

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 18 April 2023

**Public Authority:** Department for Levelling Up, Housing and Communities

**Address:** Fry Building  
2 Marsham Street  
London  
SW1P 4DF

### **Decision (including any steps ordered)**

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1. The complainant requested information relating to a bid placed to the UK Community Renewal Fund. The Department for Levelling Up, Housing and Communities (DLUHC) withheld the information under section 43(2) of FOIA.
2. The Commissioner's decision is that the DLUHC was correct to apply section 43(2) to withhold the requested information.
3. The Commissioner does not require the DLUHC to take any steps.

## **Request and response**

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4. On 12 September 2022 the complainant made the following request for information to the Department for Levelling Up, Housing and Communities (DLUHC):

"I would to make a freedom of information request related to a bid placed to the UK Community Renewal Fund on or around the 17 May 2021. The lead Authority was the Scottish Borders Council and the bid was submitted by Scottish Borders Housing Association. The bid for funding focused on a feasibility study and potential pilot to explore a concept or plan referred to as garages to homes. This bid was unsuccessful. I would like to obtain all the information you hold in relation to this bid, including any information you hold relating to how you assessed this bid, I would also like to access any information you hold relating to your decision to reject the bid including copies of any letters and accompanying documentation that explains the reason for your rejection."

5. The DLUHC responded on 11 October 2022. It refused the request on the grounds that the exemptions for commercial interests (section 43(2)) and personal data (section 40(2)) applied.
6. Following an internal review, the DLUHC wrote to the complainant on 9 December 2022. It upheld its initial position.

## **The scope of the case**

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7. The complainant confirmed that they were content for the personal information withheld by DLUHC under section 40(2) to be excluded from their complaint so the Commissioner has not considered this further.
8. The Commissioner considers that the scope of the case is whether the DLUHC was correct to apply section 43(2) to withhold the information from disclosure.

## Reasons for decision

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### Section 43(2)- commercial interests

9. The following analysis explains why the Commissioner has decided that the DLHUC was correct to apply section 43(2) to withhold the information from disclosure.
10. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
11. The request relates to information about an application bid made to the to the UK Community Renewal Fund by Scottish Borders Housing Association. DLHUC has confirmed that the information held consists of an application form from Scottish Borders Housing Association (SBHA). The information contains commercial information about intentions, including project costs, budgets and working intentions.
12. The DLUHC argued that a disclosure of the information would prejudice the commercial interests of the SBHA, and would undermine its own ability to judge bids for funding in the future.
13. Where prejudice relates to the interests of a third party the Commissioner expects that authorities will consult with the party in question rather than speculate about the potential effects of disclosure.
14. The DLUHC provided correspondence with SBHA in which it confirmed that it considers that the information is commercially sensitive, and that its disclosure would be disadvantageous to it.
15. The DLUHC explained that if the information were to be disclosed, it considers that this would be likely to prejudice the SBHA's commercial interests for the following reasons:
  - The information is subject to a duty of confidence, imposed on the Department by the common law duty of confidence. The information is neither trivial nor otherwise in the public domain, it has the necessary quality of confidence, and it was shared with the Department in circumstances creating an obligation of confidence due to the competitive nature of the bidding process and the commercial sensitivity of the information.

- The withheld information is still current and comprises detailed costings and data which, if released, would be likely to present an unfair commercial advantage to competitor businesses.
- In addition to the above points, the DLUHC said that some of the correspondence regarding the application relates to its internal process of assessment and moderation. It argued that disclosing this would provide insight into its own internal assessment processes and individual judgements which is otherwise not publicly available. It believes that a disclosure of this information could give other parties an unfair advantage should they decide to submit their own application in future rounds of the community renewal fund.

### **The Commissioner's analysis**

16. The Commissioner accepts the arguments submitted by the DLUHC regarding the application of section 43(2).
17. Firstly, the Commissioner is satisfied that the harm the DLUHC envisages relates to commercial interests of the SBHA and to the DLUHC. The withheld information is part of a competitive bidding process for funds to be awarded to bidders for planned activities.
18. Secondly, the Commissioner accepts that a causal link exists between disclosure and commercial prejudice which the DLUHC has identified. A disclosure of the withheld financial information would provide detailed information on the bid which the SBHA submitted, thereby divulging information which would be likely to cause the prejudice it has foreseen.
19. The Commissioner also accepts that the prejudice identified would be likely to occur. A disclosure of the information would provide competitors to the SBHA with detailed financial information as regards the way in which it intends to take forward its plans. This would provide an advantage to commercial competitors.

20. Disclosing details of a successful funding bid would also be likely to lead to some bidders considering the way in which the bid has been drafted, the submission which supported the successful bid, and the amounts bid for. They could then draft or amend their own bids in order to increase their own chances of being successful against others in future rounds.
21. The Commissioner's decision is therefore that the DLUHC was entitled to apply section 43(2) to the withheld information. He has therefore gone on to consider the associated public interest test required by section 2(1)(b) of FOIA.

### **The public interest in the information being disclosed**

22. The complainant has expressed concerns about the funding bid to the DLUHC and suggested there was impropriety in the process.
23. In applying its public interest test, the DLUHC has confirmed it considers that there will always be some general public interest in disclosure to promote transparency and accountability of public authorities. DLUHC recognises the public interest in the public understanding of the activities of the UK Community Renewal Fund and ensuring accountability for the spending of public money.
24. The Commissioner recognises that there is a public interest in understanding how such bids are processed, considered, and decided upon, and in the DLUHC being as transparent as possible regarding the decisions which it takes in respect of bids. This ensures that the public can understand that there is no bias or unfairness in its decision-making process.

### **The public interest in the exception being maintained**

25. There is a public interest in companies to be able to bid for funding on a fair and equal basis. A disclosure of the information in this case would potentially undermine the level playing field for future such bids.
26. Details of financial plans, budgets and forecasts can be used by competitors to disadvantage the company concerned in a competitive market.
27. If organisations believe that their plans and financial information would be disclosed, this may dissuade them from being full and frank in their bids. Some organisations may decide not to submit bids if they are aware that commercially sensitive information about their organisation and/or their wider plans might be disclosed and, as a result, this may damage their prospects of their project being a success overall.

28. There is a public interest in allowing the DLUHC to be able to consider the full information which it receives without its decision-making process being hindered by a disclosure of financial and other business planning details from some bids via information access requests.
29. A disclosure of the bid details may result in lobbying against particular projects receiving funding as compared to others, thereby resulting in pressure being exerted for and against some bids on the DLUHC. Responding to such lobbying may also increase the resources required by the DLUHC to consider and award bids.

### **The Commissioner's conclusions on the public interest test**

30. The Commissioner recognises that there is a public interest in demonstrating how community funds are allocated, and in ensuring that public funds are awarded on an equal, fair, and appropriate basis.
31. However, there is also a strong public interest in protecting the financial details and business plans of organisations who submit bids where disclosing that information would undermine the competitiveness of the organisations concerned, and potentially the aims and objectives behind their bids.
32. Although the Commissioner notes the issues highlighted by the complainant in their arguments to the DLUHC, he has no evidence that they have any foundation and, in any event, these are not issues which the Commissioner has the power to investigate.
33. The Commissioner has considered the public interest arguments both for and against the exemption applying in this instance. On balance, his decision is that the public interest favours maintaining the exemption in this instance.
34. In reaching his decision the Commissioner has also referred to a recently issued decision notice which relates to a different request to the DLUHC for comparable information about a different Community Fund<sup>1</sup>. In that case the Commissioner found that the DLUHC had correctly withheld the information under section 43(2). DLUHC has confirmed that

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024396/ic-188554-h7g5.pdf>

it considers that the same circumstances and conclusions apply in this case. The Commissioner agrees with this.

35. The Commissioner's decision is, therefore, that the DLUHC was correct to apply section 43(2) to withhold the information in this case.

## Right of appeal

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36. 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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. 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.

38. 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 .....**

**Christopher Williams**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**