

Contact:	Mark Hynes
Telephone	0208 496 3000
Reference:	CU197191191/FOI175810937
E-mail:	Data.Protection@walthamforest.gov.uk
Date:	16th June 2020

Response sent by email

Dear Ms Brown,

FOI Review: FOI17510937

I am writing to advise you that I have now had the opportunity to carry out a review your FOI request received on 18 February 2020. Please be advised that a delay has been encountered in responding to your review request due the Covid-19 pandemic. The Council is re-deploying resources to meet front line service demands in order to respond to the national crisis.

This letter sets out my findings, conclusions and is the formal response.

Summary of your FOI Review:

- The response issued to your FOI request

How I have considered your FOI Review:

In order to address your review request, I have considered:

- Your FOI request received on 18 February 2020
- The response sent to you on 13 March 2020
- Your FOI Review Request received on 20 May 2020.
- Information held by the Council.

Findings:

You submitted an FOI request on 18 February 2020; which was logged and given the reference number FOI175801937 and stated the following:

"Please can you provide a copy of the contract between Waltham Forest Borough Council and Sixty Bricks Limited? Can you also provide details of what oversight of the contract is performed by the council to ensure the quality of the work they are requested to carry out."

You received the following information:

The Council has now completed its search for the information you requested and a copy of the information which can be disclosed is enclosed. The information supplied has been provided by the department responsible for the service delivery. Please note that some of the information requested within the terms of your request is exempt from the right of access under the Freedom of Information Act 2000.

1. To be sent a copy of the contract commissioning work between London Borough of Waltham Forest and Sixty Bricks Ltd

The contract between the Council and Sixty Bricks in respect of works is a Development Agreement. This is currently in draft form and under the Environmental Information Regulations 12(4)d we are not required to disclose commercial information on land development matters. We are happy however to provide a redacted copy of the Development Agreement once it is completed.

2. To be provided with details of what oversight of the contract is performed by the Council to ensure the quality of the work Sixty Bricks are required to carry out.

The London Borough of Waltham Forest have a number of programme management and governance systems in place to ensure there is oversight and scrutiny of the work being carried out by Sixty Bricks. These systems are managed by the Council's Housing Delivery Client side team and include:

- Project Client Briefs and Commissioning Documents. These are issued by the Client team at the inception stage of projects and set the strategic and commercial framework for delivery within which Sixty Bricks must operate for each project.*
- Cyclical project review meetings. Here projects in the programme are reviewed for progress by Council client-side programme leads.*
- Monthly Client meetings where corporate and strategic issues in relation to the Council and Sixty Bricks performance under the contract are discussed,*

- *Sixty Bricks Board meetings. At these meetings the Sixty Bricks delivery team update the Board on progress, new initiatives and escalate any issues of concern. There are Council officers on the Board.*
- *Housing Investment Group meetings. Here senior council officers are advised and updated on key issue affecting the Sixty Bricks delivered housing programme. This Group also gives approvals under the Council's scheme of delegation for budgets and scheme activity delegated under overarching Cabinet approvals or that are in line with the Councils Corporate Plan*
- *Development Facility Agreement. This is the loan agreement between the Council and Sixty Bricks and there are conditions precedent within these that relate to performance and this oversight is under this contract is undertaken by the Project Monitor.*
- *Performance will be measured against the KPI's in the Development Facility Agreement and the outputs set out in the Client Briefs.*
- *The Council have appointed architects BPA as independent design quality review consultants to monitor design quality across the Sixty Bricks programme"*

20 May 2020, you submitted a request that the Council review its FOI response sent to you on 13 March 2020 and stated as follows:

Your response to my request for the contract commissioning work between London Borough of Waltham Forest and Sixty Bricks Ltd was as follows:

"The contract between the Council and Sixty Bricks in respect of works is a Development Agreement. This is currently in draft form and under the Environmental Information Regulations 12(4)d we are not required to disclose commercial information on land development matters. We are happy however to provide a redacted copy of the Development Agreement once it is completed."

Your response appears to be conflating two of the exceptions under the Environmental Information Regulations:

- *Material in the course of completion, unfinished documents and incomplete data (regulation 12(4)(d))*
- *Confidentiality of commercial or industrial information (regulation 12(5)(e))*

I would firstly ask that you clarify under which you are claiming that the information is excepted, and that you confirm when the Development Agreement is likely to be completed, as is considered good practice when managing requests for information.

However, the substance of my request for review is that you have failed to consider that both exceptions are subject to the public interest test, and that under EIR regulation 12(1)(b), a public authority can only withhold the information if, in all the circumstances of the case, the public interest in maintaining the exception outweighs

the public interest in disclosing the information. Furthermore, under regulation 12(2), it must apply a presumption in favour of disclosure.

In regard to regulation 12(5)(e), I also refer you to the fact that this only applies where disclosure of the information would cause harm to a legitimate economic interest, it does not apply to all commercial information on land development matters as you appear to be asserting.

In carrying out this assessment I would ask that you take into account the following factors:

- Sixty Bricks Ltd is solely owned by the London Borough of Waltham Forest, it is difficult to understand how in a negotiation over terms between the two parties, release of the information would be harmful to either's interest.*
- I note from information available on Companies House that Sixty Bricks Ltd (previously known as Waltham Forest Developments Ltd) was incorporated in Jan 2017 and according to their own website, they are currently progressing with 6 developments on behalf of Waltham Forest Council. That no agreement has yet been formally agreed before now is in itself a matter of concern.*

I believe therefore that the public interest is clearly in favour of releasing documentation which would demonstrate the precise nature of the work being carried out and funded by the Council.

A full history of my FOI request and all correspondence is available on the Internet at this address: https://www.whatdotheyknow.com/request/sixty_bricks_limited

I can advise you that the Development Agreement has now been completed. Therefore, in fulfilment of your original request that you be provided with a copy of the contract between Waltham Forest Borough Council and Sixty Bricks Limited, I have sent you a redacted copy of the Development Agreement by way of email attachment.

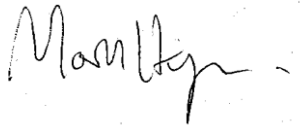
Conclusion and decision

Having considered your request that we review the reason(s) for our decision not to furnish you with a copy of the development contract at the time you made the request for such, I am satisfied that our decision was correct, therefore your complaint relating to this issue is not upheld. However, I am pleased that the Council has now been able to furnish you with a copy of this document in fulfilment of your FOI request.

Escalation of your Complaint

If you remain dissatisfied with the Council's response in respect of your personal data, you have the right to complain to the Information Commissioner. If you wish to pursue such a complaint, you can contact their office via their helpline: 0303 123 1113. You can obtain further information about them via the following link: <https://ico.org.uk/concerns/>

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Hynes', with a stylized flourish at the end.

Mark Hynes
Data Protection Officer
London Borough of Waltham Forest