



Our Reference:

BY EMAIL ONLY

18 August 2015

Dear

Request for Information

Thank you for your email dated 6 July 2015 requesting information on a Deed of Clawback made between the Homes and Communities Agency (HCA) and Summix Limited. For ease of reference your request is below:

I am writing to request a copy of a Deed of Clawback dated 9 April 2014 made between (1) Homes and Communities Agency and (2) Summix Limited mentioned in official copy of the register under SK268905

We have now had an opportunity to investigate your request and are writing to communicate our response. Attached to this letter is a copy of the deed requested, however minor redactions have been made. The redactions have been made under section 43(2) of the Freedom of Information Act 2000 as the release of the information regarding the calculation of the overage payments could harm the HCA's negotiating position in future projects involving overage.

Section 43(2) – Prejudice to 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. We have identified certain information which, if released, could have the potential to prejudice the commercial interests of the HCA in relation to our ability to negotiate contracts in the future.

Release of this information would harm the HCA's commercial interests as it would release to the world at large the agreed overage calculations and information for this project. As a result, for future negotiations, third parties would be at an advantage over the HCA in any project negotiation related to overage as they would have knowledge of what the HCA has agreed to previously.

We have concluded that Section 43(2) is engaged for the information that would cause this type of prejudice if released.

Section 43(2) is a qualified exemption, which means that before we can withhold information we must firstly consider the public interest in the disclosure. We can confirm that we have given careful consideration to the disclosure of this information, and identified the following factors as relevant.

Public Interest Test – Factors in favour of disclosure

Disclosure of the requested information would help demonstrate HCA’s commitment to the principles of transparency and accountability.

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.

Public Interest Test – Factors in favour of non-disclosure

It is not in the public interest to limit the HCA’s ability to compete in a commercial setting by releasing information as the result of an FOIA request when it is seeking to achieve best value for the public purse.

Disclosure of the information would be likely to affect the HCA’s ability to operate effectively in a competitive market as it would disclose our position with regards to the negotiation process and the agreements we accept. If this were to be released it would diminish our ability to achieve best value for money as any third party wishing to enter into a future transaction with us may base their negotiations on the information contained within the withheld information.

We have, therefore, concluded that the balance of the public interest favours non-disclosure of this information at this time. We would, however, stress that the public interest is as ever changing concept and the arguments may change over time.

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

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

0300 1234 500
homesandcommunities.co.uk

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