

Enquiries to: Information Team
Our Ref: DPASAR & EIR4738185/IR

tayo@tayoalukoandfriends.com



Liverpool
City Council

Dear Tayo Aluko

Subject Access Request under Data Protection Act 2018 & Environmental Information Regulations Request – Reference 4738185 – Data Protection Complaint. ICO Case Ref IC- 66396-V7M9. Liverpool City Council

As you are aware, the Information Commissioners Office (ICO) have asked Liverpool City Council (LCC) to respond to you regarding your complaint about LCC in the handling of your Subject Access Request.

I address each of the points raised within your correspondence with the ICO in turn, as set out below –

“I requested all internal correspondence regarding me and the proposed development site at Stalisfield Avenue, Liverpool, starting from 2nd May 2018. Liverpool City Council dealt with it as a Subject Access Request, and sent 80 pages of correspondence, from which I note the following:

- 1. Nothing was included between 2 May 2018 (a date on which I made a specific request to the council) and 24 August 2018. This is difficult to accept as a true representation of the correspondence on the matter, and leads me to suspect not only that all documents generated during that period may have been deliberately withheld , but that this might also be the case with several more since 24 August 2018.”***

Response

As previously explained to you the electronic and physical records of all Property & Asset Management Officers as well as counterparts within Legal Services were subject to comprehensive manual and electronic searches. In undertaking electronic searches of casefiles and correspondence, a range of search terms were used and applied, including –

“Tayo”, “Tayo Aluko”, “Tayo&Aluko”, “T&Aluko”, “Stalisfield Avenue”, “Stalisfield”, “Stalisfield&Avenue”, “Community Asset Revival CIC (CAR CIC)”.

In addition to the above referenced electronic searches, an examination was undertaken of all retained physical records held within Property & Asset Management Services and Legal Services (the latter departments as consultees on planning matters).



The documents which have been provided to you were the only documents retained, retrieved and duly sent out to you.

For clarity, I advise that Liverpool City Council does not retain every document if it is no longer required for operational procedures.

This element of your review is therefore not upheld.

2. *Of the eighty pages supplied , only five are of interest , the rest being mostly information that I already have – mainly emails I generated myself*

Response

As in the response to question number one, a fully comprehensive search was undertaken and the documents you received was the only documents retained, retrieved and duly sent out to you.

This element of your review is therefore not upheld.

2.11. *Of the five pages that are of interest, four (pp. 1, 2, 31& 45) are redacted. On page three of their Internal Review, the Council state, “We would advise that a limited amount of redactions have been applied to the information, which we have provided. This is because some of the information within these exchanges relate to someone other than you, or can identify a person other than you by the content of that information. It is our assessment that those elements of data held would, if disclosed, constitute an actionable breach of the Data Protection Act 2018 as we do not have those persons consent to release information to you nor do we believe it would be reasonable in all circumstances to disclose it to you “*

Response

We would advise that in accordance with the provisions of the Data Protection Act 2018, redaction can also be used to remove information which is out of scope of the subject access request because it is not the applicant's personal data. Therefore, the information was redacted as it could have led to an actionable breach of Data Protection and such disclosure would be both contrary to the provisions of the Data Protection Act 2018 and consent was not given to disclosure by relevant third party individuals.

212. It would appear council officials- acting on behalf of the council – are the only people whose identities would be revealed by providing the information in an un-redacted form. I presume that in acting for the council, the individuals waive the right not to be identified by their actions and therefore the reason given for redaction of their names as authors or subject cannot be justified.

Response

Whilst City Council Officers are acting for and on behalf of the City Council in the conduct of their employment, it does not in turn extend that such Officers would have a reasonable and legitimate expectation that their names and identifying information would be disclosed in response to requests for information. City Council Officers have and retain rights relating to their own personal data under the Data Protection Act 2018 and their employment status does not derogate or otherwise override the statutory rights which they have.

Specifically, we would advise that in accordance with the provisions of the Data Protection Act 2018, redaction can also be used to remove information which is out of scope of the subject access request because it is not the applicant's personal data. Therefore, the information was redacted as it could have led to an actionable breach of Data Protection and such disclosure would be both contrary to the provisions of the Data Protection Act 2018 and consent was not given to disclosure by relevant individuals and that such individuals were not of a level of sufficient seniority whether by way of their salary, role and responsibilities such as not to have any form of reasonable expectation that their personal data would be disclosed.

This element of your review is therefore not upheld.

2.1.3. Furthermore, notwithstanding any possible justification for the redaction of the names contained in the correspondence, no reason has been offered, and I would argue, no justifiable one exists, for the redaction of the information contained in the body of the documents. Page 31 is the starkest example completely redacted; it is likely that an officer commenting on and/or seeking instruction of my email to said officer on 28 August 2018. In the email I expressed frustration at the lack of a decision from them in relation to some reasonable requests I made, starting on 2 May 2018 as referenced above. As this is the nub of my complaint against the council, this appears to be a deliberate attempt to deny me one of the most pertinent and crucial pieces of information required for any fair and proper consideration of the case.

Response

Under the Data Protection Act 2018. Redaction can also be used to remove information which is out of scope of the subject access request because it is not the applicant's personal data. Therefore, the information was redacted as it could have led to an actionable breach of Data Protection.

This element of your review is therefore not upheld.

2.2.1 Page 61 which is not redacted at all is of interest not because of the content of the correspondence itself, but because it has an intriguing recipient copied in one Simon Morgan, whose involvement in the case is/was one of the people in the councils legal department who deals/dealt with disposal of property assets on the open market. This suggests to me that included within the correspondence I believe not to have been provided to me will be more involving this individual and I would be interested to see this.

Response

Whilst City Council Officers are acting for and on behalf of the City Council in the conduct of their employment, it does not in turn extend that such Officers would have a reasonable and legitimate expectation that their names and identifying information would be disclosed in response to requests for information. City Council Officers have and retain rights relating to their own personal data under the Data Protection Act 2018 and their employment status does not derogate or otherwise override the statutory rights which they have.

Specifically, we would advise that in accordance with the provisions of the Data Protection Act 2018, redaction can also be used to remove information which is out of scope of the subject access request because it is not the applicant's personal data. Therefore, the information was redacted as it could have led to an actionable breach of Data Protection and such disclosure would be both contrary to the provisions of the Data Protection Act 2018 and consent was not given to disclosure by relevant individuals and that such individuals were not of a level of sufficient seniority whether by way of their salary, role and responsibilities such as not to have any form of reasonable expectation that their personal data would be disclosed.

For the avoidance of doubt Liverpool City Council would confirm that no further correspondence exists as per your suggestion.

This element of your review is therefore not upheld.

2.3 I also requested external correspondence with third parties dated from 17 December 2018 and the council considered this as an Environment Regulations Request and of direct relevance and interest to me, specifically under regulations 12 (5) (b) and 12 (5) (e)). In both cases, the council concluded (on pages 7 and 9 of their review) that they considered the factors in favour of withholding the information outweighed those in favour of disclosure notwithstanding the fact that in relation to 12 (5) (e) the factors were "finely balanced"

2.3.1 I am not persuaded by the above argument particularly as the information I am particularly interested in, concerns the councils dealing with a specific third party, Cobalt housing Ltd, with whom I attempted to enter negotiations on 17 December 2018 the date stated in my request. As Cobalt Housing Ltd is a registered society subject to the highest standards of transparency and fair play I believe the Public Interest factors in favour of disclosure of correspondence between them and the council outweigh factors against disclosure.

Response

Liverpool City Council would advise that in the first instance matters relating to the application of the Data Protection Act 2018 in so far as they relate to both yourself and third party individuals have been addressed in full above. Our considerations relating to the application of the Environmental Information Regulations 2004 are set out below.

Regulations 12 (3) and 13.

Liverpool City Council as indicated in detail in our responses above would confirm that exchanges of correspondence have taken place with third party living individuals and City Council Officers. Neither the City Council Officers nor third party individuals have a reasonable expectation that their names or contact information may be disclosed in response to requests for information such as this nor are the City Council Officers concerned at such a level of seniority or remuneration such as to have any form of reasonable or legitimate expectation that their identities and personal identifying data would be disclosed. .

It is our assessment that the disclosure of the names of individuals concerned would be contrary to the provisions of Regulations 12 (3) and 13 of the Environmental Information Regulations 2004 as well as the Data Protection Act 2018 on the basis that there is there is no lawful basis for processing such data in the manner described.

In addition we would consider that the public interest in maintaining the personal data rights of individuals is not overridden in circumstances when, as a result of disagreement over an anticipated or previously anticipated commercial transaction, that requests are made for details and identities of third parties.

As such Regulations 12 (3) and 13 remain applied and this element of your review is not upheld.

Regulation 12 (5) (b)

Turning now to the application of Regulation 12 (5) (b) which relates to information which would impact on the course of justice, ability to get a fair trial, ability of a public authority to conduct a criminal or disciplinary inquiry.

In this instance, Liverpool City Council would refer you to our original detailed

response. We would further note the extensive correspondence and complaints made by yourself in relation to the subject site of Stalisfield Avenue as a result of Liverpool City Council having made reasonable and proportionate commercial and operational decisions to enter into discussions with third parties in light of the failure to progress a commercial proposal within a reasonably accessible timeline.

That you disagree with the position of Liverpool City Council on this matter is a clear matter of record, based on the extensive correspondence received.

Liverpool City Council is mindful therefore that the disclosure of information in any exchanges with third party organisations internally would result in direct prejudicial impact of the ability of Liverpool City Council to respond to claims of actionable breach of confidence from third parties in respect of their commercial and financial data. This would in turn substantially prejudice the ability of the City Council to defend its position in any associated Civil proceedings.

In addition, Liverpool City Council would again note that were you to progress your complaints and disagreement with our decisions to formal civil legal proceedings, then would result in direct prejudicial impact of the ability of Liverpool City Council to respond to claims of actionable breach of confidence from third parties in respect of their commercial and financial data as well as substantially prejudice the ability of the City Council to defend its position in any associated Civil proceedings.

Liverpool City Council would similarly note that were any such proceedings to be initiated, the Civil Procedure Rules as administered by HM Court Service include relevant and proportionate disclosure requirements such as to not prejudice the position of one or more parties in prospective or anticipated legal proceedings.

As this Regulation is subject to a Public Interest Test, our considerations in this regard were set out in detail in our original response and continue to be entirely engaged. For purposes of completeness, these are reproduced below.

Factors in favour of disclosing the information –

- (i) transparency of the process with which the City Council negotiates with third parties on the disposal of assets and what legal issues are considered to be of relevance; and
- (ii) the level of public interest in disclosure – the receipt of a request such as this does not of itself amount to a significant public interest. A public interest in this context may be considered in the light of any proposals for use of the application site and the extent to which they are appropriate and relevant. As such proposals would if any transaction concluded require a formal planning permission and associated consultation process therefore the disclosure at this stage would not amount to a public interest.

Factors against disclosure of the information –

- (i) the requested information related to a commercial contractual transaction which has yet to be concluded, the potential terms of which being subject to ongoing legal and technical advice setting out a range of legal options and potential implications arising thereof. The disclosure of associated exchanges in the context of legal advice and negotiation would compromise the City Council's ability to effectively conduct negotiations on this matter; and
- (ii) the level of public interest – limited. A public interest in this context may be considered in the light of any proposals for use of the application site and the extent to which they are appropriate and relevant. As such proposals would if any transaction concluded require a formal planning permission and associated consultation process therefore the disclosure at this stage would not amount to a public interest.

In light of the above factors, Liverpool City Council having considered your additional representations continues to consider that the factors against disclosure of information outweigh those in favour and to this extent all such correspondence relating to legal negotiations and exchanges of legal advice/discussions in respect of Stalisfield Avenue will continue to be withheld from disclosure on this basis in accordance with the application of Regulation 12 (5) (b).

This element of your review is therefore not upheld.

Regulation 12 (5) (e)

Lastly we return to the application of Regulation 12 (5) (e), and specifically commercial confidentiality provided by law.

Liverpool City Council would again note the extensive correspondence and complaints made by yourself in relation to the subject site of Stalisfield Avenue as a result of Liverpool City Council having made reasonable and proportionate commercial and operational decisions to enter into discussions with third parties in light of the failure to progress a commercial proposal within a reasonably accessible timeline. That you disagree with the position of Liverpool City Council on this matter is a clear matter of record, based on the extensive correspondence received.

Liverpool City Council continues to be mindful that the disclosure of information in any exchanges with third party organisations internally would result in direct prejudicial impact of the ability of Liverpool City Council to respond to claims of actionable breach of confidence from third parties in respect of their commercial and financial data. This would in turn substantially prejudice the ability of the City Council to defend its position in any associated Civil proceedings.

In addition Liverpool City Council continues to note that were you to progress your complaints and disagreement with our decisions to formal civil legal proceedings, then

would result in direct prejudicial impact of the ability of Liverpool City Council to respond to claims of actionable breach of confidence from third parties in respect of their commercial and financial data as well as substantially prejudice the ability of the City Council to defend its position in any associated Civil proceedings.

Liverpool City Council would similarly note that were any such proceedings to be initiated, the Civil Procedure Rules as administered by HM Court Service include relevant and proportionate disclosure requirements such as to not prejudice the position of one or more parties in prospective or anticipated legal proceedings.

As this Regulation is subject to a Public Interest Test, detailed assessments and considerations were applied in our original response on this matter. In light of your additional representations it remains the City Council's position that these factors have neither changed in number and substance nor in the weighting applied.

Factors in favour of disclosing the information –

- (i) transparency of the process with which the City Council negotiates with third parties on the disposal of assets; and
- (ii) the level of public interest in disclosure - the receipt of a request such as this does not of itself amount to a significant public interest. A public interest in this context may be considered in the light of any proposals for use of the application site and the extent to which they are appropriate and relevant. As such commercial proposals would if any transaction concluded require a formal planning permission and associated consultation process therefore the disclosure at this stage would not amount to a public interest.

Factors against disclosure of the information –

- (i) the requested information relates to a commercial contractual transaction which, the potential terms of which being subject to ongoing commercial, legal and technical advice setting out a range of commercial, financial and legal options and potential implications arising thereof and which includes discussion and information exchanges relating to business planning and financial consideration. The disclosure of information of this type relating to either party would compromise the City Council's ability to effectively conduct negotiations on this matter and could give rise to an actionable breach of confidence as well as inhibiting the effectiveness of the City Council's negotiations on future commercial projects; and
- (ii) the level of public interest –the receipt of a request such as this does not of itself amount to a significant public interest. A public interest in this context may be considered in the light of any proposals for use of the application site and the extent to which they are appropriate and relevant. As such proposals would if any transaction concluded require a formal planning permission and associated

consultation process therefore the disclosure at this stage would not amount to a public interest.

The above factors were, in the opinion of the City Council, finely balanced. However, a key factor in the application of the Exception remains that of the ability of an organisation such as Liverpool City Council to undertake and ultimately complete commercial negotiations on matters relating to transactions of this type.

Were information of this nature to be routinely disclosed during ongoing negotiations, the ability of the City Council to achieve the best possible commercial and financial outcomes for the use of public funds as well as supporting regeneration and wider activities under its general powers of competence, and to be able to continue and conclude such negotiations would be significantly prejudiced. On this basis Regulation 12 (5) (e) continues to be engaged and is therefore confirmed as applied.

This element of your review is therefore not upheld.

In relation to your query regarding a Code of Conduct in relation to a customer self-identifying as belonging to a vulnerable group, we do not have such a specific policy nor does the Equality Act 2010 require us to produce or have one.

Relevant customer care policies are published on our website and which were prepared as well as implemented on an ongoing basis with due regard to protected characteristics as well as ensuring fair and consistent treatment for all customers.

This concludes our response to the correspondence that you sent to the ICO and indeed a copy will be sent to them.

Yours sincerely

Information Team

Liverpool City Council