



Our Reference:

BY EMAIL ONLY

22 January 014

Dear

Request for Information

Thank you for your letter dated 19 December 2014 requesting the contract in relation to title number WM672725 being the land on the north side of Birmingham Road, Dudley.

Alongside this letter we have provided you with the contract requested above. Whilst we have been able to make a large amount of the information contained in the contract available to you, some of it has been withheld. Most redactions are made under Section 43(2) of FOIA however Appendix 4 (Ground enabling Works and Specification) is redacted under Section 41 of FOIA. Below a full summary of the exemptions have been explained as well as and relevant Public Interest tests conducted.

Section 43(2) – Commercial Interests

Section 43(2) of the Act permits a public authority to withhold information where disclosure “would, or would be likely to, prejudice the commercial interests of any party,” including the public authority holding the information.

The HCA determines that harm would arise from disclosure of this information as it would compromise our commercial interests. It would impact upon our ability to operate effectively and competitively within the marketplace as disclosure would reveal conditions specific to a particular developer, which would result in other third parties having an advantage in negotiating conditions in future deals. Disclosure of the information could also harm the third party that HCA has entered into a contract with as it would enable competitors to use the information against them resulting in loss of business.

Section 43 of FOIA requires a Public Interest Test to be carried in order to see where the weight of arguments lies in relation to disclosure of the information. The arguments both for and against disclosure are set out below.

Public Interest Test – Factors in favour of disclosure

Disclosing the information requested promotes the accountability transparency of the HCA as well as providing increased information about the application of public funds. This in turn

provides a basis for a more informed public debate about the value of money being obtained by the HCA.

Disclosure would also assist the public in understanding the HCA's position and gain an understanding as to why certain decisions have been made or actions considered. This again helps to assist the public in informed debate around the future of projects, sites and developments.

Public Interest Test – Factors in favour of non-disclosure

Whilst the HCA recognises the need to be transparent, there are strong arguments for maintaining the engaged exception.

Disclosure of information we hold would severely undermine our ability to negotiate competitively and achieve best value for money in future transactions. It would affect our current position on achieving best sale price but would also disclose our negotiating strategies to the world at large which would include those wishing to potentially buy/sell to us in future transactions. To release this would have a negative impact on the HCA and would not be in the public interest considering the public purse is at stake as well hindering the HCA's ability to continue their work in a fair market, for this and all other projects.

We have in this case determined that disclosure would cause harm rather than just create a likelihood of harm. This strongly adds to the factors below of non-disclosure.

Disclosure of the withheld information would indicate the HCA's commercial strategy, including the valuation ranges, to the world at large. This would include any interested parties that were seeking to transact with the HCA. This would therefore significantly damage the HCA's commercial standing in seeking best value for money as well as hindering our ability to make the best decisions and achieve our operational objectives.

It is not in the public interest to diminish a public authority's ability to be competitive in a commercial market by prematurely releasing information as the result of an FOIA request when it is seeking to achieve best value for the public purse.

Lastly, disclosure of information would impact on the third party as it would enable its competitors to use the information against them in order to gain valuable business.

Taking all factors into consideration we have determined that the exception is maintained and the information is withheld at this time as the public interest arguments are weighted more heavily to non-disclosure. We would, however, stress that the public interest is as ever changing concept and the arguments may change over time.

Section 41 – Information provided in confidence

Section 41 of the Act permits an authority to exempt information if the information was obtained by any other person (including another public authority) and if disclosure by the authority that holds the information would constitute a breach of confidence.

Section 41 is a class exemption which means it only relies on it 'fitting the profile' for the exemption to be engaged without requiring a test of prejudice. It is also an absolute exemption meaning that public interest test does not need to be carried out to apply the exemption. We have therefore withheld Appendix 4 (Ground enabling Works and Specification) of the contract for Land 1 under Section 41 as this information was supplied to us by a third party.

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

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

