



**First-tier Tribunal
General Regulatory Chamber
Information Rights**

Appeal Reference: EA/2020/0265 (V – CVP)

**Heard remotely by video conference
On 11 May 2021**

Before

**JUDGE HAZEL OLIVER
ALISON LOWTON
NAOMI MATTHEWS**

Between

GARY MURPHY

Appellant

and

INFORMATION COMMISSIONER

Respondent

Appearances:

Appellant – in person

Respondent – Mr Will Perry, counsel

Determined at a remote hearing via video (Cloud Video Platform) on 11 May 2021

DECISION

The appeal is upheld.

SUBSTITUTE DECISION NOTICE

The Pubs Code Adjudicator did not deal with the appellant's request for information in accordance with the requirements of the Freedom of Information Act 2000 (FOIA). The Pubs Code Adjudicator was not entitled to rely on sections 36(2)(b)(i) and 36(2)(b)(ii) of FOIA to withhold the information requested by the appellant. Although these exemptions were engaged, the public interest in disclosure is not outweighed by the public interest in maintaining the exemptions. The Pubs Code Adjudicator is to disclose to the appellant all information within scope of his request (as refined on 10 May 2019) by 12 July 2021.

REASONS

Mode of hearing

1. The proceedings were held by video (CVP). All parties joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way. The appellant appeared in person and the Information Commissioner was represented by Mr Perry.

Background to Appeal

2. This appeal is against a decision of the Information Commissioner (the “Commissioner”) dated 21 July 2020 (FS50878167, the “Decision Notice”). It concerns information sought from the Pubs Code Adjudicator (“PCA”) under the Freedom of Information Act 2000 (“FOIA”) regarding a voluntary agreement with six companies. The Commissioner ordered disclosure of some information that had been withheld by PCA. She decided that the exemption in section 36(2) FOIA applied to some of the withheld information, and the appellant appeals against this decision.

3. Relevant background context to the appeal is as follows:

- a. The office of the PCA is responsible for enforcing the Pubs Code (in accordance with the Small Business, Enterprise and Employment Act 2015). The Pubs Code was introduced in 2016 and gives “tied” pub tenants certain rights. The PCA arbitrates disputes, investigates suspected breaches of the Pubs Code, and reports unfair business practice to the Secretary of State. It also has powers to issue advice and guidance on the Pubs Code.
- b. A significant proportion of public houses in the UK are owned by six businesses (pub-owning businesses, “POB”). Often a POB will own the premises of a public house and lease it to a publican. As part of this arrangement, the publican is “tied” to the POB (a tied pub tenant, “TPT”). The TPT agrees to purchase drinks (and potentially other products/services) exclusively from the POB. They may be charged a lower rent than they would otherwise be charged at market rate.
- c. The Pubs Code includes a requirement that POBs must offer TPTs the option to end the tied tenancy and enter into a Market Rate Only (“MRO”) tenancy, where certain criteria are fulfilled. This includes whether the TPT is coming up to a contractual rent review under the tied tenancy. The Pubs Code sets some requirements for the terms of an MRO tenancy, including that they are reasonable. A TPT can refer a dispute to the PCA if they do not agree that the terms offered for an MRO tenancy comply with the legislation. The PCA can arbitrate disputes and decide if the terms offered are MRO-compliant. The PCA can also refer disputes about the level of market rent for an MRO tenancy to an independent assessor.
- d. There is a separate process for assessing the rent for a tied tenancy when there is a contractual rent review. The POB is required to send a rent assessment proposal to the TPT giving information about how it has been calculated. A dispute may be dealt with through arbitration under a contractual dispute resolution clause. This process is not governed by the Pubs Code or the PCA. However, this contractual process may run alongside the MRO process, if the TPT decides to request an MRO

tenancy. This can cause a conflict between the two processes. The PCA published an advice note in June 2017 which dealt with the interaction between the process for assessing tied rents and the process for seeking an MRO tenancy (the "Advice Note"). The Advice Note was withdrawn on 7 June 2019.

- e. Paragraph 3.3 of the Advice Note states, "*The PCA's view is that a POB should not trigger an arbitration clause in a tied agreement relating to a tied rent review if there is an outstanding PCA arbitration concerning the rent assessment proposal in connection with that rent review. All six regulated POBs agree that they do not, or will not do this in future.*"

4. On 6 May 2019 the appellant made a request for information to the PCA as follows (the "Request"):

"I would be grateful if you could provide the following information under request of the Freedom of Information Act 2000:-

"Information relating to the consideration and preparation of the PCA Advice Note on Rent Dispute Clauses and Calderbank Letters dated July 2017. In particular:-

(a) correspondence, meeting and discussion notes, both internal and external, relating to the agreement with POBs mentioned within the said Advice Note;

(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."

5. The PCA responded on 10 May 2019 stating that the request as drafted was likely to exceed the cost limit, and provided advice and assistance. On the same day the appellant refined his request as follows (the "Refined Request"):

"I thought that it might be helpful if I was specific about the issue I am researching: that is paragraph 3.3 of the Advice Note where it states 'All six regulated POBs agree that they do not, or will not do this in future.'

"This confirmation from POBs was presumably obtained through a consultation involving the PCA and the POBs. It is the correspondence and meeting notes in relation to this that are of specific interest." [sic]

6. The PCA responded on 8 July 2019. It confirmed that it held information within the scope of the request. The PCA said that disclosure would inhibit the free and frank provision of advice or the free and frank exchange of views, or otherwise prejudice the effective conduct of public affairs. The PCA relied on sections 36(2)(b)(i), 36(2)(b)(ii) and 36(c) FOIA to withhold the information. There was an internal review and the PCA upheld its position.

7. The appellant complained to the Commissioner on 28 September 2019. The Commissioner obtained unredacted versions of the withheld information from the PCA during her investigation, including the opinion from the relevant Qualified Person. The Commissioner did not agree with the PCA's assessment of information within scope of the Refined Request. She told the PCA what she considered to be within scope, and asked the PCA to obtain a fresh

opinion from a Qualified Person on the new information within scope if they wished to rely on section 36. An opinion from the PCA's new Qualified Person was provided on 6 July 2020, which confirmed they still wished to rely on the same parts of section 36 and provided additional analysis.

8. The Commissioner decided:

- a. There was more information within scope of the Refined Request than the PCA had determined (as set out in a confidential annex to the decision). This information related to all six POBs.
- b. Section 36(2)(b)(i) exemption (the free and frank provision of advice). It was reasonable for the Qualified Person to conclude this was engaged in respect of some of the requested information, but not reasonable in respect of five individual letters sent to POBs 1 to 5, or the responses to those letters.
- c. Section 36(2)(b)(ii) exemption (free and frank discussion). It was reasonable for the Qualified Person to conclude this was engaged in relation to correspondence and notes of meetings with POB6, but not in respect of the correspondence between the PCA and POBs 1 to 5.
- d. Section 36(2)(c) (other prejudice). It was not reasonable to consider this exemption engaged as the Qualified Person had not demonstrated any other form of prejudice.
- e. The public interest favours maintaining the exemption, particularly because disclosure would have a harmful effect on the willingness of the POBs to engage with the Adjudicator in the same way in the future.
- f. A confidential annex set out the information to be disclosed.

9. The PCA wrote to the appellant on 25 August 2020 and provided a table setting out the information that the Commissioner had ordered it to disclose. This consisted of information from a letter from the PCA to POBs 1 to 5, being the question, "*In any case where a referral has been made to the PCA to arbitrate a Pubs Code dispute, has [POB] sought to rely on a contractual term to trigger a contractual dispute resolution term eg an arbitration clause? If so in how many cases has [POB] done so?*" The table also set out information from the responses by POBs 1 to 5 to that letter (consisting of one or two sentences from each POB).

The Appeal and Responses

10. The appellant appealed on 24 January 2020. His grounds of appeal can be summarised as follows:

- a. The Commissioner erred in her interpretation of what information fell within scope of the Refined Request. The appellant says that, having seen the information from the PCA, it seems the scope was determined by the Commissioner as simply "confirmation" of the PCA asking a question and "confirmation" of answers to that question. This is not all of the information "relating to the consultation" on rent dispute clauses as requested.

- b. The Commissioner failed to take into account and give sufficient weight to two relevant considerations in relation to the public interest test.
 - i. The Commissioner inaccurately states that TPTs benefit from bulk-buying discounts as part of a large company, when in fact TPTs are ordinarily charged upwards of 50% more for tied products than the price on the open market and are independent businesses. This is a key reason for the Pubs Code and MRO option. An error in the Advice Note prevented hundreds if not thousands of TPTs from saving substantial amounts of money with a release of tie.
 - ii. Mr Newby, head of the PCA at the time of the Advice Note, had declared personal financial interests in the POBs.

11. The Commissioner’s response maintains her decision.

- a. She correctly identified the scope of the Refined Request, being “*information relating to any consultation the Adjudicator had carried out with the POBs in respect of triggering dispute resolution clauses*”. She did not draw a distinction between consultation and “confirmation”. The appellant has confused the issue of whether information is within scope with the issue of whether it can be disclosed.
- b. In relation to the public interest balancing, the Commissioner did take into account the financial disparity between POBs and tenants. She also took into account the position of Mr Newby and perceived conflict of interests, but does not accept this is a sufficiently compelling public interest to justify significant prejudice to the PCA’s ability to regulate.

12. The appellant has provided a reply. He maintains that the Commissioner and PCA have unreasonably limited the scope of his request, and there has been only superficial consideration of the public interest by the Commissioner. He also says he had assumed he could not challenge the PCA’s use of the exemption, but would now like to challenge this if permitted to do so. We raised this with Mr Perry at the start of the hearing, and he confirmed the Commissioner had no objection to this issue being included as part of the appeal.

Applicable law

13. The relevant provisions of FOIA are as follows.

1 General right of access to information held by public authorities.

- (1) Any person making a request for information to a public authority is entitled—
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.

.....
2 Effect of the exemptions in Part II.

- (2) In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that—
 - (a) the information is exempt information by virtue of a provision conferring absolute exemption, or

- (b) *in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.*

.....

36 Prejudice to effective conduct of public affairs

- (1) *This section applies to—*
 - (a) *information which is held by a government department or by the Welsh Assembly Government and is not exempt information by virtue of section 35, and*
 - (b) *information which is held by any other public authority.*
- (2) *Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—*
 -
 - (b) *would, or would be likely to, inhibit—*
 - (i) *the free and frank provision of advice, or*
 - (ii) *the free and frank exchange of views for the purposes of deliberation, or*
 - (c) *would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.*

.....

42 Legal professional privilege.

- (1) *Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.*

.....

58 Determination of appeals

- (1) *If on an appeal under section 57 the Tribunal considers—*
 - (a) *that the notice against which the appeal is brought is not in accordance with the law, or*
 - (b) *to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently, the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.*
- (2) *On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.*

14. The application of the section 36 exemption involves a two-stage analysis, as set out in **Information Commissioner v Malnick and ACOBA** [2018] UKUT 72 (AAC). Firstly, is there a reasonable opinion of a qualified person that one of the listed prejudices would or would be likely to occur? The question for the Tribunal is whether the qualified person's opinion was substantively reasonable. Secondly, if so, in all the circumstances of the case, does the public interest in maintaining the exemption outweighs the public interest in disclosing the information? The opinion of the qualified person should be given appropriate consideration in relation to the likely occurrence of the prejudice.

15. The test of “would or would be likely to” is understood to mean either that inhibition would probably occur (meaning more than 50%), or that there would be a “very significant and weighty chance” that inhibition would occur (i.e. that it may well occur even if this falls short of more probable than not. (See *Guardian Newspapers and Brooke v Information Commissioner*, EA/2006/0013).

Issues and material before the Tribunal

16. The issues are:

- a. Did the Commissioner incorrectly narrow the scope of the information which fell within the scope of the Refined Request?
- b. Are the exemptions in sections 36(2)(b)(i) and section 36(2)(b)(ii) FOIA engaged? As noted above, this was not part of the appellant’s original grounds of appeal, but the Commissioner did not object to this issue being included.
- c. Did the Commissioner correctly apply the public interest balancing test? The appellant says the balancing test favours disclosure. Does the public interest in maintaining the exemption outweigh the public interest in disclosing the information?

17. By way of evidence and submissions we had the following, all of which we have taken into account in making our decision:

- a. An agreed bundle of open documents.
- b. A closed bundle of documents containing the withheld information.
- c. Oral submissions from the appellant and from Mr Perry on behalf of the Commissioner.

Closed Evidence

18. We have seen a copy of the withheld information, and unredacted copies of redacted material in the open bundle - this is the closed material. The Registrar has made Case Management Directions which confirmed that this material can be considered by the Tribunal but will not be disclosed to anyone except the Commissioner, as to do otherwise would defeat the purpose of the proceedings. Having viewed this material, we are satisfied that its wider disclosure would give away the context, nature or substance of the withheld information.

19. The Registrar issued Directions on 4 May 2021 which raised queries about some of the material in the closed bundle. We held a closed hearing with Mr Perry to discuss whether further material should be disclosed to the appellant and added to the open bundle. As a result of these discussions the appellant was provided with:

- a. A copy of the second Qualified Person’s opinion, with one sentence redacted. The Commissioner agreed that the first Qualified Person’s opinion was not relevant to the hearing and would not be relied on.
- b. A copy of the closed annex to the Commissioner’s Decision Notice with one bullet point no longer redacted.
- c. A full copy of a letter appointing the Qualified Person (already disclosed before the hearing).

20. We are satisfied that it would defeat the purpose of the proceedings to disclose further details about the closed material, and undermine the effect of the Rule 14(6) direction. The Tribunal has an investigatory function which involves considering and testing the closed material itself, having regard to the competing rights and interests involved (see ***Browning v Information Commissioner***, [2014] EWCA Civ 1050). In this case, we can view the closed material and make a decision based on this material together with the submissions from both parties.

Discussion and Conclusions

21. In accordance with section 58 of FOIA, our role is to consider whether the Commissioner's Decision Notice was in accordance with the law. As set out in section 58(2), we may review any finding of fact on which the notice in question was based. This means that we can review all of the evidence provided to us and make our own decision. We deal in turn with the issues.

22. Did the Commissioner incorrectly narrow the scope of the information which fell within the scope of the Refined Request? We find that the Commissioner dealt correctly with the scope of the Refined Request. There was no distinction drawn between consultation and "confirmation" when the Commissioner assessed the information. The scope of the Refined Request was limited to consultations about the "triggering" of dispute resolution clauses, in the context of the Advice Note. The appellant argued that consultations and discussions about Calderbank offers are also within scope, as these occur in the context of a rent dispute having been triggered. Calderbank offers occur when one party makes a settlement offer during a dispute. The other party may have to pay costs if they do not accept the offer and then achieve less when the claim is adjudicated upon. We find that this is a separate issue from the initial triggering of a dispute resolution clause, and is dealt with in a completely different section of the Advice Note. Discussions about Calderbank offers do not fall within scope of the Refined Request.

23. The appellant believes that very little has been disclosed, and says he was expecting to see full details of the consultation letter from the PCA to the POBs. Having viewed the closed material, the Tribunal can confirm that the appellant has been provided with all of the information from the original letter to POBs 1 to 5 that is within scope of the Refined Request.

24. Is section 36(2)(b)(i) and/or (ii) engaged? The appellant says there seems to be a blanket argument by the Qualified Person that all correspondence with POBs is covered by these exemptions. He says it is not clear why all of the information is exempt, and the exemptions simply seem to have been applied to all correspondence with POBs.

25. The Tribunal can confirm that none the PCA's letter to POBs 1 to 5 has been withheld under these exemptions. The appellant has been provided with all of the information from this letter that is within scope. Similarly, all of the information in the letters from POBs 1 to 4 that is within scope has been supplied to the appellant, and a redaction was made to the letter from POB5 to avoid disclosing its identity. The remainder of these letters has not been supplied because the information is out of scope of the Refined Request, not because it is exempt.

26. In relation to correspondence from POB6 and notes of meetings, we find that these exemptions are engaged. The test is the relatively low bar of whether the Qualifying Person's opinion was reasonable – not whether we necessarily agree with that opinion. The exemptions have not simply been applied to all correspondence with the POBs. The Qualified Person's

opinion looks at the context of the correspondence in the early years of a new law, the fact these are communications on complex issues of interpreting law, and the need for full and frank discussions to inform advice on interpretation of law. The correspondence with POB6 and meeting notes record an exchange of views. We find that it is reasonable to hold the opinion that disclosure of this material would inhibit the free and frank exchange of views for the purposes of deliberation. This is because POBs are likely to be less willing to enter into open discussions with the PCA if they believe this type of correspondence and meeting notes may be released to the public. Similarly, we find that it is reasonable to hold the opinion that disclosure of this material would inhibit free and frank provision of advice, as it would undermine the safe space for POBs to seek and be provided with informal advice from the PCA.

27. Does the public interest in maintaining the exemption outweigh the public interest in disclosing the information? We have considered both exemptions together.

28. We have considered the following arguments in favour of disclosure.

- a. General interests in transparency and openness. The PCA is a public authority and so there is a general public interest in understanding how it carries out its work, including how it communicates with the six POBs which are affected by the Pubs Code. This general interest is enhanced by the following considerations.
- b. The financial and power disparity between POBs and tenants. The Pubs Code was created in order to help regulate the relationship between POBs and TPTs. Its purpose was to correct an imbalance between the parties, by setting up a mechanism by which tenants could break their ties and move to a market rent arrangement instead. We have taken into account the appellant's submissions that the overall arrangements under a TPT are not necessarily beneficial to the tenant, and the tied goods and services may be expensive. The appellant also makes the point that the PCA only consulted with the POBs on the issue of triggering rent dispute clauses, not the tied tenants – even though both groups are stakeholders who are affected by the Pubs Code. We do not find there was any obligation on the PCA to consult with TPTs as well as POBs. However, as the consultation was only with one group, this makes it particularly important for the public to be able to see and understand how the PCA was carrying out its role. If the PCA chose to consult with one party and not the other when drafting its Advice Note, there is an enhanced interest in transparency because the PCA should be acting impartially.
- c. Concerns about POBs “gaming” the system. We have taken into account the appellant's submissions that POBs were “weaponising” rent dispute clauses to make it difficult for TPTs to be free of a tie. It is not our role to decide whether this allegation is correct or not. However, the purpose of the Pubs Code is to create a more equal relationship between POBs and TPTs. It is clear that the issue of how rent dispute clauses were being used was important to the equality of this relationship and effective operation of the right to request an MRO tenancy. This is why the PCA consulted with the POBs about the issue and covered this point in the Advice Note. There is an enhanced public interest in understanding how the PCA and POBs talked to each other about this issue, in the context of the purpose of the Pubs Code to create a more level playing field. This was addressed briefly by Commissioner (paragraph 95 of the Decision Notice), but we find this factor has more weight than was given to it by the Commissioner.

- d. The subsequent withdrawal of Advice Note. The appellant says that the Advice Note gave an incorrect legal position, and there is a public interest in understanding how errors made and who was responsible. The Tribunal cannot decide if there were any legal errors in the Advice Note. However, we do accept that it is an issue of public interest and concern as to whether the POBs may have been using the system to pressurise TPTs, and if this was against the law or the spirit of the Pubs Code. This gives enhanced importance to the public understanding how the PCA communicated and discussed this issue with the POBs. This issue was not addressed directly by Commissioner in the Decision Notice.
- e. The alleged conflict of interest of Mr Newby. The appellant says that Mr Newby was the head of the PCA at the time of the Advice Note, and had declared personal financial interests in the POBs. The appellant did not cover this point during the hearing. We are not in a position to determine whether there was any actual conflict of interest, and so we give this issue limited weight.

29. We have considered the following arguments in favour of upholding the exemptions:

- a. The Qualified Person's view that disclosure would cause prejudice. As noted by the Commissioner, the fact a Qualified Person has reached a reasonable opinion that prejudice would result from disclosure of the information creates an inherent public interest in preventing this prejudice. The more severe the prejudice, the more compelling the public interest in disclosure will need to be in order to outweigh that prejudice. The Tribunal can make its own assessment of extent of the prejudice as part of balancing exercise.
- b. The benefit of free and frank discussions and advice. The PCA will benefit in carrying out its functions if it is able to have free and frank discussions with POBs, particularly about areas of uncertainty in relation to new legislation. The discussions in question took place at a time when the Pubs Code was new, and so there was public interest in a safe space for candid discussions. There is a public interest in these types of discussions being unimpeded in the future.
- c. The extent of the need for a "safe space". This has diminished due to the time that has passed since the correspondence and the withdrawal of Advice Note. We note that the *ICO's guidance: Prejudice to the effective conduct of public affairs (section 36) (March 2015)* states that the need for a safe space will be "*strongest when the issue is still live*" and the decision is being considered, and will generally no longer be necessary when the public authority has made the decision unless any residual points remain to be determined. In this case, the request for information was made well after the Advice Note had been published. The public interest in upholding the exemptions is based on the effect of disclosure of historic communications on future advice and discussions between the PCA and the POBs.
- d. Prejudice to free and frank advice in the future. We have accepted that the Qualified Person has a reasonable opinion that disclosure would cause some prejudice to the PCA's willingness to provide informal advice in the future. However, we find that this prejudice is limited. Having viewed the withheld information, we do not feel that disclosure at the time of the Refined Request would significantly affect the PCA's

willingness to give candid advice in the future. The position might be different if the request had been made while the discussions were live, but as noted above it was made after discussions had concluded and the Advice Note had been issued.

- e. Prejudice to free and frank exchange of views in the future. We agree with the Qualified Person's opinion that disclosure of the information would or would be likely to inhibit the free and frank exchange of views for the purposes of deliberation. POBs would still engage with the PCA, but they may well do so in a manner that would be more cautious, less candid and with a greater focus on protecting corporate reputations. This would be harmful to the public interest. However, we have also considered the likely extent of that prejudice.
 - i. We note that POB6 does not actually object to disclosure of its correspondence with the PCA (paragraph 62 of the Decision Notice). This indicates that POB6 would not feel inhibited in engaging in the same way in the future.
 - ii. As noted in the Qualified Person's opinion, two out of the six POBs argued that disclosure would inhibit their future communications, and one argued that it may do so. This indicates that some but not all POBs may be inhibited from providing free and frank views in the future. We also note that these opinions were expressed in relation to their own correspondence, which we and the Commissioner have found is not covered by the exemptions.
 - iii. In relation to the notes of meetings, POB6 does object to disclosure. Having seen the information within these notes which is within scope, it is similar to that contained in the correspondence. In addition, the content of the meetings are referred to in some of that correspondence. Although there may be a difference between disclosure of correspondence and meeting notes in some cases, in this case the overlap between the two indicates that disclosure of these meeting notes would not cause additional prejudice.

30. Taking the above factors into account, we find that the public interest in maintaining the exemption does not outweigh the public interest in disclosing the information. We accept that there do need to be compelling public interests in disclosure when weighed against prejudice to a public authority. However, the test still requires the interests in upholding exemption to *outweigh* the interests in disclosure.

31. Disclosure may well deter some POBs from engaging in exactly the same way with the PCA in the future. This could harm the public interest by affecting the operation of the PCA. But, we find that the likely extent of this prejudice is limited, taking into account the time that has passed since the "safe space" for discussing this particular issue was required. Although disclosure would or would be likely to cause some prejudice to the PCA in future discussions with POBs, this is outweighed by the public interests in disclosure. The general interest in transparency and openness is enhanced by the purpose behind the Pubs Code, the concerns around the use of rent dispute clauses, the concerns around the withdrawn Advice Note, and the one-sided engagement with the POBs by the PCA on this issue. These factors make it particularly important for the public to understand the content of the discussions with the POBs which led to the section in the withdrawn Advice Note on the issue of not triggering rent dispute clauses. There is strong public interest in disclosure, and is not outweighed by the interests in upholding the exemptions.

32. We note that this finding does not mean that future communications and meetings between the PCA and POBs will necessarily need to be disclosed under FOIA. The public interest balance favoured disclosure in this particular case, but the balance may be different in relation to future requests.

33. We uphold the appeal. The PCA was not entitled to withhold information within the scope of the Refined Request. This information is to be disclosed to the appellant, as set out in the Substitute Decision Notice above. The information to be disclosed is the previously redacted section from the letter from POB5 which relates to the triggering of rent clauses, the within scope correspondence to and from POB6, and the within scope notes of meetings with POB6. The PCA is also to provide the identity of all POBs as linked to their correspondence, as their identities were only withheld in order to avoid identifying POB6 (see paragraph 67 of the Decision Notice).

34. The Tribunal notes that the PCA chose to comply with the Commissioner's decision by providing a table of extracts from the relevant correspondence, rather than a redacted version of the correspondence itself. This complies with the requirements of FOIA. However, the appellant appears to have believed that the PCA sent out lengthy correspondence to the POBs, and that a significant amount of relevant information had been withheld in relation to all POBs. This may have been avoided if the claimant had been provided with full copies of the relevant correspondence, with out of scope information redacted where necessary.

Hazel Oliver
Judge of the First-tier Tribunal

Date of Decision: 06 June 2021
Date Promulgated: 07 June 2021