

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 13 November 2019

**Public Authority:** Homes England  
**Address:** Windsor House  
50 Victoria House  
London  
SW1H 0TL

#### **Decision (including any steps ordered)**

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1. The complainant requested from Homes England<sup>1</sup> information in relation to the allocation of a "Transition Grant Fund" to Liverpool City Council. Homes England provided the information it considered to be held within the scope of the request. The complainant was dissatisfied with the amount of information received.
2. The Commissioner's decision is that, on the balance of probabilities, Homes England did not hold any further information within the scope of the request to that which was disclosed. She therefore considers that the Council complied with its obligations under section 1(1) of the FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

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<sup>1</sup> Homes England is a non-departmental public body responsible for affordable housing in England founded in January 2018 as one of the successors of the Housing and Communities Agency.

## Background information

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4. In July 2011 a local news agency published an article titled "Council bids for £10m HMR transition funding"<sup>2</sup> where, among other things, it was stated "*Liverpool City Council is bidding for a share of £30m in Government cash to help boost areas affected by the removal of Housing Market Renewal funding.*"
5. According to this article the aim of this transition fund was "*to re-house the residents left most vulnerable and stranded in clearance areas as a result of the ending of HMR funding.*" The Article also quotes Liverpool City Council citing the Welsh Streets as among five beneficiary areas for this fund.
6. On 29 November 2011 the Permanent Secretary of the Department for Communities and Local Government (DCLG) signed a document titled "Housing Market Renewal Transition Grant Determination" (Transition Grant), which set out, among other things, the purpose of the grant and grant conditions.
7. On 1 December 2011 the Deputy Director of DCLA signed a document titled "The Homes and Communities Agency Transfer Scheme 2011" which transferred the rights and liabilities of the Minister of State for Housing and Local Government arising from the Transition Grant to the Homes and Communities Agency.

## Request and response

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8. On 22 December 2018 the complainant wrote to Homes England and requested information of the following description:

*"I was advised by Liverpool Council that 'no specific funding for the Welsh Streets was ever received from the Government.'*

...

*[Liverpool City Council stated that:]*

*'Since 31<sup>st</sup> March 2011, Liverpool has been allocated a total of £9,289,400 from the Transition Fund, all of which has been spent.*

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<sup>2</sup> <https://www.placenorthwest.co.uk/news/council-bids-for-10m-hmr-transition-funding/>

*There is no longer a dedicated HMRI programme which receives any grant fund from Government.'*

*So under Freedom of Information Act, I would be grateful if you would advise me on the following:*

*1. Can you give me a breakdown on the allocation of this £9,289,400 Transition Fund (that Liverpool Council had received from the Government) for each of above 5 areas (as that stated above on the 'Place North West' article)?*

*2. What are the reasons if it is not possible to provide me the Breakdown and what is on the record regarding this £9,289,400 Transition Fund allocated to Liverpool Council?*

*3. Had the Government ever given any amount from this allocated £9,289,400 Transition Fund to the Welsh Streets Area in Liverpool? What are the reasons if No Transition Fund was ever given to the Welsh Streets Area (Please be specific on their reasons)?*

*4. I was advised by Homes England that the funding was paid as Section 31 unringfenced grant to local authorities. Can you give me further information on this 'Section 31 unringed grant' and if possible please provide me a copy of the Government Guideline on/ related to this Section 31 unringed grant."*

9. On 17 January 2019 Homes England responded, stating that it did not hold any recorded information within the scope of the information request. However, citing its section 16 obligations, it provided the complainant with some explanations:

- In relation to Part 1, Homes England stated that it did not hold the information requested. However it confirmed that *"the funding was paid in full and with the condition that it was spent on works that can be defined as capital without reference to specific projects or elements of a project.* It also attached as annexes copies of the documents that form the legal basis of the Transition Grant, Grant Conditions and a redacted table of Grant Payments for 2011/12.
- In relation to Part 2, Homes England stated that it did not hold the information requested and it referred to the explanation provided in response to Part 1.
- In relation to Part 3, Homes England stated that it did not hold the information requested and advised the complainant to submit this part of the request to Liverpool City Council.

- In relation to Part 4, Homes England stated that it did not hold the information requested and confirmed that it has not created any guidance on "Section 31 infringed grants". However it provided a web-link to a piece of legislation which was considered to be relevant to this matter.
10. Remaining dissatisfied with the response received, on 21 January 2019 the complainant requested an internal review.
  11. Homes England provided the complainant with the outcome of its internal review on 18 February 2019, which included additional explanations. However in relation to the main substance of its response of 17 January 2019, Homes England did not change its initial position that there was no information held within the scope of the request.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 4 March 2019 to complain about the way his request for information had been handled.
13. During the course of the investigation, Homes England changed its position as a result of identifying information it held that fell within the scope of the request. Homes England provided the complainant with the materials that it had identified, with some of the content redacted under section 40(2) of the FOIA as Homes England believed it to be the personal data of third parties.
14. This subsequently uncovered information consisted of an annex divided into two parts comprised of:
  - correspondence involving different HCA officials and DCLG in relation to "Transition Grant Fund";
  - excerpts from different documents relating to "Transition Grant Fund" which referred to Liverpool City Council or Welsh Streets; and
  - a copy of HCA's project expenditure approval for Liverpool City Council.
15. The complainant remained dissatisfied and expressed his belief that there should be further information held by Homes England. The complainant did not object to the redactions made under section 40(2).
16. The analysis below considers whether, on the balance of probabilities, Homes England held further information within the scope of the request

at the time the request was made, to that identified during the course of the Commissioner's investigation.

## Reasons for decision

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### Section 1 - general right of access

17. Section 1 of the FOIA states that:

*"Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

18. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.

19. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

20. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, Homes England held further information within the scope of the request.

21. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.

22. Homes England maintains that it has provided to the complainant all the information that it held within the scope of the information request, excluding the content that was withheld under section 40(2).

23. As part of her investigation, the Commissioner wrote to Homes England requesting a submission in respect of a number of questions relating to the allegations raised by the complainant. The Commissioner's questions were focused on Homes England's endeavours in providing the requested information to the complainant, its searches conducted in relation to the complainant's request, and whether any of the information falling within the scope of the requests was deleted or destroyed.
24. Homes England stated that following the Commissioner's queries *"Searches were conducted by the team working on the project (although a number of those people have now left Homes England). They reviewed the project files, both paper and electronic. If the information was held it would be held by the project team in either project files or in emails."*
25. As explained above in paragraphs 13-14, information was uncovered following these searches and most of it was provided to the complainant.
26. Homes England explained that in this process its information access team spoke to relevant officers in the Housing Delivery Team, specifically to the persons who were lead contact for the project. The advice obtained confirmed that all information held, within the scope of the present information request was stored in the project file.
27. Homes England considers that it has conducted all necessary and adequate searches for the purpose of identifying the information requested. It explained that the keywords used in this process were those used by the complainant in his information request. The subsequently uncovered information has been moved into a more appropriate location so that it can be more easily found and cross referenced with the other information relating to the project.
28. To the Commissioner's question whether any information falling within the scope of the request was deleted or destroyed, Homes England confirmed that, to its knowledge, this was not the case. However, bearing in mind that the information relevant to the request covers a relatively long period of time and the fact that there were movements in Homes England's staff, it could not categorically confirm that no information held at any time has been destroyed or deleted. Nevertheless, Homes England added that it *"operated a Records Retention policy and destruction would normally be undertaken only in accordance with that policy and in accordance with data protection legislation."*
29. Homes England explained that its formal records retention policy outlines the timeframes for destroying records. However, as in this case

the information requested is still held as a record in accordance with the policy, it does not have any records of documents destruction relevant to the information request in question.

30. Homes England asserted that it holds this type of information for the business purpose of maintaining the records relating to funding and for audit purposes, in accordance with its retention policy. It also confirmed that there is no specific statutory requirement to retain information of this nature.
31. The Commissioner has examined the submissions of both parties and their arguments put forward.
32. The Commissioner has considered the searches performed by Homes England, the information it disclosed, Home England's explanations as to why there is no further information held and the complainant's concerns.
33. On the balance of probabilities, the Commissioner considers that Homes England did not hold any further information to that already identified and, for the most part, disclosed to the complainant. She therefore concludes that, whilst it did not comply with section 1(1)(a) of the FOIA in either the initial response to the request or in the internal review response, both of which stated incorrectly that no information falling within the scope of the complainant's request was held, it has now belatedly complied with section 1(1)(a).
34. In light of this finding, the Commissioner does not require Homes England to take any steps as a result of this decision notice.

## **Other matters**

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35. Although not forming part of the formal decision notice the Commissioner uses this section to highlight issues that have arisen during her investigation.
36. The Commissioner is aware that the complainant made further information requests to Homes England following the disclosure of information referred to above. As the complainant has been advised, any complaint submitted relating to those requests will be handled as a new case.
37. Whilst the Commissioner has found above that Homes England holds no further relevant information, it remains that the case that it stated incorrectly at both the initial response and internal review stages that it did not hold any such information. Had Homes England identified the

relevant information it held at either of the earlier opportunities it had to do so, this complaint to the Commissioner may have been avoided.

38. Homes England must ensure that its request handling procedures are fit for the purpose of identifying all the relevant recorded information it holds whenever it receives an information request.



## Right of appeal

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39. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

40. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Ben Tomes  
Team Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
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SK9 5AF**