

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 22 February 2023

**Public Authority:** Department for Levelling Up, Housing and Communities

**Address:** Fry Building  
2 Marsham Street  
London  
SW1P 4DF

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to a successful bid made to the DLUHC as regards its Community Ownership Fund. The DLUHC withheld the information under section 43(2) of FOIA.
2. The Commissioner's decision is that the DLUHC was correct to apply section 43(2) to withhold the requested information.
  - The Commissioner does not require the DLUHC to take any steps.

## Request and response

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3. On 5 February 2022 the complainant made the following request for information under the FOIA for:

"I request that you kindly supply me with the details of the funding application of the Whithorn Trust and the Old Town Hall rebuild funding they have received of £300,000 that which they have been awarded via the Community Ownership Scheme.

My request is as follows and is outlined below. It is in 2 parts;

1. I request a copy of the fully completed application form/s made (regarding the above application for funding) by The Whithorn Trust and that was submitted by them or their representative. If there are more than one application, I would like to see all copies...

...2. I request all information that you have on the on the above funding application. This includes, the application made by the Whithorn Trust to include but not limited to all correspondence by phone, email, post; and to include all correspondence, meetings, minutes of meetings, calls etc relating the funding application of the Whithorn Trust and the 'Old Town Hall' rebuild funding they have received of £300,000 and that they have been awarded via the Community Ownership Scheme, actual submissions, post submissions etc."

4. The DLUHC responded on 4 March 2022. It refused the request on the grounds that the exemptions in Section 35(1)(a), 43(2) and Section 40(2) applied.
5. Following an internal review, the DLUHC wrote to the complainant on 18 July 2022. It upheld its initial position.

## The scope of the case

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6. The complainant did not question the application of section 40(2) to the information, and therefore the Commissioner has not considered this further.
7. Additionally, during the course of the Commissioner's investigation, the DLUHC withdrew its reliance upon section 35(1)(a) and relied purely upon 43(2).

8. The Commissioner therefore considers that the scope of the case is whether the DLUHC was correct to apply section 43(2) to withhold the information from disclosure.

## **Reasons for decision**

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### **Section 43(2)- commercial interests**

9. The following analysis explains why the Commissioner has decided that the DLHUC was correct to apply section 43(2) to withhold the information from disclosure.
10. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
11. The requested information relates to information about a successful application bid made to the Community Ownership Fund by the Whithorn Trust for funding in relation to the Old Town Hall in Whithorn, Galloway<sup>1</sup>. The information contains commercial information about the Trust's intentions, including project costs, budgets and working intentions.
12. The DLUHC argued that a disclosure of the information would prejudice the commercial interests of the Trust, and would undermine its own ability to judge bids for funding in the future.
13. The DLUHC provided correspondence with the Trust in which it confirmed that it considers that the information is commercially sensitive, and that its disclosure would be disadvantageous to it.
14. The DLUHC explained that if the information were to be disclosed, it considers that this would be likely to prejudice the Trust's commercial interests for the following reasons:
  - The information is subject to a duty of confidence, imposed on the Department by the common law duty of confidence. The information is neither trivial nor otherwise in the public domain, it has the necessary quality of confidence, and it was shared with

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<sup>1</sup> <https://www.gov.uk/government/case-studies/300000-to-transform-old-town-hall-in-whithorn>

the Department in circumstances creating an obligation of confidence due to the competitive nature of the bidding process and the commercial sensitivity of the information.

- The withheld information is still current and comprises detailed costings and data which, if released, would be likely to present an unfair commercial advantage to competitor businesses.
- Competitors in possession of this information would be able to absorb business, tempt staff with improved wages, and act to reduce the competitiveness of the Trust.
- In addition to the above points, the DLUHC said that some of the correspondence regarding the application relates to its internal process of assessment and moderation. It argued that disclosing this would provide insight into its own internal assessment processes and individual judgements which is otherwise not publicly available. It believes that a disclosure of this information could give other parties an unfair advantage should they decide to submit their own application in future rounds of the community ownership fund.

#### The Commissioner's analysis

15. The Commissioner accepts the arguments submitted by the DLUHC regarding the application of section 43(2).
16. Firstly, the Commissioner is satisfied that the harm the DLUHC envisages relates to commercial interests of the Trust and to the DLUHC. The withheld information is part of a competitive bidding process for funds to be awarded to bidders for planned activities.
17. Secondly, the Commissioner accepts that a causal link exists between disclosure and commercial prejudice which the DLUHC has identified. A disclosure of the withheld financial information would provide detailed information on the bid which the Trust submitted, thereby divulging information which would be likely to cause the prejudice it has foreseen.
18. The Commissioner also accepts that the prejudice identified would be likely to occur. A disclosure of the information would provide competitors to the Trust with detailed financial information as regards the way in which it intends to take forward the Old Hall project. This would provide an advantage to its commercial competitors.

19. Disclosing details of a successful funding bid would also be likely to lead to some bidders considering the way in which the bid has been drafted, the submission which supported the successful bid, and the amounts bid for. They could then draft or amend their own bids in order to increase their own chances of being successful against others in future rounds.
20. The Commissioner's decision is therefore that the DLUHC was entitled to apply section 43(2) to the withheld information. He has therefore gone on to consider the associated public interest test required by Section 2(1)(b) of FOIA.

### **The public interest**

#### The public interest in the information being disclosed

21. The complainant has expressed concerns about the funding bid to the DLUHC. She provided her arguments for considering that to be the case, both in the initial request, and also in the request for review.
22. There is a general public interest in public authorities being open and transparent about the way they do things and about how they make decisions over issues. The DLUHC recognised that there is a public interest in the public having a greater understanding the activities of the Community Ownership Fund; thus, ensuring better accountability for the spending of public money. In this case, a significant amount of public money was awarded to the Trust as a result of this bid.
23. There is a public interest in understanding how such bids are processed, considered, and decided upon, and in the DLUHC being as transparent as possible regarding the decisions which it takes in respect of bids. This ensures that the public can understand that there is no bias or unfairness in its decision-making process.
24. There is a public interest in the disclosure of information relating to bids. It would allow the public to identify that the purposes stated in the bid have been carried forward once funding has been won and received. This would aid in identifying bids which are not subsequently taken forward in the manner described within the bid. This adds a degree of additional protection against the potential misuse of public money. The Commissioner notes, however, that the DLUHC does publish high level information about successful bids.

#### The public interest in the exception being maintained

25. There is a public interest in companies to be able to bid for funding on a fair and equal basis. A disclosure of the information in this case would potentially undermine the level playing field for future such bids.

26. Details of financial plans, budgets and forecasts can be used by competitors to disadvantage the company concerned in a competitive market.
27. If organisations believe that their plans and financial information would be disclosed, this may dissuade them from being full and frank in their bids. Some organisations may decide not to submit bids if they are aware that commercially sensitive information about their organisation and/or their wider plans might be disclosed and, as a result, this may damage their prospects of their project being a success overall.
28. There is a public interest in allowing the DLUHC to be able to consider the full information which it receives without its decision-making process being hindered by a disclosure of financial and other business planning details from some bids via information access requests.
29. A disclosure of the bid details may result in lobbying against particular projects receiving funding as compared to others, thereby resulting in pressure being exerted for and against some bids on the DLUHC. Responding to such lobbying may also increase the resources required by the DLUHC to consider and award bids.

The Commissioner's conclusions on the public interest test

30. The Commissioner recognises that there is a public interest in demonstrating how community funds are allocated, and in ensuring that public funds are awarded on an equal, fair, and appropriate basis.
31. The level of funding, the high-level purposes behind that funding, and the intentions of the Whithorn Trust have already been disclosed into the public domain.
32. However, there is also a strong public interest in protecting the financial details and business plans of organisations who submit bids where disclosing that information would undermine the competitiveness of the organisations concerned, and potentially the aims and objectives behind their bids.
33. A disclosure of information such as details of the budgets forecast by the Trust for procuring land, goods or services would disclose details which can be used by providers to set prices at the highest possible levels. This would potentially undermine the ability of the Trust to procure items or services at market value.
34. Although the Commissioner notes the issues highlighted by the complainant in her arguments to the DLUHC, these are not issues which the Commissioner has the power to investigate.

35. The Commissioner has considered the public interest arguments both for and against the exemption applying in this instance. On balance, his decision is that the public interest favours maintaining the exemption in this instance.
36. The Commissioner's decision is therefore that the DLUHC was correct to apply section 43(2) to withhold the information in this case.

## Right of appeal

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37. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Ian Walley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**