



Our Reference:

**BY EMAIL ONLY**

7 August 2015

Dear

**Request for Information**

Thank you for your email dated 10 July 2015 requesting the following information:

*I am aware of the global accounts data and have already been analysing it. However, the information I am trying to obtain is for future plans (which I understand is contained within the Financial Forecast Returns (FFR)).*

*Therefore, if you could pass my request on I would appreciate it. I understand that the information might not be released for individual providers but even an England wide overview of the future maintenance spends / newbuild plans would be of use.*

We have investigated the details of your request and are writing to communication that we are unable to provide you with the information at this time.

We hold the information at a Register Provider (RP) level as well as Local Authority (LA) level. We have identified that the information about individual RP's falls under Section 31(1)(g)(2)(a) of the Freedom of Information Act (FOIA) as disclosure would prejudice the Homes and Communities Agency's (HCA) ability to regulate effectively and has therefore been withheld.

The Homes and Communities Agency (HCA) works with Registered Providers (RPs) in a variety of ways and we rely heavily on providers' financial forecasts in our regulation. Financial plans are commercially sensitive and there is an understanding that we will use individual provider business plans for regulatory uses only. It is the opinion of the HCA that making publicly available providers' commercially sensitive information would significantly harm our ability to regulate effectively in the future. The HCA considers that disclosure of this information would hinder the HCA's ability to exercise its statutory regulatory powers as set out in the Housing Regeneration Act 2008 (HRA) for future investigations as it could compromise our ability to request information, discuss issues and receive candid information from RPs. In light of the above, exemption Section 31(1)(g)(2)(a) is engaged.

Homes and Communities Agency  
Fry Building, 2 Marsham Street, London, SW1P 4DF

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### **Section 31 – Law Enforcement**

**31.** (1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice -

- the exercise by any public authority of its functions for any of the purposes specified in subsection (2)
  - The purposes are (in this case):
    - The purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment may exist or may arise

To maintain this exemption we also need to consider the Public Interest Test factors in favour of disclosure and non-disclosure. Below we have set out both arguments.

#### **Public Interest test – factors in favour of disclosure**

We recognise that there is a public interest in operating transparently and being held to account in how we regulate RPs.

We also recognise that it is of interest to the public to understand how the HCA conducts investigations and how it works with RPs at such times.

Further, there would be public interest in releasing this information to provide the public with the ability to challenge or make comment on the information.

#### **Public Interest test – factors in favour of non-disclosure**

Disclosure would harm our ability to conduct future assessments/investigations if the bodies we regulate cannot be candid with us. It could also affect the voluntary supply of information either from the RPs themselves or other parties wishing to remain confidential in matters concerning the possibility of regulatory action. These outcomes would have a negative impact on our ability to regulate in accordance with our statutory obligations.

The HCA considers there is more than enough published information on how we regulate RPs. We also publish all Regulatory Notices and Judgements [here](#), so providing detailed information that reveals candid discussions would not further enable the public to understand our regulatory process and is therefore not in the public interest to release it.

We have therefore concluded that the balance falls in favour of non-disclosure at this time. We would however state that the public interest is continually changing and that whilst we are unable to release this information at this time, we welcome all requests for information and a future request on this matter would again be considered against the prevailing public interest of that time.

In relation to the information we hold at LA level, we consider that as this is intended for future publication, and therefore your request falls under Section 22.

Each year the HCA publishes its Global Accounts of Registered Housing Providers. It includes a section that looks at providers' financial forecasts in aggregate. The March 2016 publication will include aggregate information taken from the FFR returns received during 2015/16.

The information in the financial forecasts received between April and June 2015 are based on assumptions about income made prior to the July budget. The July budget contained a significant change in the rent settlement for social housing. In response to this the HCA has determined that it is necessary for providers to submit a revised FFR by the end of October 2015 using revised assumptions.

### **Section 22 – Information intended for future publication**

Section 22 of the FOIA says that information is exempt if, at the time a public authority receives a request for it:

- the public authority holds it with a view to its publication;
- the public authority or another person intends to publish the information at some future date, whether determined or not; and
- in all the circumstances it is reasonable to withhold the information prior to publication.

In this case the information you have requested is intended for publication in March 2016 and therefore the exemption applies. However, in order to engage section 22 of the FOIA, a public authority must first determine whether or not it is reasonable in all the circumstances to withhold the requested information prior to publication before considering the public interest test.

### **Public Interest Test – Factors in favour of disclosure**

The HCA is compliant with the government agenda of transparency and recognises the benefit of publishing the information particularly when it concerns the Regulatory Framework.

### **Public Interest Test – Factors in favour of non-disclosure**

The HCA has had to weigh the above arguments against the harm that may result from publishing information which is yet to be finalised. Publication of this information now would inevitably lead to incomplete and inaccurate data being made available. In such circumstances rather than promote understanding, the information could be very misleading. This may worry tenants, stakeholders and lenders unnecessarily.

The HCA is committed to publication of this information at a later date, and is therefore of the opinion that the public interest in maintaining this exemption is greater than the public interest in disclosing it.

After careful consideration we have concluded that the balance of the public interest favours the non-disclosure of the information requested at this time. This is in respect of the both RP and LA level. As mentioned previously, the public interest is continually changing and that whilst we are unable to release this information at this time, we may be able to reconsider its disclosure in the future.

If you have any questions regarding this response or any further queries you can contact us at the following addresses and quote your unique reference number found at the top of this letter:

**Email:** [mail@homesandcommunities.co.uk](mailto:mail@homesandcommunities.co.uk)

**Mail:** Information Access Officer  
Homes and Communities Agency  
Fry Building  
2 Marsham Street  
London  
SW1P 4DF

If you are unhappy with the way Homes and Communities Agency has handled your request you may ask for an internal review. You should contact

Head of Legal Services  
Homes and Communities Agency  
Fry Building  
2 Marsham Street  
London  
SW1P 4DF

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Yours sincerely

Naomi McMaster  
Information Access Officer  
Homes and Communities Agency

Homes and Communities Agency  
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