

Newton Heath

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9 March 2022

Dear Newton Heath

Ref: FOI2022/03211

## Freedom of Information Act 2000

Thank you for your enquiry of 11 February 2022, which we have considered under the terms of the Freedom of Information Act 2000 (the FOI Act).

You asked for the following information:

*"1. the business case(s) setting out the funding proposal for the UK Infrastructure Bank Capitalisation;*

*2. the basis on which the funding will comply with the relevant subsidy control rules, including (where available):*

*(a) the legal advice obtained on subsidy control / state aid rules*

*(b) the assessment of the measure with the subsidy principles / state aid rules*

*(c) minutes of the decision to award funding."*

Following a search of our records, we can confirm that HM Treasury does hold some information within the scope of your request.

The information which is held in relation to this request engages section 35(1)(a) of the FOI Act. Section 35(1)(a) is engaged because the information in scope relates to the formulation and development of Government policy regarding the UK Infrastructure Bank (UKIB) and its ongoing development and operation. This is a qualified exemption, and we are required to balance the public interest between disclosure and non-disclosure.

In relation to the release of this information, we recognise that there is an inherent public interest in transparency and accountability of public authorities. We also recognise the broad public interest in furthering public understanding of the issues with which public authorities deal. There is a clear public interest in the work of Government departments such as the Treasury's work on the UK Infrastructure Bank.

Balanced against this, with regard to section 35(1)(a) is the public interest in protecting the Government's ability to discuss and develop policies and to reach well-formed conclusions. The Information Commissioner has recognised that policy development needs some degree of freedom to enable the process to work effectively and we consider that there is a strong public interest in protecting information where release would be likely to have a detrimental impact on the ongoing formulation and development of policy. There is a strong public interest in protecting against encroachment on the ability of ministers, officials and public servants to formulate and develop policy options freely and frankly. In

this particular case it relates to policy formulation regarding the UKIB as the organisation builds to full capacity and works towards delivering its mandate in the medium-term.

Having set out our public interest balance considerations, we consider that the public interest lies in favour of withholding this information given that it relates to live policy issues and the UKIB is continuing to develop towards full capacity.

Additionally, due to external legal advice being provided regarding the establishment of the UK Infrastructure Bank certain information held in relation to the scope of your request engages section 42 of the FOI Act. The Information Commissioner acknowledges that the generic public interest in the section 42 exemption is potent, i.e. the principle behind legal professional privilege is compelling: we ought to preserve openness in all communications between a client and its lawyer, so that legal advice is full and frank, which is itself core to the administration of justice.

There is likewise a strong public interest in the government being able to take decisions in a fully informed legal context, and there have been a number of Information Commissioner and Information Tribunal decisions concerning the section 42 exemptions. These decisions were considered in recent High Court cases, which acknowledged the importance of protecting communication between lawyers and clients, and that disclosure of legal advice has a high potential to prejudice the government's ability to defend its legal interests. These protections are not less important where the issue is contentious; rather the reverse. As a result of the above, we do not consider disclosure of this information in the public interest.

Notwithstanding the above, there are publicly available documents which may be relevant given the nature of your request:

- The UK Infrastructure Bank [Policy Design](#) (4.15-4.16);
- The UK Infrastructure Bank [Framework Document](#) (6.2);
- [Subsidy scheme details](#) regarding HM Treasury's capitalisation of the UK Infrastructure Bank.

If you have any queries about this letter, please contact us. Please quote the reference number above in any future communications.

Yours sincerely,

Information Rights Unit

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Email: [foirequests@hmtreasury.gov.uk](mailto:foirequests@hmtreasury.gov.uk)

It would assist our review if you set out which aspects of the reply concern you and why you are dissatisfied.

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