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Mr R Parnham

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Date: 2 November 2022

Dear Mr Parnham ,

Freedom of Information (FOI) Act Request reference number F0021443

I am replying to your request, received on 17 September 2022, for an internal review of our response to your FOI request. You had asked for the following:

1. *Oxford County Council's (OCC) funding bid.*
2. *The Department for Transport's (DfT) evaluation report of the OCC funding bid*
3. *Any budgetary breakdown of funding between OCCs various strands of planned / approved activity as part of this scheme.*
4. *Any KPI imposed on OCC as a condition of OCC receiving this funding.*
5. *Any discussions between the DfT and OCC personnel on the specific issue of the delivery of the traffic filters / bus gates. What was said/promised / by who, and what response was received?*

You were provided with links to publicly available information for questions 1 and 2 of your request.

Information in relation to the following questions was withheld in reliance on section 35(1)(a) of the FOI Act on the grounds that the information related to the formulation and development of Government policy:

- Any budgetary breakdown of funding between OCCs various strands of planned / approved activity as part of this scheme.
- Any KPI imposed on OCC as a condition of OCC receiving this funding.
- Any discussions between the DfT and OCC personnel on the specific issue of the delivery of the traffic filters / bus gates. What was said/promised / by who, and what response was received?

Your request for a review has been passed to me to deal with, as I had no involvement in the handling of your original FOI request. In reaching my decision I have carefully considered your arguments as to why the information should have been disclosed, and have sought further information from the Bus Recovery and Reform team who made the decision to withhold the information.

I have established that information related to any budgetary breakdown of funding between OCC's various strands of planned/approved activity as part of this scheme can be

viewed via the following link: [Oxfordshire Bus Service Improvement Plan](#). The outline funding can be found pages 79/80.

It has also been established that, following a thorough search of records, the department does not hold information relating to discussions with OCC on the specific issue of the delivery of traffic filters/bus gates. I am sorry that this was not communicated to you within the original response.

I have reviewed the information relating to any KPI imposed on OCC as a condition of receiving funding, which in this instance are letters from the department to OCC relating to funding for the Bus Improvement Service Plan (BSIP), and am satisfied that it falls within the class relating to the formulation and development of government policy. I have therefore established that the criteria for engaging section 35(1)(a) of the Act have been met.

Section 35(1)(a) Exemption

There are three key indicators that the ICO relies upon regarding the formulation or development of policy. For the avoidance of doubt, I have listed the key indicators the ICO relies upon below:

- ☐ the final decision will be made either by the Cabinet or the *relevant minister*;
- ☐ the government intends to achieve a particular outcome or *change in the real world*; and
- ☐ *the consequences of the decision will be wide-ranging*.

Having reviewed the information in scope of your request, I am satisfied that it falls within the classes of the three key indicators above.

I accept that if the remaining decisions on this policy are taken below ministerial level, are managerial or administrative in nature, or don't significantly affect overall outcomes in the wider world, it is likely that they are decisions on implementation, thus reducing the threshold under section 35(1)(a) within which information can be withheld. However, as noted, it is clear in this instance that a live policy issue is currently being formulated and decisions are still to be made at ministerial level. It is essential that Ministers and officials have a safe space within they can formulate and develop policy. As such, the information in scope of your request clearly meets the test of government policy in development.

I should explain that the purpose of section 35(1)(a) is to protect the integrity of the policymaking process, and to prevent disclosures which would undermine this process and result in less robust, well considered or effective policies. In particular, the exemption ensures a safe space to consider policy options in private. Consequently, disclosure of information would be likely to fetter the Department's ability to engage with Ministers. Premature disclosure would also be likely to inhibit the candour of advice officials provide.

Public interest test

The public interest arguments put forward for and against disclosure in the original response to you were detailed and clearly set out why the balance favoured non-disclosure.

I have noted that the public interest for disclosure in terms the general interest in transparency and accountability of government, and release would allow the public to see how decisions have been made and allow them to potentially contribute to the policy making process. This was mitigated by the fact that the information in scope related to the formulation of Government policy surrounding a live policy process requiring Ministerial approval, particularly given the fact that BSIP funding has yet to be allocated to OCC. Additionally, there is a strong public interest in allowing Ministers and senior officials the safe space to engage with each other without undue or premature scrutiny so as to preserve the quality of such discussions and views and advice being exchanged, particularly in this instance where the policy regarding providing BSIP funding to OCC is still in the process of being formulated.

There are weighty public interest arguments in favour of protecting this safe space and the ability of ministers and senior officials to debate the issues candidly, consider options freely and frankly so as to ensure that the most appropriate decisions are made on the way that is best for the policy regarding BSIP funding to develop. There will be reviews and discussions on the eventual implementation of this policy. These matters need to be protected from external scrutiny and to prevent a chilling effect on free and frank views in the future so as to ensure that sound and fully informed decision-making takes place.

Officials would be reluctant to contribute to this particular policy making process if they felt that policy information relating to the policy BSIP funding was routinely disclosed. It could lead to the reduction in the levels of communications between ministers and departmental stakeholders thus giving rise to sub-optimal outcomes for this policy, particularly where formulation is still taking place. Moreover, local authorities would be likely to be less candid and forthright in their views if they were in the knowledge that communications in relation to BSIP funding were to be placed into the public domain. This would have the effect of hindering the policy making process relating to the allocation of funding.

You have mentioned a previous response from the department to request for information under our reference number E0020971 and that this sets a precedent for releasing information for this particular request. It should be pointed out that each request for information must be considered in light of all the circumstances at the time. In this instance the withheld information will inhibit the safe space to develop the policy to provide BSIP funding to OCC.

Summary

I have therefore found that on balance, the public interest lies in withholding the information found in scope of your request and that the original responder was correct in applying section 35(1)(a) of the Act.

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: <https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/>

Yours sincerely

Information Rights Team