

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 February 2012

Public Authority: Tenant Services Authority
Address: Maple House
149 Tottenham Court Road
London
W1T 7BN

Decision (including any steps ordered)

1. The complainant requested information from the Tenant Services Authority ('the TSA') relating to the TSA's investigation of his allegations concerning an organisation and its parent company.
2. The Information Commissioner's ('the Commissioner') decision is that, on the balance of probabilities, the TSA has provided the complainant with all the information it holds relevant to his requests.
3. The Commissioner requires no steps to be taken by the public authority.

Background

4. In August 2008 the complainant raised a number of allegations about Paddington Churches Housing Association ('PCHA') with the TSA's predecessor the Housing Corporation ('the HC'). The assertions concerned incorrect rule changes put in place without the required majority shareholder vote and that therefore such changes were in breach of the association's rules.
5. On 28 August 2008 the HC wrote to the complainant to inform him that it would be asking Genesis Group (the parent organisation of the PCHA) to commission an independent investigation into those allegations that the HC considered breached its regulatory requirements. The HC was not satisfied that all the matters raised had sufficient evidence to satisfy a breach of its regulatory requirements.

6. Genesis Group commissioned and paid KPMG to carry out an independent investigation. The HC was therefore not in direct correspondence with KPMG but did agree the investigation brief. The HC stated that the complainant should be interviewed as part of the investigation process.
7. The investigation brief was agreed by the HC on 15 September 2008. The complainant was advised by hand delivered letter on 22 September 2008 advising him to contact a named person to arrange to be interviewed as part of the process.
8. The KPMG report was produced in January 2009. It did not uphold the complainant's allegations and the TSA stated that it was satisfied that no regulatory action was required.

Request and response

9. The complainant made a detailed request on 22 December 2009 which flowed from an earlier request of 7 November 2008. The request of 22 December 2009 is set out in Annex 1. During 2009 and 2010 the complainant contacted the TSA and provided various "clarifications/amendments/additions/deletions" in respect of his requests.
10. The TSA first responded on 5 December 2008 and subsequently corresponded during 2009. Its response to the substantive request of 22 December 2009 was made on 21 January 2010. The response referenced each of the points raised by the complainant and outlined whether the information had already been provided, was not held or was being provided again. The information requested in points 3 (b),(c),(e) and the internal communications relevant to points (5) and (6) were disclosed. The TSA explained that 'some minor redactions' had been made to some of the documents and relied on section 40 of the FOIA (personal data) and section 41 (information provided in confidence) for withholding this information. An internal review was provided on 22 April 2010 which upheld the response and clarified that the withheld information comprised solely of the redactions made to the information provided; no documentation had been withheld in its entirety. The internal review also covered the complainant's dissatisfaction as to the way the information had been provided.
11. The TSA corresponded with the complainant throughout 2010 regarding the same matters. A request concerning elements of the same matters, dated 17 March 2010, was not received by the TSA and following advice from the Commissioner this was re-submitted. The TSA received the re-submitted request on 24 October 2010 and the

TSA provided its response on 15 November 2010. This response stated that the information had already been provided.

12. The complainant requested an internal review on 17 January 2011, referring back to his request of 22 December 2009 and to its subsequent amendments. At the same time the complainant complained about TSA staff and requested explanations and opinions which are matters outside the remit of the FOIA. The review was provided on 21 February 2011. The TSA re-stated its previous responses in relation to the request of 22 December 2009 and the subsequent requests submitted by way of clarifications and amendments.

Scope of the case

13. The complainant wrote to the Commissioner on 19 April 2011. His complaint linked this complaint to a previous data protection complaint he had raised with the Commissioner and which had been concluded on 3 September 2010. The complainant provided a summary of the points he considered to be outstanding from all his communications with the TSA (Annex 2). These points form the scope of the case.
14. The complainant has focussed his complaint solely on the information which had not been provided by the TSA. The complainant did not challenge the redactions made by the TSA or its rationale for them. The Commissioner has therefore not considered the limited redactions made to the information provided which relied on section 40 and section 41. The TSA confirmed that no documents were withheld in totality. The Commissioner notes that his assessment under the Data Protection Act ('the DPA') concluded that the TSA was likely to have complied with the DPA in respect of the complainant's subject access request and the redactions made for third party information.
15. The Commissioner has investigated each of the points referenced in Annex 2. However, because the nature of the complainant's requests is complex and the terminology used by the complainant has changed, yet refers to the same information, the Commissioner has included his own indexing of Annex 2 in Roman numerals.

Reasons for decision

16. **Section 1(1)** provides that:

“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.”

17. The standard of proof that the Commissioner has applied in determining whether the TSA holds information relevant to the list as detailed in Annex 2 is the civil standard of the balance of probabilities as outlined by the Information Tribunal in *Linda Bromley v Information Commissioner & the Environment Agency (EA/2006/0072)*. The Commissioner will consider the scope, quality and thoroughness of the searches carried out as well as the reasons provided by the TSA to explain why the information is not held.

18. Before answering the Commissioner’s enquiries the TSA provided detailed background information relating to the complainant’s involvement with the TSA and the information requested. It also explained that the TSA uses a Customer Relationship Management (‘CRM’) database to capture its regulatory engagement. The database is a central repository holding copies of correspondence, emails, notes and reports. Each housing association is allocated to an account manager who is responsible for uploading and recording information in the CRM database. The information held in the CRM database is in relation to the TSA’s regulatory requirements. In response to the complainant’s initial allegations about PCHA, the TSA established a reference and folder in this database to store correspondence with the complainant and PCHA.

19. The TSA advised the Commissioner that the appendices [Annex 2,(i)] used in the KPMG report were never held by the TSA. The TSA explained that the information held comprised a copy of the investigation brief, which listed the titles of 14 appendices; however the full appendices were not attached. An accompanying email had only one attachment which was the investigation brief itself not the series of appendices. Following the TSA’s comments a revised brief was provided in the same way without copies of the appendices. The TSA explained that it was important for the TSA to know what types of information the investigators would have access to, that being the list of appendices, but that it was not necessary to see copies of the

specific documents in order to assess the suitability of the brief. The TSA went on to explain that some of the information referred to as appendices, for example the PCHA's rules and rule changes, was held as part of the TSA's regulatory engagement and had been provided to the complainant in response to his request of November 2008. The Commissioner has therefore concluded that the full set of appendices to the investigation brief is not held.

20. In respect of point (ii) of Annex 2 the Commissioner has noted the complainant's concern that the investigation conducted by KPMG progressed without his input. The Commissioner has questioned the TSA regarding the information held in respect of the complainant's involvement in the investigation. The TSA explained that it does not hold copies of the document(s) as specifically requested by the complainant. However it does hold information relating to the matter of the complainant not being involved in the investigation. An email dated 10 November 2008 from a named individual at Genesis Group states that the complainant declined to be interviewed. The KPMG report itself makes reference to the complainant not taking the opportunity to meet with KPMG. Consequently the Commissioner is satisfied that the information requested specifically in (ii) is not held.
21. The complainant acknowledges that he has been provided with some of the named individual's correspondence [(iii) Annex 2] but considers that other information has been withheld. The complainant particularly focuses on any correspondence dealing with 'proxies used during Special General Meetings ('SGM') in order to pass important resolutions' [(iv) and (xi) Annex 2]. In order to probe this matter the complainant has requested explanations from the TSA which fall outside the remit of the FOIA. In response to this the TSA stated in its letter of 21 January 2011 that it had already 'provided a view' on the matter of proxies. The complainant sought to further his concerns by requesting a reference where 'the view' could be located. The TSA explained to the Commissioner that it had exchanged correspondence with the complainant on the matter of proxies and the handling of this point, along with other issues, had already been subject to an independent complaints review. Therefore no one document 'provides a view'. The Commissioner is satisfied that the TSA has covered this point in a series of correspondence and in the review.
22. The complainant stressed to the Commissioner the importance of the request made in point (v) Annex 2. He provided a copy of the TSA website from November 2009 highlighting a paragraph stating:

"Regular meetings are also held with credit rating agencies,"

The complainant considers that this statement is evidence that the TSA would have discussed the specific issue of the £250 million bond issued in December 2009. Consequently the TSA would hold minutes of such meetings. The TSA has informed the Commissioner that although the TSA meets with the ratings agencies, the purpose of such meetings is to discuss sector wide issues not to discuss the specific financial arrangements of individual providers. The TSA provided a copy of an email supporting its point. A copy of this email has been provided to the complainant. The TSA assured the Commissioner that the meetings as identified by the complainant did not take place.

23. The complainant stressed to the Commissioner the importance of these meetings and considered that he had changed the scope of this point of his request by amending his initial request for:

"correspondence with the ratings agencies in connection with the £250 million bond issued by the recently created Genfinance II plc,"

to the following:

"Please amend item (3)(d) to read 'the minutes of the TSA and the rating agencies meetings and any additional documents used during the meetings instead of 'the correspondence'. It is public knowledge that such meetings took place quite regularly and there should be nothing private and confidential about the meetings, because they affect the affairs of PCHA, Genesis and other social landlords."

However the Commissioner considers that the refinement is not sufficient to change the meaning - or a reasonable interpretation - of the point to encompass any meeting at any time between the TSA and the ratings agencies. The Commissioner therefore accepts that the TSA interpreted the amended request in good faith. The Commissioner is satisfied that the TSA does not hold the requested minutes because meetings on the specific topic of the request did not take place.

24. The TSA provided the complainant with all the correspondence between itself and the Independent Complaints Reviewer ('ICR'), which it held at the date of his request. The last piece of correspondence is dated 26 November 2009 which is the ICR's statement that the complainant's complaint to the ICR would not be pursued as there was no evidence of maladministration in the TSA's handling of the matters raised by the complainant. As the ICR did not proceed with the case, no further correspondence is held. Consequently in response to the complainant requesting correspondence "after 26.11.2009 up to 17.6.2010" the TSA could not provide further information [(vi) Annex 2].

25. In his initial request to the TSA the complainant requested **all** correspondence between the TSA and Genesis/PCHA. The scope was wide and the TSA's search for information encompassed all staff involved. This information was provided. The complainant progressed his requests by specifying named members of staff and requesting their correspondence [(vii), (viii), (ix) Annex 2]. However this information had already been considered and provided in response to the complainant's first request.
26. In point (xii) Annex 2 the complainant again returns to his point regarding why the investigation by KPMG progressed without his input [Annex 1 (1)(d)]. He requests copies of the 'extensive correspondence' referenced by TSA in its response to this point in the letter of 21 January 2010. The Commissioner finds that the TSA has already provided this information at least once during the lengthy course of the complainant's issues. The TSA has corresponded on this matter and provided explanations for its conclusions.
27. The final point of Annex 2 has been emphasised by the complainant and concerns email 'in' and 'out' boxes. The Commissioner has a copy of correspondence from the TSA to the complainant dated 6 May 2009 in which the TSA explains the case handling system in operation at the TSA. The system is described above in paragraph 18. The TSA has explained to the Commissioner that the in and out boxes of those staff involved with this case were separately checked for any other relevant correspondence to ensure that the established procedure, in line with the TSA's records management policies and procedures, had been followed and no further information was discovered. This search confirmed that only the central repository contained the requested information held by the TSA. The complainant considers that there are "gaps" in the correspondence he has received. The Commissioner has no evidence that any information held has been omitted and is satisfied that the searches undertaken in respect of this point were proportionate and appropriate.
28. The Commissioner acknowledges that the TSA has not sought to rely on any of the exemptions in the FOIA to withhold the information identified in Annex 2 and has repeatedly provided the information it holds which is listed there. The Commissioner notes that in November 2009 an independent investigation into the TSA's handling of the allegations made by the complainant and the ensuing investigation concluded that no evidence of maladministration could be found in respect of his complaints. The Commissioner is satisfied that on the balance of probabilities the TSA has provided the complainant with all the information it holds relevant to the request as detailed in Annex 2. Therefore the TSA has complied with sections 1(1)(a) and (b) of the FOIA.

Right of appeal

29. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

30. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF

Annex 1

The complainant's request of 22 December 2009:

"Below are enumerated the documents I need, with a brief comment on my reasons, and I believe that you should get involved personally in making sure that your officers supply the documents. This matter cannot be delayed any further, and since another £250 million from PCHA assets are employed to secure a bond issued yesterday, I urge you to seriously look at the situation. In addition, I expect to get an assistance from the Public Administration Select Committee, the Public Accounts Committee: also other bodies concerned with the waste of public funds, and interested in revelations uncovered with the help of FOIA.

The documents – concerning individual files or events dealt with collectively – are:

(1) THE KPMG INVESTIGATION – including emails, file notes, copies of IN-boxes and OUT-boxes, and any other documents relating to the investigation; and in particular

a) complete copy of the KPMG officer's report, with various drafts, and his file notes which should accompany the report;

b) copies of all the documents – appendices and others used in the report – which the CEO of TSA declared that had been seen by TSA. These should have been preserved as a matter of course; and if not - they should be requested again from KPMG;

c) copies of all communication – faxes, doc. Files of emails, etc. – with KPMG, Genesis and others who were involved in the investigation;

d) explanation of why the investigation went ahead (emails, file notes, etc.) without my evidence and testimony; using a brief, prepared by the person accused of corrupt practices and designed to exonerate him, while I was trying to improve the brief by using the FOIA – a process which was not completed, and being handled by the TSA officers fully aware of my purpose;

e) the amount of the fee paid to KPMG in order to complete the report without my evidence and testimony. As the TSA should be fully aware, the officer from KPMG refused to give me a copy of the report on the ground of confidentiality, but he advised me to request a copy from you.

(2) [Named person A's] CORRESPONDENCE FILE – I have some of her emails and some of her letters from my earlier FOIA request, but the most important documents, which should have been preserved as a matter of course, are missing. They include

a) copies of my correspondence with the previous auditors of Genesis and PCHA, Deloitte & Touche, and with the Chairman of Genesis, [name redacted], sent to [person A] as enclosures with my letter to her of 8 August 2008. They were not in the papers sent to me on 5 December 2008, and they have been traced because they reveal that auditors were aware since September 2006 that Genfinance and Genesis were unlawfully using the PCHA assets, as I alleged due to non-existent or fraudulently generated proxies. [Person A] is aware since September 2006, during our discussions, that Deloitte did nothing, so as Director of Regulations she should have intervened. If she is now denying knowledge of the alleged legal irregularities, she should make a statement and be prepared to repeat it under oath, when necessary;

b) her, and [person C's], correspondence with [name redacted], the ex-CEO of Genesis, are missing. They have to be provided as there are cross-references showing collusion with [name redacted], and her acquiescence to his request to finally water down the brief, thus in effect exonerating the accused officer(s) and [name redacted] himself;

c) explanation from [person A] why the question of the proxies was excluded from the brief, and can she provide evidence, e.g. email, asking the accused officer to include the issue of proxies in the brief. The original doc. file has to be included.

(3) [Named person B's] CORRESPONDENCE FILE – nothing from his file was included in the 5th December 2008 bundle. As a CEO from 1st December, and a DCEO before, he is involved with all of the issues from the beginning, and lately I allege that he is covering-up for the alleged corrupt practices; and I consider him, with [person A], as an accomplice responsible for the unlawful waste of PCHA assets. The documents needed:

a) all his emails and file notes related to the brief and my allegations about the waste of assets, including IN- and OUT- boxes, addressed to officers of Genesis and PCHA, together with their responses;

b) his internal correspondence with [name redacted, name redacted, person A, person C and person E] – including memos and file notes – relating to issues in my original complaint and to issues in my requests for reviews, both external and internal: and matters during preparation of his letters – drafts and final – to me;

c) copy of his circular – or memo/order – to TSA employees, as I am informed as far afield as Leeds, ordering them to suspend the published Service Standards of TSA, and to put the phone down on me despite the fact that I was pursuing a fraud, I allege committed by Genesis / PCHA and covered up by senior officers of TSA; and that person B was afraid to respond to my letters and was always at a meeting when I rang. I assume that he was afraid that some of his officers may disclose some matters which may spoil his cover-up of the alleged corrupt practices;

d) copies of his correspondence with the rating agencies Fitch and Moody's, and the valuers Drivers Jonas, in connection with the £250 million bond issued by the recently created Genfinance II plc; informing them that PCHA borrowing limit is only £350 million and that the Rules of PCHA are not legally adopted as there was no 75% majority as required by the IPSA; and further informing them that there are allegations of fraudulently used proxies during recent ballots. PCHA already has a debt of £1.2 billion, which is £800 million above the legal limit; and with assets of £250 million to secure the bond, the debt will be £1 billion above the legal limit. Therefore, [name redacted] will be a major culprit if PCHA collapse with a debt of about £1.5 billion. Will TSA/HCA pay to PCHA the money squandered by Genesis, who have been using PCHA as a cash-cow;

e) copies of his correspondence and file notes with [name redacted] from I.C.R., in relation to her review of my complaint, which she completed without seeing any of my evidence and documents, and based her decision on two letters from TSA, branded by me as a whitewash. I also need copies of her correspondence with other officers of TSA related to my complaint.

(4) [Named person C's] CORRESPONDENCE WITH GENESIS/PCHA – to include all emails, file notes, IN –and OUT- boxes etc. in relation to the brief and the investigation by the KPMG; and including her notes of conversation with [name redacted], and her notes of her conversations with the KPMG officer.

(5) [Named persons D and E] – the emails, file notes, IN- and OUT-boxes etc. related to their involvement with the investigation of my complaint since 7th November 2009 and additional correspondence as regards the brief-preparation since 7th November; and the notes of their conversations with officers of Genesis, PCHA and KPMG. Also their internal communication – emails, memos, file notes – with [name redacted and person F], together with their internal communication with [person A and person B] related to my complaint, my allegations; and any other aspects of my relations and contacts with TSA officers.

(6) [Named person F's] CORRESPONDENCE – to include internal and external correspondence related to any aspects of the investigation of my complaint and my allegations; and letters and emails – sent internally and

externally – related to my contacts with TSA officers. To include also all notes and emails related to her internal review of my case; and further to include any communication coming from outside related to me and my contact with TSA officers.”

Annex 2

The complainant identified the following itemised list as the information outstanding from his series of requests. The list is referenced by the complainant following the request set out in Annex 1.

“Documents requested under FOIA but not provided by TSA despite my reminders (see letters dated 22.12.09, 25.2.10, 17.3.10, 19.3.10, 21.3.10, 22.3.10, 30.3.10, 26.5.10, 17.6.10 – references used as in the request of 22.12.09).

- i (1)(b) All appendices used in the KPMG report
- ii (1)(d) Document(s) showing that I ‘declined’ to take part in the investigation by KPMG, or an ‘unless’ letter to me [stating] that the investigation will begin without me.
- iii (2) [Person A’s] correspondence file.
- iv (2)(c) Explanation of why ‘the question of the proxies’ was excluded from the brief.
- v (3)(d) The minutes of the TSA meetings with the ratings agencies – to include the minutes of the TSA and the valuers Drivers Jonas, to include any relevant papers used at their meetings.
- vi (3)(e) The complete correspondence of TSA and ICR officers after 26.11.09 and up to 17.6.10.
- vii (4) [Person C’s] correspondence with Genesis/PCHA – there appears to be gaps in her correspondence (please check her file and provide the missing papers, or make a declaration that the complete file has been copied).
- viii (5) [Persons D and E’s] files – there appear to be gaps in their letters and emails (please check their files and provide the missing papers, or make a declaration that the complete file has been provided; and that nothing from their files has been withheld).
- ix (6) [Person F’s] file – as (4) and (5) above – please check her files and provide the missing papers, or make a declaration that the complete file has been provided; and that no papers from her file have been withheld).

DOCUMENTS REQUESTED UNDER FOIA BUT NOT PROVIDED BY TSA DESPITE MY REMINDERS (the CEO and the ICM have used as an excuse the carefully contrived combination of words "THE TSA HAS ALREADY PROVIDED A VIEW" (a.k.a. weasel words) in order to avoid answering important questions repeatedly asked in letters).

- x (2) Important letters concerning the squandering of PCHA assets, worth millions of pounds, used unlawfully to secure the debts of non-charitable companies – I need copies of the answers from the TSA, not weasel words (please see the correspondence with [person A]).
- xi (2)(c) Concerning the question of the proxies, I need copies of the answers from the TSA – not weasel words – because £3 billion were approved by invalid proxies; and witnesses were prevented to attend by the secretary with full knowledge of the TSA.
- xii (1)(d) Copies of the 'extensive correspondence referred to by the ICM, or the page numbers from the bundles dated 5.12.08 (prepared by the ICM) and 18.6.10 (prepared by me from the documents received on 25.0.10).
- xiii (3)(4)(5)(6) Please scan ICM's letter of 21.1.10 and where she has used the words 'provided a view' give the bundle page no. or send a copy.
- xiv **THE ICM STATES THAT 'IN' / 'OUT' BOXES 'SIMPLY DON'T EXIST'. I AM ADVISED BY AN I.T. EXPERT THAT EACH INDEX IS PRESERVED – EVEN UNDER A NEW DESIGNATION – OTHERWISE IT WILL BE IMPOSSIBLE TO FIND THE DOCUMENTS IN THE NEW SYSTEM. ITS SEARCH ENGINE SHOULD BE ABLE TO RESTORE THE OLD 'IN' INDEX, AND WHAT THE 'OLD' DOCUMENTS WERE."**