

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 January 2024

Public Authority: Department for Levelling Up, Housing and Communities

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information from the Department for Levelling Up, Housing and Communities ("the DLUHC") relating to loan guarantees. The DLUHC withheld the information under section 43(2) (Commercial sensitivity).
2. The Commissioner's decision is that the DLUHC was entitled to rely upon section 43(2) to withhold the information.
3. The Commissioner does not require the DLUHC to take any steps.

Request and response

4. On 16 May 2023, the complainant wrote to the DLUHC and requested information in the following terms:

"Please provide a list of the current outstanding loan guarantees granted by the department under the following programmes managed by Homes England as of the date of this request."

Investment:

Long Term Fund
Short Term Fund
Build to Rent
Estate Regeneration
Legacy
PRS Guarantees
Levelling Up Home Build Fund
Brownfield, Infrastructure and Land fund

Development:

Public Sector Land
City Growth Deals
Land Assembly Fund/Starter Homes
Direct Commissioning
First Homes

For each guarantee, please state:

- The date the guarantee was issued.
- The company or entity the guarantee was given to.
- The size of the financial guarantee issued (which I'm happy to receive in a banded form if necessary).
- The scheme under which the guarantee was offered.
- The project the guarantee was issued in relation to."

5. The DLUHC responded on 14 June 2023. It stated that the information was withheld under section 43(2).
6. Following an internal review, the DLUHC wrote to the complainant on 21 July 2023. It maintained the application of section 43(2).

Reasons for decision

7. Information can be withheld under section 42(3) of FOIA if disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
8. The DLUHC has explained to the Commissioner that the withheld information relates to the 'Private Rented Sector Guarantee Scheme'. The DLUHC has clarified that this is the only scheme listed (in the request) which provides loan guarantees.

9. The withheld information represents the identities of borrowers who have received loan guarantees, and the project that they are involved in.
10. The DLUHC has explained to the Commissioner that it considers disclosure of the information could prejudice the commercial interests of ARA Venn. ARA Venn manage PRS Operations Ltd., which is the 'special purpose vehicle' through which the scheme is delivered. The DLUHC has further explained to the Commissioner that disclosure would also prejudice the commercial interests of the borrowers (using the scheme), and further, the lender and bond investors who fund the loans.
11. The DLUHC has explained that ARA Venn has provided submissions to it explaining its view that prejudice 'would be likely' to cause the claimed prejudice for each of the three groups (namely ARA Venn, the borrowers, and lender and bond investors). The DLUHC has provided a copy of these submissions.
12. In respect of the prejudice to the commercial interests of ARA Venn, it has argued that:
 - "ARA Venn, a commercial business, was hired via public procurement to run the PRS Scheme as a commercial lender. It bore all of the scheme set-up costs and bears all the operational risks."
 - "Whilst of course ARA Venn accepted that certain details of the scheme would be likely to subject to the FOIA (as acknowledged in the PRS licence [...]), if the details of borrowers financing terms were unexpectedly disclosed in the public domain it would likely impact the future demand for loans under the scheme and therefore have a commercial impact on ARA Venn."
 - "The disclosure would also likely have a broader negative reputational impact for ARA Venn's business."
13. The Commissioner understands that main concern held by ARA Venn is that disclosure of the information would reveal information about the debts and financing terms relating to the borrowers. Borrowers expect market standards of confidentiality in respect of their debts and financing terms; should ARA Venn not be able to provide market standards of confidentiality it will damage its ability to attract borrowers with the success that it currently is.
14. The Commissioner has considered the DLUHC's position, and the withheld information. Having done so, he accepts that the information relates to the commercial activity of ARA Venn. The Commissioner also accepts that the disclosure of the information would be likely to

prejudice ARA Venn's commercial interests for the reasons given above. The Commissioner has therefore concluded that section 43(2) is engaged and must go on to consider the public interest test.

The public interest test

15. The DLUHC has explained that it accepts there is a strong public interest in the disclosure of information relating to its actions, and specifically in regard of financial transparency and propriety. The disclosure of such information promotes transparency and the accountability of public authorities. In this specific case, the DLUHC acknowledges that such disclosure would increase public understanding of how the housing guarantee scheme supports the building of new homes for the private rented sector.
16. The complainant argues that the disclosure of the information, and specifically the identity of companies that have received loan guarantees, acts as an important anti-corruption measure. The complainant has argued that there has already been one occasion where a party involved in the approval of one loan guarantee had not declared their interest in the borrower^{1 2}.
17. In respect of the public interest in maintaining the exemption, the DLUHC argues that there is a public interest that ARA Venn is able to attract borrowers to ensure the success of the scheme. Prejudice to this, by preventing ARA Venn from providing market standards of confidentiality to prospective borrowers, would undermine the success of the scheme, and impact the development of new homes in the private rented sector.
18. The Commissioner also understands, from the DLUHC's submissions, that information about borrowing under the scheme is already publicly available on Companies House under 'Full accounts made up to 31 December 2022'³. This public information provides the value and dates of the guaranteed loans. The publishing of this information already addresses some of the public interest in this case, by revealing the value of loan guarantees.

¹ <https://www.thetimes.co.uk/article/boris-johnsons-aide-lord-udny-lister-in-187m-loan-apology-xwnl6fr9r>

² <https://www.thetimes.co.uk/article/lord-udny-listers-property-paymasters-handed-another-150m-loan-237w807bx>

³ <https://find-and-update.company-information.service.gov.uk/company/09331085/filing-history>

19. The Commissioner has considered the arguments provided by both parties.
20. The Commissioner cannot make a judgement on the process by which DLUHC, or ARA Venn, have conducted the scheme or made decisions on the acceptance of borrowers, as it does not fall within his powers to do so. His decision must be based on the understanding that the scheme, and the way that it is delivered by ARA Venn, has been approved by the DLUHC and is subject to necessary checks and oversight.
21. The Commissioner notes that there is a strong public interest in ensuring transparency around the way that ARA Venn is delivering the scheme. This promotes accountability and helps the public to understand how the scheme is being delivered.
22. However, this needs to be balanced against the public interest in ensuring that ARA Venn is able to attract borrowers and implement the scheme, without undue prejudice to its interests. This prejudice would be likely to negatively impact the scheme, and therefore the building of private rental housing. There is a significant public interest that the success of the scheme is not damaged in such a way.
23. The Commissioner also understands that related information, being the value of the guaranteed loans, is also subject to transparency through the public accounts available on Companies House. The Commissioner perceives that this information, which reveals the value of the loans guaranteed by the schemes, already addresses some the public interest in this case.
24. In these circumstances, the Commissioner considers that the weight of the public interest rests on ensuring that ARA Venn is not subject to the above prejudice.
25. The Commissioner's decision is therefore that the DLUHC was correct to apply section 43(2) to withhold the information from disclosure.

Right of appeal

26. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
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SK9 5AF