

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 January 2025

Public Authority: Homes and Communities Agency (Homes England)

Address: 50 Victoria Street
Westminster
London SW1H 0TL

Decision (including any steps ordered)

1. The complainant has requested information about the Help To Buy: Equity Loan scheme. Homes England (HE) disclosed some information and has withheld the remainder under sections 40(2) and 43(2) of FOIA, which concern personal data and commercial interests, respectively.
2. The Commissioner's decision is that, on the balance of probabilities, HE holds no further relevant information but breached section 1(1) and 10(1) because it didn't communicate all the non-exempt information it holds within the statutory period. The Commissioner has also decided that HE correctly applied section 43(2) to information it has withheld. Finally, HE has complied with its obligations under section 11(1) and 16(1) of FOIA, which concern the means of communication, and advice and assistance.
3. It's not necessary for HE to take any further steps.

Request and response

4. Under the reference [IC-272441-B4Z8](#), the Commissioner had considered a request that the complainant submitted to HE on 28 September 2023 (its reference RFI4132). In a decision notice dated 20 May 2024, he had instructed HE to disclose certain information held in a Help To Buy: Equity Loan tracker spreadsheet.

5. On 31 May 2024 HE disclosed the information to the complainant.
6. The complainant then contacted the Commissioner as they considered that HE held further information relevant to their request. The Commissioner advised that he was aware that HE could hold another spreadsheet but that this was outside the scope of their request of 28 September 2023. He suggested that the complainant submit a new request to HE for this information.
7. At this time, the complainant was also corresponding with HE. They wrote to HE on 14 June 2024 to advise the following:

“...I confirm my request is limited to the information contained in the complete spreadsheets (old and new) since 2021 till date, excluding the information not to be disclosed as per the Information Commissioner’s Decision Notice.”
8. HE explained that a request for a “new” spreadsheet would be a new request, and on 19 June 2024 the complainant confirmed that:

“On this basis, I believe you will provide information “all spreadsheets for all properties including those without an EWS1 form in an excel file since you started recording this information without restricting ability to apply filters. This excludes information to be withheld according to the ICO Decision Notice” by 28th June 2024 ...”
9. HE responded to this new request on 15 July 2024 (its reference RFI4815). It disclosed information in two relevant spreadsheets it holds (Spreadsheet 1 and Spreadsheet 2), having redacted some information under sections 40(2) and 43(2) of FOIA.
10. The complainant requested an internal review on 17 July 2024. They disputed HE’s reliance on section 43 to withhold some of the information.
11. They were also dissatisfied with the format in which HE had provided the information and said that there appeared to be a gap in the dates in the disclosed spreadsheet information. The complainant queried if these were “all and the complete spreadsheets.”
12. HE provided a review on 25 September 2024. It provided more information in another spreadsheet (Spreadsheet 3). This was the same as in Spreadsheet 1 but updated with information created in between the original request for Spreadsheet 1 (which the Commissioner understands to be the request of 28 September 2023) and the current request. HE maintained its reliance on section 43(2) to withhold some information and addressed the complainant’s other queries.

Reasons for decision

13. In their new complaint to the Commissioner, the complainant said that they're not satisfied that HE applied section 43(2) to some of the information in scope of their request. They were also dissatisfied that HE hadn't confirmed whether the disclosed information from one of the spreadsheets reflects the complete spreadsheet and all the information it holds that's relevant to their request.
14. Finally, they raised the matter of the format in which HE supplied the information and that it didn't explain abbreviations in the information from the spreadsheet.
15. This reasoning's focus is on the request of 19 June 2024, whilst noting that this request is related to the original request of 28 September 2023. The notice covers whether HE has disclosed all the relevant, non-exempt information that it holds, and its application of the section 43(2) of FOIA to information it withheld. The Commissioner will also consider the matter of the abbreviations and the format in which HE provided the disclosed information.

Section 1 – general right of access to information held by public authorities/ Section 10 – timeliness of response.

16. Under section 1(1) of FOIA a public authority must (a) confirm to an applicant whether it holds the information they've requested and (b) communicate the information if it's held and isn't exempt information.
17. Under section 10(1) an authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
18. In its submission to the Commissioner, HE discussed its earlier correspondence with the complainant. It says that, based on that correspondence, it believed the fact that the scope of the spreadsheet was 'all novel redemption cases' - which were almost exclusively limited to cladding matters - was a significant factor in the complainant's query about whether or not it had provided all information, or appropriately withheld it from disclosure.
19. The complainant had provided clarification on 14 June 2024, and HE has noted that on 17 June 2024, it had advised the complainant as follows:

"For absolute clarity, we have disclosed the full spreadsheet to you that was the subject of your request, with the exception of the information to be withheld according to the ICO Decision Notice.

20. The complainant had responded the same day, stating:

"I don't believe you disclosed the full spreadsheet since you only provided part of the spreadsheet. You did not provide all properties recorded in the spreadsheet including those without an EWS1 form since you started recording this information till date."

21. At internal review, HE says that it became apparent that another version of the spreadsheet (Spreadsheet 3) existed. It disclosed information from this spreadsheet to the complainant, save for the same redactions to personal, commercially sensitive information and information that would be likely to endanger an individual's health and safety (section 38 of FOIA). HE had apologised and advised that it couldn't be sure why this spreadsheet had been overlooked originally but it might have been due to a change in personnel.
22. In its submission to the Commissioner, HE apologised again and acknowledged that it's regrettable that this information wasn't provided at the time of the original request. It says that all its staff receive training on FOIA, and their responsibilities and this particular team regularly liaises with the Information Governance team to handle requests for information. HE says it's confident there is no systemic issue which led to the error.
23. HE says that in conducting this final review, it has again consulted with the relevant business area which has confirmed there's no additional information that falls within scope of the request that hasn't been provided [or withheld].
24. It is logical, HE says, that the three spreadsheets represent all of the information held. Spreadsheet 1 was a 'snapshot' in time to facilitate its response to FOIA request RFI4132. Spreadsheet 3 is the full spreadsheet in which information continued to be created after the request was received by its previous mortgage administrator, Target. Spreadsheet 2 was created by HE's new mortgage administrator, Lenvi.
25. As it had explained to the complainant during the clarification process, HE says that the spreadsheets don't contain all redemption cases. This is because to compile that information would far exceed the cost limit prescribed under section 12 of FOIA. HE notes that this has been confirmed in previous decision notices ([IC-266511-J3V7](#) and [IC-266513-L1D8](#)).
26. On the basis of HE's explanation to him, the Commissioner is satisfied that, on the balance of probabilities, apart from the information it has disclosed and that which it has withheld, HE doesn't hold any further

information within scope of the complainant's request of 19 June 2024 (or 28 September 2023).

27. However, HE didn't communicate all the non-exempt information it holds within the statutory period and so it didn't comply with sections 1(1) and 10(1) of FOIA.

Section 43 – commercial interests

28. 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.
29. HE has discussed its application of section 43(2) in its submission to the Commissioner. In order not to prejudice those commercial interests HE is seeking to protect through its application of this exemption, he'll reproduce some, but not all, of that discussion in this notice.
30. First, HE has confirmed that for the majority of the withheld information, it is its own commercial interests that would be likely to be prejudiced if the withheld information were disclosed. However, some information would be likely to prejudice the commercial interests of third party organisations – Persimmon PLC, HSBC Group, and Taylor Surveyors - if it were to be disclosed.
31. HE has gone on to explain how disclosing the information would or would be likely to cause the envisioned prejudice and has first listed the information it's withholding under section 43(2), not reproduced here.
32. HE acknowledges that, on their own, these categories of information aren't commercially sensitive. However, it says, held in the context of information relating to redemption of Help to Buy: Equity Loans, it considers that the information becomes very commercially sensitive in nature.
33. Where properties were found to have unsafe cladding or be affected by other novel issues, the properties were either un-mortgageable or reduced in value, in some cases significantly reduced in value. This is particularly pertinent because of the nature of the Help to Buy: Equity Loan. As HE had explained elsewhere in its submission, the Loan is an equity charge and therefore the loan amount is not for a fixed amount. Instead, the Help to Buy: Equity Loan is a loan taken to cover a percentage of the market value of the property concerned and the Equity Charge is secured for that percentage of the prevailing market value of the property. The loan amount therefore rises and decreases in line with the prevailing market value of the property – this means its value can rise or fall with the overall value of the property.

34. As some properties were reduced in value, this means the value of the equity loan was reduced. HE has gone on to provide more detail about the Help to Buy: Equity Loan, which hasn't been reproduced here.
35. HE notes that it's required to maintain the value of the Government's investment in the Help to Buy: Equity Loan product. But it recognises that individuals need to sell their properties and manage their finances. A blanket policy on rejecting valuations for less than the original purchase price of the property wouldn't be in the public interest and wouldn't allow HE to demonstrate that it's a responsible lender. HE says it recognises the additional stress of a property being deemed to have unsafe cladding and it resolved to take a pragmatic approach.
36. HE has gone on to discuss other information it has withheld under section 43(2), which, again, hasn't been reproduced here.
37. It says that, as it had outlined in its internal review, it considers that releasing the withheld information would be likely to prejudice HE's ability to recover the amount of public money loaned in the Help to Buy: Equity Loan programme. It would also negatively affect HE's negotiating position regarding the value of homes and the value of the equity mortgages.
38. HE says it's also relevant to consider that if Help to Buy: Equity Loan customers were to artificially reduce the value of their properties, this could affect house prices more widely across England. This would be likely to negatively affect the housing and financial sectors as a whole, as well as neighbouring property owners.
39. HE has withheld the identities of third party organisations who have been involved in either the production, finance, or valuation of the property. It says that a large number of housebuilders, lenders and valuation firms have been involved in the management of Help to Buy: Equity Loan properties. HE's view is that releasing this information, which will identify a small number of organisations, will indicate that, given the context of the information, there has been an 'issue' in relation to that organisation and Help to Buy: Equity Loans.
40. HE considers that releasing this information will reveal commercial information about a third party which would be likely to in turn affect their commercial interests. The consequences of releasing data that is part of a wider ongoing matter could damage HE's relationships with partners and put other potential works at risk, namely the ongoing management and remediation of properties affected by unsafe cladding. This wouldn't be in the public interest as this could put potential homes in jeopardy and affect HE's ability to deliver against its objectives in its strategic plan.

41. HE believes that disclosing the information would be likely to result in the third parties being deterred from engaging with it in this and other matters. This will mean that HE's ability to conduct work in the public interest and meet its strategic objectives would be likely to be impaired.
42. HE also says that, given that only one housebuilder, lender and valuation firm is mentioned in the requested information, this exacerbates the prejudice it's seeking to avoid.
43. Finally, HE confirmed that it's relying on the lower threshold of likelihood, that disclosure 'would be likely' to have a prejudicial effect
44. When he's considering whether section 43(2) is engaged, the Commissioner considers whether the envisioned harm concerns commercial interests and whose interests would be harmed; how disclosing the information would cause that harm and the level of likelihood of the harm occurring.
45. First, the Commissioner is satisfied that the envisioned harm relates to the interests applicable to section 43 - commercial interests - and has noted that the envisioned prejudice would affect HE and other organisations. He hasn't been able to fully discuss it in this notice, but the Commissioner also accepts that there's a causal relationship between disclosing the information and commercial harm to HE and those other organisations. He considered similar matters in IC-272441-B4Z8.
46. Finally, the Commissioner has considered the level of likelihood of the envisioned prejudice occurring. He accepts as credible the lower level of likelihood that HE envisions; that the prejudice would be likely to happen, rather than would happen.
47. Because the criteria at paragraph 44 have been met, the Commissioner considers that HE was entitled to apply section 43(2) of FOIA to the information it has withheld. He's gone on to consider the associated public interest test.

Public interest test

48. HE has noted the following public interest arguments for disclosing the information:
 - Openness and transparency in decision making relating to valuations and the amount of equity loan recovered
 - Fairness in treating home owners equally and being transparent about it

- Openness in recovery of public money
 - Homes England's ability to recover public money lent under the Help to Buy: Equity loan scheme (as noted in IC-272441-B4Z8)
 - The public interest in how a significant amount of public money is managed and in decisions that affect public services and public money being accountable.
49. Against disclosure, HE has argued the following, in addition to the reasoning it provided which isn't reproduced in this notice:
- Disclosing information which would be likely to impact on the ability of HE to value homes and calculate the amount of equity mortgage to be repaid
 - Accountability for public money loaned for equity mortgages and the amount recovered, and maximising the amount recovered
 - External factors influencing the valuation of the property which would reduce the value of the property, and the amount of equity mortgage recovered
 - Loss of public confidence in HE that valuations and redemption figures are of market value
 - Loss of public confidence in the ability of HE to recover the maximum amount of equity loan and recoup public money loaned
 - Creation of losses to HE in not being able to recover the maximum amount of equity mortgage and recover public money loaned
 - Negatively affecting the negotiating position of HE regarding the value of the home and the value of the equity mortgages
 - Disclosure of factors HE takes into account in negotiating valuations and redemption figures would be likely to negatively influence the outcome of the negotiations and would be likely to affect the amount of equity loans recovered
50. HE has noted that these arguments have a common theme, namely protecting public money, which is directly linked to HE's commercial interests.
51. HE has concluded by balancing the arguments for and against disclosure. It notes that they contain a commonality – public money. HE says that it recognises the public interest in disclosing information on how it makes decisions about managing public money. However, it says, it doesn't consider that the public interest in this case is so compelling

that it can allow prejudice to HE's own [and other organisations'] commercial interests; its ability to manage that public money most effectively in order to maximise the value to the public of the Help to Buy: Equity Loan programme.

52. In short, HE says, it doesn't consider 'how' its management of public funds is carried out - ie HE's internal criteria - outweighs the effectiveness of the management itself.
53. HE considers that there's significant public interest in it recovering as much public money as possible. Disclosing the withheld information would be likely to prejudice the recovery of public money. It notes that this was recognised in the Commissioner's earlier decision.
54. HE says it deals with requests for the redemption of Help to Buy: Equity Loans on a case-by-case basis and each matter is assessed on its own facts. The possible statistical analysis of internal criteria should the information be disclosed would be likely to prejudice this discretion.
55. The Commissioner considered broadly this same matter in IC-272441-B4Z8 which concerned similar information. In that case, he recognised that there was a public interest in transparency about the extent to which HE has been able to recover public money spent under the Help to Buy: Equity Load scheme. But he found that there was also significant public interest in HE recovering as much of this money as possible. The Commissioner has again found that disclosing the requested information would be likely to prejudice HE's ability to do that.
56. As in his earlier decision, the Commissioner's decision is again that the public interest in managing public money most effectively outweighs that in providing transparency about how it has been managed.
57. As such, his decision is that the public interest in maintaining the section 43(2) exemption outweighs that in the information being disclosed.

Procedural matters

58. Regarding the matter of unexplained abbreviations, FOIA concerns solely recorded information a public authority holds when it receives a request. FOIA doesn't oblige an authority to provide explanations or clarifications, to give opinions or respond to general queries.
59. Section 16(1) of FOIA obliges a public authority to provide advice and assistance if it's reasonable to do so. The circumstances in which advice and assistance should be offered is outlined in the [FOIA Code of Practice](#). They aren't the circumstances outlined here.

60. Section 16(2) of FOIA states that a public authority that has conformed with the Code of Practice will have complied with section 16(1) of FOIA. The Commissioner finds that, in the circumstances of this case, there was no specific advice and assistance that HE was obliged to provide. It therefore complied with section 16(1) of FOIA.
61. In its submission to the Commissioner, however, HE has noted that in correspondence to the complainant on 14 June 2024, it had explained various colour coding and abbreviations in the disclosed information and discussed this matter further in its internal review. HE has confirmed it has nothing further to say on that matter.
62. Finally, the complainant isn't satisfied with the format in which HE disclosed information. HE had disclosed information in a PDF format which the complainant said made it difficult for them to use or examine the information.
63. Section 11 of FOIA concerns the means by which the communication of the information should be made. Section 11(1) states that where, on making their request for information, the applicant expresses a preference for communication by particular means or in a particular form, the authority should give effect to that preference, so long as it's reasonably practicable to do so.
64. The complainant's request has been reproduced in this notice. They indicated that that they wanted the information in an Excel format and in its submission, HE has acknowledged this.
65. HE goes on to say that it takes its obligations to protect the confidentiality and integrity of information very seriously. As such, it maintains a cautious approach to the format of disclosed information. HE says it's mindful of recent incidents where disclosures made in response to a FOIA request have inadvertently revealed hidden personal information, putting individuals at risk and resulted in regulatory action from the Commissioner. This is discussed in the Commissioner's published guidance on section 11 of FOIA.
66. In that guidance the Commissioner advises that where a response is issued that doesn't align to the preferred means of communication, the authority must give an explanation. HE says that it can confirm it gave a reason to the complainant in both its initial response and its internal review.
67. HE has noted the level of personal and commercial information contained within the spreadsheets and the likelihood of harm that could be caused by their inadvertent disclosure. It says it therefore decided to provide the information in PDF form, rather than Excel as requested. HE

considered that, other than minor inconvenience, there was no harm to the public or threat to transparency by releasing the information in PDF form.

68. On 28 September 2023, the Commissioner issued an [advisory note](#) to public authorities, calling on them to stop using original source excel spreadsheets in FOIA responses, for the reasons HE has noted.
69. As such, the Commissioner is satisfied that HE's approach – to provide the spreadsheet information in PDF format rather than in Excel format – was appropriate. He finds that HE complied with its obligations under section 11 of FOIA.

Right of appeal

70. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

71. 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.
72. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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