

Environmental Information Regulations 2004

Disclosure log entry

Reference

EIR: 22-23082

Date sent

27/07/22

Subject

Rooftop & Greenfield Mobile Mast Agreements

Details of enquiry

Please provide me with all documents and electronic communications relating to the rooftop and greenfield mobile mast site agreements that your trust may have entered into with any of the following organisations (Code Operators) since 28 December 2017. The information should include internal emails and minutes of discussions relating to the site agreements.

- a. EE Limited
- b. Hutchison 3G UK Limited
- c. Arqiva Services Limited
- d. On Tower UK Limited
- e. Cornerstone Telecommunications Infrastructure Limited (CTIL)
- f. Airwave Solutions Limited
- g. Vodafone Limited; and
- h. Telefonica O2 UK Limited

Please provide the following information in respect of those agreements:

1. The number of agreements with any of the Code Operators that were renewals of existing agreements and the number of agreements relating to new sites.
2. In respect of those agreements which were renewals, the number of renewals completed before the contractual expiry of the existing agreement.
3. Where the agreements were renewals, the rent paid under the previous agreement and the consideration paid under the renewed agreement; and
4. Any legal costs incurred by the trust in dealing with these agreements and not paid by the Code Operators

Response sent

1. The number of agreements with any of the Code Operators that were renewals of existing agreements and the number of agreements relating to new sites.
No renewals, and no new sites; One current agreement
2. In respect of those agreements which were renewals, the number of renewals completed before the contractual expiry of the existing agreement.

Zero

3. Where the agreements were renewals, the rent paid under the previous agreement and the consideration paid under the renewed agreement;
Not applicable – see response to Q1
4. Any legal costs incurred by the trust in dealing with these agreements and not paid by the Code Operators
We do not hold this data.

With regards to your request for a copy of any current agreement, we can confirm that we hold this data, but that it is exempt from disclosure under the terms of Regulation 10(5)(e) – Confidentiality of Commercial or Industrial Information - of the EIRs.

In making this decision, the Trust weighed up consideration the following points:

- a) whose commercial interests will be damaged by the release of the information and what is the nature of those interests?
The Trust is of the view that the rental and/or access agreements for Trust owned land relating to mobile phone masts and a breakdown of yearly income is commercial in nature and that the commercial interests of the Trust would be damaged if we were to disclose these into the public domain under the Environmental Information Regulations 2004 (EIRs) Please see below.
- b) Does a legally binding duty of confidence exist in relation to the information?
A legally binding duty of confidence exists in relation to rental and leasing agreements as there is an expectation that these agreements are protected by the common law of confidentiality
- c) Is the information publicly available?
This information is not currently publicly available
- d) how disclosure of the requested information would cause the level of harm required for this exception?
Releasing information on rental agreements for Trust land would give potential applicants an indication of what the Trust expects to receive or has negotiated in the past. That may influence the amount they offer and may give them a competitive advantage over the Trust and over other potential third parties that have not seen the published information.
- e) The public interest arguments
 - a. Arguments in favour of disclosure:
 - The Trust recognises that there is public interest in how public funds are spent, and therefore the agreements the Trust enters into with commercial entities,
 - b. Arguments in favour of maintaining the exemption:
 - That the Trust's ability to ensure the best value for its assets in this market place will be detrimentally effected by the release of the rental agreement.
 - The release of the rental agreement information would put the Trust at a commercial disadvantage with the potential loss or reduction in capital receipts which could result in less money for the Trust and the NHS.
 - Disclosure could impact on third parties who may be forced to lower their prices to compete

In view of the above, we have concluded that the public interest in withholding the telephone mast rental agreement under the terms of Regulation 10(5)(e) of the EIRs