

**Executive Head of Organisational
Development and Strategic Business**
Sheila West

My Ref:
Enquiries to: Emmanuella Chinedu

Date: 13th July 2016

Name: Mr Derek Moss



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Dear Mr Moss,

Re: Freedom of Information Request (FOI) – Internal Review Decision

You have requested for a review of RBK's decision dated 9 March 2016 not to disclose the information requested by yourself on 16 February 2016 because the costs of complying with the request would exceed the prescribed limit of £450 or 18 hours.

Your FOI Request

On 16 February 2016 you made the following FOI request:

"I am writing to make a Freedom of Information request for the following information:

- 1. Any information held, including e-mails and other electronic records, printed or handwritten notes, relating to the selection and appointment of Renaisi as consultants for the regeneration programme and the work they have been, or are expected to be, instructed to do.*
- 2. Any information held, including e-mails and other electronic records, printed or handwritten notes, relating to the selection and appointment of BNP Paribas as consultants for the regeneration programme and the work they have been, or are expected to be, instructed to do.*
- 3. Any information held, including e-mails and other electronic records, printed or handwritten notes, relating to the decision to set up an Affordable Homes Working Group, the remit and intended purpose of said group, any plans or decisions made as to what it is going to do, when it will be meeting and whether those meetings will be open to the public.*
- 4. Details of the "stakeholders" in the regeneration programme"*

The Council's decision

In its letter of 9 March 2016 the Council considered the request and responded as follows:

"Your request for information under the Freedom of Information Act 2000 has now been considered and the information requested is below.

The Council has now carefully considered the request in accordance with the provisions of the Freedom of Information Act 2000 ("the Act") and considers the exemption in Section 12 of the Act applies. For the purposes of the Act this letter therefore constitutes a Refusal Notice.

As you may be aware under Section 12(4) of the Act a public authority is not required to comply with a request for information if the authority considers that the costs of complying with the request would exceed the appropriate limit. The prescribed limit has been fixed by regulations at £450 or 18 hours. I regret to say that this request goes beyond this level. The Council does hold information relating to the regeneration consultants and the Affordable Homes Working Group; however, it is not possible to accurately forecast the true number of hours associated with responding to the request in its entirety as it covers different departments across the Council. In addition, the information is held on an individual basis.

Under Section 16 of the Act the Council has a duty to provide advice and assistance, so far as it would be reasonable to expect, to persons who have made request for information. The Council is legally required to publish details of the contracts it awards and details relating to the Renaisi and BNP Paribas contracts can be found at the following links:

<https://procontract.due-north.com/ContractsRegister/ViewContractDetails?contractId=34bb973f-088ae511-80f7-000c29c9ba21&returnPage=ContractsRegisterSettings>

<https://procontract.due-north.com/ContractsRegister/ViewContractDetails?contractId=41bb973f-088ae511-80f7-000c29c9ba21&returnPage=ContractsRegisterSettings>

Details of the proposal to set up the Affordable Homes Working Group are already in the public domain and can be found at the following links:

<https://moderngov.kingston.gov.uk/documents/g7734/Printed%20minutes%20Tuesday%2015-Dec-2015%2019.30%20Council.pdf?T=1>

<https://moderngov.kingston.gov.uk/documents/s66546/Affordable%20Homes%20Working%20Group%20Report.pdf>

Request for Review

On 9 March 2016 you wrote:

I am writing to request an internal review of your handling of my FOI request 'Information about regeneration consultants and the Affordable Homes Working Group'.

You refused my request on the grounds that it would exceed the prescribed cost/time limit. I do not accept that it would take more than 18 hours to provide information showing how and why the consultants Renaisi and BNP Paribas were selected/appointed and what they have been, or will be, instructed to do. Nor do I accept this as a valid reason to refuse to provide details of the 'stakeholders' in the regeneration programme.

In addition, the links in your letter to the contracts, which you are legally required to publish, and the first link regarding the Affordable Homes Working Group do not work."

Review

The Council has reviewed its decision and considered ICO guidance on requests where the cost of compliance exceeds the appropriate limit. It has reviewed the amount of the costs it reasonably expects to incur in carrying out the following permitted activities in complying with the request:

- determining whether the information is held;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

It has calculated the time spent on the permitted activities at the flat rate of £25 per person, per hour and has concluded that the appropriate limit will be exceeded.

Section 12 of the Freedom of Information Act says as follows:

12. Exemption where cost of compliance exceeds appropriate limit.

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

Section 12(1) of the FOIA therefore allows a public authority to refuse to comply with a request for information where the cost of compliance is estimated to exceed a set limit known as the appropriate limit.

The fees regulations which define the appropriate limit for section 12 purposes have set the appropriate limit for Local Authorities at £450. All public authorities should calculate the time spent on the permitted activities at the flat rate of £25 per person, per hour. This means that the appropriate limit will be exceeded if it would require more than 18 hours work.

The Local Authority cannot include in calculating the cost of extracting the requested information the staff time taken, or likely to be taken, in removing any exempt information in order to leave the information that is to be disclosed (redacting) and it has not done so in calculating the costs of this request.

The Council is required to make a reasonable estimate of the cost of providing the information. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. The Council is mindful of *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA/2006/0004, 30 October 2007) and that a reasonable estimate is one that is “....sensible, realistic and supported by cogent evidence”.

The information requested would be held in the following electronic and paper records:

- Google mail, calendar and docs.
- An electronic procurement system.
- Agendas, reports and minutes of Committee meetings are published on its website.
- The Council encourages the use of Google doc folders for sharing and collaboration on key documents.
- The Council also encourages the use of shared servers for document folders.
- Individuals use their own paperwork/note books and keep their own written records.
- Individuals also organise their own electronic information.

All of these paper and electronic records would need to be reviewed when searching the information requested.

In estimating the amount of staff time required the Council considered the following:

- The single request relates to three separate issues - two procurement processes and the establishment of a Working Group.
- Each of these three separate issues each involved between six and over a dozen different members of staff, i.e. a total of over twenty-five staff, including senior officers in different Council departments and offices as well as elected Members.
- The request asked for any information held including e-mails and other electronic records, printed or handwritten notes relating to each of the separate issues.
- For sampling purposes we approached four members of staff to provide an estimate for the length of time it would take to collate the requested information:
 - Staff member 1 (Leading officer) estimated time to be 13 hours
 - Staff member 2 estimated time to be 5.5 hours
 - Staff member 3 estimated time to be 4 hours
 - Staff member 4 estimated time to be 15 minutes

It was estimated that it would take an absolute minimum of an hour per member of staff to review all emails, written notes and other information relating to the issues. The Leading Officer would need to allocate significantly more time and a further amount of time would be necessary for collation and coordination of the response; as illustrated above.

It was therefore estimated that the amount of time required in providing the information requested would be considerably in excess of 18 hours.

Whilst it is not a statutory requirement to explain how the estimate has been calculated the Council has done so as in order to enable the requestor to assess the reasonableness of the estimate.

The Council is also mindful of section 16 FOIA which states as follows:

16. (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it. Not necessarily mean that the information will be permanently withheld.

The Council has attempted to assist with the request by providing links to the relevant documents which it has published on its website. I understand that you have experienced difficulties with accessing the links. The Renaisi and BNP Paribas contracts have come to an end and are no longer available online to view. The system that the contracts are stored in has a default setting for removing them from public once they have ended. I can confirm that the following information can be publically viewed at:

- Affordable Homes Growth Committee:
<https://moderngov.kingston.gov.uk/documents/s66546/Affordable%20Homes%20Working%20Group%20Report.pdf>
- Affordable Homes Meeting of the Council (15th December 2015):
<https://moderngov.kingston.gov.uk/documents/g7734/Printed%20minutes%20Tuesday%2015-Dec-2015%2019.30%20Council.pdf?T=1>

It may be that having considered these documents you will be able to make a fresh and refined request for information which would fall within the prescribed 18 hour limit.

If you are dissatisfied with my decision then you may take the matter to the Information Commissioner's Office at:

Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Fax: 01625 524510

www.ico.gov.uk

Yours sincerely,

Emmanuella Chinedu
Business Analyst