



Our Reference:

**BY EMAIL ONLY**

6 August 2015

Dear

**Request for Information**

Thank you for your email dated 26 June 2015 requesting information on One Housing Group (OHG). For ease of reference your request is below:

*I request copies of all documentation (held both electronically and in paper-form) relating to any complaints or investigations into One Housing Group (OHG) since 2005.*

*This includes but is not limited to:*

- 1. All correspondence between complainants and the HCA in relation to investigations and complaints against OHG;*
- 2. All correspondence between OHG and the HCA in relation to complaints made against OHG and any investigations by the HCA;*
- 3. All documents relating to HCA investigations into OHG in accordance with Serious Detriment procedures;*
- 4. All documents produced by the Consumer Regulation Panel in relation to OHG related complaints/investigations;*
- 5. Any correspondence between the HCA and FCA in relation to OHG related complaints/investigations.*

We have located a large amount of correspondence within the scope of your request of which we have been able to make a lot of it available to you. However we have identified that some information falls under the following Freedom of Information Act (FOIA) exemptions and has therefore been withheld:

- Section 42
- Section 31(1)(g)(2)(a)
- Section 31(3)
- Section 40(2)
- Outside scope of the request

We have provided you with a schedule to identify what exemption/reason has been used for withholding parts of the information.

The Homes and Communities Agency (HCA) works with Registered Providers (RPs) in a variety of ways, including corresponding with them to discuss areas of concern which may require further information to be supplied, to ascertain if regulatory action is needed. The HCA considers that disclosure of the withheld 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.

### **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 -

- g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)

(2) The purposes are (in this case):

- a) 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 issues discussed.

#### **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 to public the 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.

Further to the above, a small amount of information has been withheld as it is the personal data of a third party. This has been withheld under Section 40(2) of FOIA.

### **Section 40(2) – Personal Data of a third party**

Section 40(2) of the Act permits a public authority to withhold information where disclosure would be in breach of any of the Principles of the Data Protection Act. Disclosure of certain information within the documents would be likely to breach the First Data Protection Principle, as it would exceed the Data Subjects' expectations as to how their information would be processed. This exemption is absolute and therefore no public interest test needs to be carried out to apply the exemption.

### **Section 31(3) Neither confirm nor deny (NCND)**

Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at Section 1(1) (a) is to confirm or deny whether the information specified in the request is held. The second duty at Section 1(1)(b) is to disclose information that has been confirmed as being held.

The HCA can neither confirm nor deny that it holds some information relevant to your request. When responding to a request by refusing to confirm or deny under a prejudice based exemption, the HCA needs to demonstrate what prejudice (relevant to the particular interest that the exemption relates to) would, or would be likely to, arise from complying with s1(1)(a). The HCA is not required to consider what prejudice would, or would be likely to arise from complying with section 1(1)(b) (providing the information). However we need to explain which limb of the comparative section 1(1)(b) provision is relevant to the exclusion from the duty to confirm or deny. We have the duty in Section 1(1)(a) of FOIA does not apply by virtue of the following exemption:

### **Section 31 – Law enforcement**

Under Subsection (3) the duty to confirm or deny does not arise if, or to the extent that, compliance with Section 1(1)(a) would, or would be likely to, prejudice the commercial interests mentioned in subsection (2) below.

Subsection (1)(g)(2)(a) of Section 31 states that information is exempt if its disclosure under FOIA would, or would be likely to, prejudice the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

### **Prejudice identified**

The HCA has identified that confirming or denying whether any third party has or has not breached a standard and is or is not being investigated, would be likely to prejudice the HCA's ability to effectively regulate that RP or any other RP.

### **Section 42 – Legal Professional Privilege**

Section 42 of the Act permits a public authority to withhold information which is subject to legal professional privilege (LPP). We can confirm that some of the information you have requested contains legal advice that is subject to LPP, that this privilege has not been lost or waived and that the information is therefore exempt at this time. Section 42 is a qualified exemption and therefore subject to the public interest test so that factors favouring both the disclosure and non-disclosure of the information can be considered before engaging the exemption.

#### **Public Interest in favour of disclosure**

Disclosure of the requested information would help demonstrate HCA's commitment to the principles of transparency and accountability, which are central to the successful operation of information access legislation. It is in the public interest that public authorities take a pro-active and open approach to making information available.

Disclosing information helps further the public scrutiny of the activities and management of the HCA. This helps to serve the public interest by enabling interested individuals to be fully empowered of all the facts when considering the activities of HCA. It encourages individuals to challenge the propriety of the decisions or actions of a public authority, as well as helping them to understand why a particular course of action may have been pursued.

We therefore recognise that the disclosure of the legal advice would help individuals understand the HCA's legal position and, in turn, gain an understanding as to why certain decisions have or will be made.

#### **Public interest in favour of non-disclosure**

Whilst we recognise that there are valid and legitimate arguments in favour of disclosing the information, LPP is a fundamental aspect of the English legal system and any party wishing to procure legal advice should be able to do so on the understanding that this advice will not be undermined by inappropriate or premature disclosure.

LPP consist of two categories: advice privilege and litigation privilege. The information have requested falls into the category of advice privilege meaning that it relates to confidential communications between the Agency and its lawyer obtaining legal advice, assistance and/or opinion of its rights and obligations in a particular matter.

A client and its lawyer both expect their communications to be confidential and indeed, professionally lawyers owe their clients a duty of confidence. Owing to the above HCA should be able to obtain any legal advice in confidence, without having to divulge the information when requested by individuals.

In addition, disclosure of this information would prejudice the HCA's ability to pursue the advice, options or options in a free and frank manner and undermine our ability to mount a robust defence should this matter become litigious. This is not in the public interest, which is best served by ensuring that public authorities are able to obtain honest, effective and informative legal advice and that their ability to rely upon this advice is not unduly compromised.

After careful consideration we have concluded that the balance of the public interest favours the non-disclosure of the information requested at this time. 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:

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**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

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

0300 1234 500  
[homesandcommunities.co.uk](http://homesandcommunities.co.uk)

Yours sincerely

Naomi McMaster  
Information Access Officer  
Homes and Communities Agency