA.

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 would have a chilling effect on the candid nature of discussions between the regulator and pub – owning businesses in the future.

This is particularly important at this time, where the PCA is undertaking an investigation into Star Pubs & Bars use of stocking requirements in Market Rent Only (MRO) proposals and disclosure of the information before the conclusion of the investigation would, or would be likely to, have an adverse effect on the PCA's ability to offer an effective public service, as a regulator, by conducting a fair and compliant investigation.

The PCA needs private thinking space to fully explore all aspects of the investigation without fear that its unevolved opinions will enter the public domain. Such concerns would hinder the efficient running of the

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investigation – the findings of which will be published at a later date when they represent the PCA's fully considered conclusions.

Star Pubs & Bars operate in a competitive market - the tenanted and leased pub market. Disclosure of the information would be likely to prejudice the commercial interest of Star Pubs & Bars in the market and would distort competition in that market which in itself would not be in the public interest. Disclosure of information relating to Star Pubs & Bars business practices may cause unwarranted reputational damage, which in turn may damage its commercial interest through loss of trade.

I therefore consider that the information held relating to your request is exempt under section/s 31(1)(g) and 31(2)(c); 36(2)(b)(i)(ii) and (c); and 43(2) 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,

[Redacted signature]

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