

London Borough of Hammersmith & Fulham

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Mr Briggs
request-423234-5e6b1c15@whatdotheyknow.com

22 August 2018

Dear Mr Briggs

**Your Internal Review (IR) request under the Freedom of Information Act 2000 (FOIA)–
case 1096304
ICO case reference: FS50710650**

Further to our partial response of 31 May 2018, we have now completed our investigation into your IR request which was received by H&F on 23 January 2018.

Internal Review outcome

We partly uphold your complaint as:

- H&F breached s.10 of FOIA as we didn't respond to your request for information (RFI) within 20-working days
- The s.36 (Prejudice to the effective conduct of public affairs) no longer applies and we're disclosing most of the information you requested
- We are withholding some of the information you requested under the FOIA s.40 (Personal information) exemption as this information relates to other individuals' personal data and under the FOIA s.43 (Commercial interests) exemption, as some of the information, if disclosed may prejudice the commercial interests of H&F.

The information we're disclosing is on the following pages and in the attached document(s):

- agenda and papers for the H&F Community Gateway Association Shadow Board

We're sorry for the delays with your RFI and the delays with this IR.

On the following pages we've set out:

- details of your IR request
- the actions we took to investigate this matter
- who you should contact if you're unhappy with our internal review response

Yours sincerely,

Sherine Malko
Senior Information Management Officer

NOTE: Please contact H&FInTouch@lbhf.gov.uk with all new requests for information, including personal information, or data protection complaints.

Veronica Barella
H&F Chief Information Officer

Background to your IR request

- You sent a request for information (RFI) to H&F on 04 August 2018:
 - *“...copies of all agendas, minutes, reports and any associated information or data in relation to the Shadow Board and Housing Stock Transfer from 01 January 2015 to 04 August 2017.”*
- The RFI response of 07 November 2017 stated:
 - H&F held the information being requested
 - H&F withheld all the relevant information under the FOIA s.36 (b) (ii) exemption
- You filed this IR request on 24 January 2018, asking that H&F:
 - Review its decision to withhold all the requested information.

Our Internal Review

We contacted colleagues in Housing Strategy and the InTouch Team for their help as they hold the information you requested and processed your RFI.

We've set out the points you raised in your IR request in bold italics below, together with our responses:

“Councillors are entitled to access to the documents as part of their role. Resident representatives have been able to view the documents at the Council's offices. The documents are therefore already essentially in the public domain.

Meeting papers from the Shadow Board were consequently made available for viewing at the Council's offices for members of the Housing Representatives Forum for four sessions in mid to late June. The Council have continued to resist requests for these documents to be supplied under FOI.

Therefore, the public interest test must fail to indicate any other than the documents should be published in full.

The Housing Shadow Board and project are both finished, it is a completed project. The Council seems to want to conflate the two separate projects seeking cover from releasing the information in this request. The public interest test, therefore, does not apply as the Defend Council Homes project is a separate project that the Council have stated in the Housing Representatives Forum on 16/05/2017 that will not review the previous issues.”

H&F's RFI IR response:

What is FOIA s.36 and when can H&F use it?

H&F can apply the FOIA s.36 (Prejudice to the effective conduct of public affairs) exemption to information we consider would, or would be likely to, prejudice the effective conduct of public affairs if the information was disclosed. This includes the effective conduct of H&F and how we carry out our public duties and responsibilities. The H&F qualified person must consider whether in their reasonable opinion as qualified person that this exemption would apply (subject to the application of the public interest test – see below).

This is a qualified exemption so once we've decided the exemption would apply, we must also carry out a Public Interest Test. We do this by weighing up the public interest factors for and against disclosure and deciding which has greater weight.

Veronica Barella
H&F Chief Information Officer

What did we do with your RFI? The LBHF qualified person considered this case and their opinion was that this exemption was engaged for the information you requested. We carried out the Public Interest Test and considered the factors in favour of withholding the information outweighed those for disclosing the information.

What have we done with your IR request?

We reviewed the information that was withheld and the factors considered when your RFI was responded to. We also considered the application of the decision *Upper Tribunal in AAPGER v ICO and Foreign and Commonwealth Office (2015)*. That decision is referred to in the ICO guidance on the Public Interest Test. And was applied in the January 2018 ICO decision notice reference FS50663290 involving a case where LBHF applied the s36 exemption.

These confirm that when an Internal Review has been sought then the Public Interest Test should be assessed at the time of the Internal Review.

Therefore, without any reflection upon the original application of s36 in the original response to the RFI the potential application of s36 was considered afresh at the Internal Review stage.

Given that the Shadow Board Project is now completed, and given the passage of time which has elapsed since the RFI and the RFI response we find the public interest now lies with disclosure and no longer seek to apply the s.36 exemption. As such we have not sought a fresh opinion from the qualified person and have not re-visited the opinion given at the RFI stage.

We are therefore disclosing most of the information to you. This is attached in the documents headed:

- FS50710650_1096304_ICO IR_Final response_Batch 1 of 3_20180822
- FS50710650_1096304_ICO IR_Final response_Batch 2 of 3_20180822
- FS50710650_1096304_ICO IR_Final response_Batch 3 of 3_20180822

Information redacted under FOIA s.40 (2) (Personal Data)

We've redacted some information under section 40 (Personal Information) of the FOIA. The names of certain attendees have been redacted, as personal information about identifiable living individuals is exempt if disclosure to a third party would breach one or more principles of the Data Protection Act 2018.

The individual/s concerned would not expect their personal data (in this case the names and contact details of junior members of staff) to be disclosed to a third party. Disclosing it would be unfair and would breach the first Data Protection Principle (processing must be lawful, fair and transparent).

This is an absolute exemption if disclosure would contravene one or more of the data protection principles (section 40(3)(a)(i)). The individuals in this case would not have realistically expected us to process their data in a manner that would disclose it to you. They are junior members of staff acting as such and there would have been no expectation on their part that this information was to be disclosed at any time either at the time of these meetings or at the time your request was received. Junior staff members do not represent the Council at external events and in many cases, do not have public facing roles or responsibilities. Disclosure would therefore be unfair to the individuals involved. It is also unlikely to add any value to the information that is

Veronica Barella
H&F Chief Information Officer

being provided to you. Therefore, there is little to no legitimate public interest in disclosing these junior staff names.

As disclosure of this information would contravene the rights of these individuals under principle 1 of the DPA, we are not disclosing this information to you.

This letter acts as a refusal notice for this information.

Information redacted under FOIA s.43 (Commercial interests)

We've also redacted some information under FOIA section 43 (Commercial interests). This exemption states that information is exempt information if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

The wording of this exemption is below:

- *(1) Information is exempt information if it constitutes a trade secret.*
- *(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).*
- *(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 interests mentioned in subsection (2).*

This is a qualified exemption so once we've decided the exemption would apply, we must also carry out a Public Interest Test. We do this by weighing up the public interest factors for and against disclosure and deciding which has greater weight. These are below:

Factors for disclosure:

- Disclosure would promote transparency and accountability in relation to information held by us and how we spend public money.

Factors against disclosure:

- Disclosing our profit assumptions, may impact on any current or future commercial and business negotiations with third parties in relation to the matters discussed in the disclosed meeting minutes
- Any disclosure would impact on our ability to negotiate and maintain the best commercial contracts on behalf of H&F residents and businesses and that would not be in the public interest.

Whilst there's public interest in greater transparency and accountability in relation to public spending, there's a greater public interest that any current and future commercial negotiations are not undermined and that we ensure best value for H&F wherever possible. So, we believe the public interest in withholding this information outweighs the public interest in disclosing it and this email acts as a refusal notice to this part of the information you've requested.

We're sorry about the delays

We're sorry for the delays in responding to your RFI and IR requests. Human error was the cause of the original delay in responding to your internal review request as, although we received it on 24 January 2018, it wasn't assigned to the relevant team until 23 March 2018.

There were further delays with us responding to your IR request due to internal delays in obtaining all the relevant information and the voluminous nature of this request. There were also delays with our response as we were ensuring that all and any relevant redactions had been made.

Why did H&F's Information Management Team investigate your internal review request?

H&F's Information Management Team (IMT) investigate complaints about how we process requests for information (RFIs) and comply with the Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR).

This includes investigating complaints about:

- whether H&F processed the RFI in line with our legal obligations under FOIA.
- whether H&F was correct to withhold the requested information.

What can you do if you aren't happy with the council's response?

You can appeal to the Information Commissioner if you aren't happy with how H&F has handled your internal review request. There is no charge for making an appeal.

You can do this by:

- **Writing** to the Information Commissioner's Office (ICO), Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF
- **Emailing** casework@ico.org.uk
- **Visiting** the ICO's website www.ico.org.uk/concerns/

The ICO are the UK's independent authority set up to uphold information rights in the public interest.

More information about the ICO is available on their website or by calling their helpline: 0303 123 1113.