



Our Reference: FOI000426

BY EMAIL ONLY

9 April 2015

Dear Mr Cowcher

Request for Information

We are writing to you in relation to your request for information regarding the Delivery Partner Panel 2. We received your request on 19 December 2014 and responded to you on 13 January 2015 where we supplied you with the requested information in full. Since our response to you, it has become apparent that this information is exempt under the Freedom of Information Act 2000 (FOIA) and should have been withheld. Due to this, please accept this letter as a formal Refusal Notice under Section 17 of FOIA which details the reasons the information engages and maintains the exemption Section 43(2). It is also imperative that the information released to you under the FOIA request is destroyed and is not published or disseminated by Test Valley Borough Council. We are aware that you hold the information as per the conditions of being a DPP2 user.

To be clear, you requested the following:

On behalf of Test Valley Borough Council I would like to request all information with regard to build costs within the Delivery Partner Panel 2 for the areas of the South East and the South West.

We have determined that disclosure of all monetary figures and percentages in the document titled 'SOUTH EAST - SUMMARY OF FIGURES FOR CARRY FORWARD DPP2' which was previously supplied to you, would cause harm to both the third party developers that make up the DPP2 and the Homes and Communities Agency (HCA).

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 HCA and its panel partners.

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, which are central to the successful operation of information access legislation. It is in the public interest that public authorities take a proactive and open approach to making information available.

There is a legitimate public interest in ensuring that public authorities are operating effectively and in line with their organisational objectives, and that they are obtaining the maximum value for money for the public purse. This can be served by promoting transparency in the disclosure of any information which relates to the Agency's decision making and spending activities.

Public Interest Test – Factors in favour of non-disclosure

This information is not generally known, or readily accessible to the wider public, and is central to each firm's ability to maintain its position in a competitive market. Disclosure of the information could also have a disadvantageous impact upon the ability of the firms to compete effectively in future tender exercises, as rival firms would be able to use this information to inform their own submissions. To provide details of the costs charged by appointed firms and their overall profit margins, would involve releasing information central to the way in which they are able to generate profits, as well as to their ability to maintain a "competitive edge" over their rivals. This information would be available to rival firms who could use it to influence their own tender submissions in the future, and as such may impact directly upon their ability to compete effectively in the marketplace. It would also affect their willingness to work alongside HCA in the future which would diminish the HCA's ability to work with developers who provide best value for money and/or deliver the best outcomes. This would not be in the public interest, which is best served by ensuring that those organisations upon which the HCA relies are able to continue to provide the best results for the best value for money, and are not unduly prejudiced through their association with the Agency.

Whilst we recognise that there is a legitimate public interest in the disclosure of any official information, such disclosure needs to be considered in line with the potential harm which may be caused by its release. We have made a considerable amount of information available, and have endeavoured to serve the public interest through the disclosure of this information. However, we have determined that the public interest in favour of withholding the specified information falls in line of non-disclosure at this time. We would stress that 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:

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

0300 1234 500
homesandcommunities.co.uk

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