

Department for Communities and Local
Government
1 NW Fry Building
2 Marsham Street
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Telephone: 030 3444 2222

Mr Nigel Hobro

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Date: **19 June 2015**

Dear Mr Hobro

Freedom of Information Act 2000: reference 768042

I apologise for the time taken to respond to your request for information which was received on 5 January 2015.

You requested:

In Autumn 2013 your investigator was sent to Enterprise Solutions (NW) Ltd following an investigation by Grant Thornton that reported to Wirral Borough Council in March 2013 regarding abuses of the Intensive Start Up Scheme ISUS. Regardless of the fieldwork being complete by December 2013 the report-which is known to me to be written-has not been released. I request a copy of the report.

Your request has been considered under the Freedom of Information Act 2000.

I can confirm that the Department for Communities and Local Government holds the information you requested. However we are withholding that information since we consider all the information to be exempt under the exemptions to disclosure at section 36(2)(b)(i) and (ii) of the FOI Act as the disclosure would inhibit the free and frank provision of advice and the exchange of views for the purposes of deliberation, or, alternatively, section 36(2)(c) as the disclosure would prejudice the effective conduct of public affairs. We also consider that some information falls within the exemptions at section 41 concerning confidential information provided by a third party and section 40(2) relating to personal information.

We hold a draft copy of the report you have requested, but this has not been finalised and interested parties have yet to be given a "right of reply" to the report. Any issues raised from third parties given the opportunity to comment on the draft report will be considered by the Government Internal Audit Agency prior to finalisation of the report. Consequently, we consider there is still a need for an appropriate degree of private space within which officials can continue to consider the investigation's findings, have full and robust exchanges freely and frankly, and to provide advice as needed in order to inform the final report and its conclusions. Failure to protect that necessary degree of private space by releasing the information at this time would, despite any caveats that it was not finalised, undermine the ability to have exchanges of views and to provide robust advice aimed at finalising the report without being hindered by external comment and/or media involvement.

To the extent that disclosure of the report at this time may, however, not be considered to inhibit the process of the free and frank provision of advice and

exchange of views for the purposes of deliberation, I consider in any event that it would prejudice the effective conduct of public affairs. Disclosure would be likely to hinder the ability of officials to consider any opinions expressed by third parties away from public scrutiny to allow them to conclude and finalise the report. More broadly, there is clearly a need for information and conclusions arising in audit investigations to be protected where there is a demonstrable need for that. Any routine disclosure of such information otherwise, particularly where an investigation, or related investigation, is not concluded, would prejudice the ability to undertake audit activities in the future if there was a concern that information that needed protecting at a given time might be made public.

The exemptions under section 36 are qualified, which means that information falling within them must still be disclosed unless the public interest served by doing so is outweighed by the public interest in maintaining the exemption.

The Department acknowledges that, in general, the public interest is served by releasing information, as this creates greater transparency and promotes accountability; it enables the public to be informed and better able to engage in any debate about the delivery of government policies or services, and thus increases public trust and confidence in good governance. In this case, there is a public interest served by disclosing information which would aid an understanding of any possible financial wrongdoing, especially as a public body and public funding was involved. There is, generally, a public interest served also by knowing that audit investigations are appropriate, thorough and objective and in knowing that findings are well-founded based on available evidence.

However, in this case, we must also consider how disclosure of the information requested at this time would inhibit the free and frank provision of advice and exchange of views for the purposes of deliberation, or would otherwise prejudice the effective conduct of public affairs. We think that the severity and extent of these effects would be reasonably significant in this case. If the information is released at this time it could impact on the on-going negotiations in relation to this investigation and prejudice the responses of those parties entitled to a "right of response" to the draft report. Thus would have a negative impact on the ability of the Department and the Government Internal Audit Agency to continue to have exchanges with those parties in view of the deterrent effect that would have resulted.

On the basis of the above arguments I consider that the public interest in withholding the information outweighs that in disclosure. Accordingly, I am withholding the information that you have requested.

Turning to the exemption at section 41 of the FOI Act, this applies where confidential information has been provided by a third party and where disclosure would constitute an actionable breach of confidence.

It is a common part of audit investigations that some information will have been gathered from third parties with a clear expectation that it would be treated as confidential. That information is often sensitive, and is therefore unlikely to be readily otherwise known and available; knowledge and certainty of confidentiality can greatly assist in securing material information or advice from third parties during an investigation. Such is the case here, many of the third parties who provided

information to investigators verbally sought and were given verbal assurance that the information they provided during interview would only be used for the purposes of the audit investigation and would not be publicly disclosed. Internal auditors have no specific investigative powers and, as such, rely on the co-operation of individuals and organisations when undertaking their work. If any suggested confidence is undermined and such third party evidence is disclosed, it is likely to impact detrimentally on the level of cooperation from third parties with any future investigations. Unless there is an overriding public interest that would render otherwise legitimate entitlement to confidentiality as unreasonable, which we do not consider to be the case here, then it is likely that a court would find that the information was confidential and that disclosure constituted a breach of confidence. We therefore take the view that the absolute exemption at section 41 of the FOI Act applies to such information in this case.

Personal information relating to third parties involved in the investigation also falls within the absolute exemption from disclosure at section 40(2) of the Freedom of Information Act as its disclosure would breach one or more of the data protection principles in the Data Protection Act 1998 (DPA). The information is personal data, as defined by the DPA, of another individual. The first data protection principle in that Act states that personal data shall not be processed (including any disclosure) fairly and lawfully and, in particular, shall not be unless at least one of the conditions in Schedule 2 of the DPA is also met. As the affected individuals in this case reasonably could not have expected that their personal data would be disclosed, to do so would breach the first data protection principle.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review which should be submitted within two months of the date of receipt of this letter and should be addressed to:

Department for Communities and Local Government
Knowledge and Information Access Team
1st Floor NW, Fry Building
2 Marsham Street
London, SW1P 4DF
xxxxxxx@xxxxxxxxxx.xxx.xxx.xx

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. Generally, the ICO cannot make a decision unless you have exhausted the internal review procedure provided by the Department.

The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.
Phone: 0303 123 1113
Website: ico.org.uk

Yours sincerely

Anna Canning
Knowledge and Information Access Team
Department for Communities and Local Government