

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 March 2024

Public Authority: Department for Levelling Up, Housing and Communities (DLUHC)

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information from DLUHC regarding the contract Barratt Developments PLC has signed regarding work to address life-critical fire-safety defects arising from the design and construction of buildings 11 metres and over, under the developer remediation contract. DLUHC has refused the request under section 14(1) of FOIA (vexatious requests) on the grounds that to comply with the request would be excessively burdensome.
2. The Commissioner's decision is that DLUHC is entitled to refuse the request under section 14(1) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 19 April 2023, the complainant wrote to DLUHC and requested information in the following terms:

"This is a freedom of information request for the Developer Remediation Contract between the government and Barratt Developments PLC to include all appendices, addendums etc ie the entire contract and any further documentation which forms a part of the contract. You have a proforma copy on your website but this does not include information critical to leaseholders concerning the buildings Barratt's have included in the contract and the timespan for repairs. As this is a matter designed for the

benefit of leaseholders no privacy claims can be made concerning this document.”

5. DLUHC responded on 11 August 2023. It refused to provide the requested information citing the exemption at section 38 of FOIA (health and safety).
6. Following an internal review DLUHC wrote to the complainant on 19 September 2023. It maintained its reliance on section 38, specifying that it was relying on section 38(1)(b) (endanger the safety of any individual). It also applied section 40(2) (personal information) to some of the withheld information.

Scope of the case

7. During the course of the Commissioner’s investigation DLUHC changed its position to refuse the request under section 14(1) of FOIA (vexatious requests) on the grounds that to comply with the request would be excessively burdensome.
8. This notice will therefore consider whether DLUHC is entitled to refuse the request under section 14(1) of FOIA.

Reasons for decision

Section 14(1) – vexatious requests

9. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
10. In the Commissioner’s view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
11. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would

place a grossly oppressive burden on the public authority¹. This is the position adopted by DLUHC in this case.

12. The Commissioner has first considered the purpose and value of the request.
13. By way of background, in response to the Grenfell Tower tragedy, certain residential and mixed use buildings of 11 metres and over in height were identified as having fire defects. Under English law at that time, the leaseholders of such buildings would typically be obliged to fund the costs associated with any remediation of those defects. However, provision has been put in place to ensure that leaseholders do not have to bear the cost of life-critical fire-safety remediation work arising from the design, construction or refurbishment of buildings of 11 metres and above. Barratt Developments PLC is one of 55 developers to have signed a developer remediation contract to this effect². As stated in the request, the standard wording of this contract is in the public domain³, however, the specific details of the agreement with each developer, as detailed in various appendices to the contract, is not.
14. DLUHC has provided a copy of the information held about the specific agreement with Barratt Developments PLC to the Commissioner for his consideration. This information is a list of buildings requiring remediation work that are covered by the contract, it also sets out which buildings fall within the definition of a Stage A, B, C or D Fund Building as set out in pages 78-79 of the standard wording of the contract⁴. In simple terms, this indicates how far along the process for securing funding for the works Barratt Developments PLC is for each building.
15. The Commissioner acknowledges the significant impact felt by all residents of buildings identified as having fire defects in terms of concerns for their own safety in light of the Grenfell Tower tragedy. He also acknowledges the impact that this has had on leaseholders due to the fact that, it can be very difficult to obtain a mortgage on a property that requires the remedial work where this has not yet been carried out,

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/how-do-we-deal-with-a-single-burdensome-request/>

² <https://www.gov.uk/government/publications/developer-remediation-contract>

³

https://assets.publishing.service.gov.uk/media/64134bf4d3bf7f79e1938b9e/Developer_remediation_contract.pdf

⁴

https://assets.publishing.service.gov.uk/media/64134bf4d3bf7f79e1938b9e/Developer_remediation_contract.pdf

which has made these properties very difficult to sell and/or significantly affected their value.

16. The Commissioner therefore accepts that there is a clear purpose and value of the request in terms of providing greater transparency around the remedial works that will be carried out under the contract with Barratt Developments PLC, which relates to an issue that has significantly affected a large number of people.
17. In terms of the burden that complying with the request would place upon DLUHC, it has argued that it would take it 117 hours to consider whether exemptions apply to the information it holds within the scope of the request.
18. DLUHC has stated that it estimates it would take 5 minutes per each of the 1400 rows of data to identify issues which might attract exemptions, giving a total of 117 hours.
19. Specifically, it states that it considers information is likely to be exempt under section 35 (formulation of government policy), section 38 (health and safety), section 40 (personal information) and section 43 (commercial interests) of FOIA.
20. DLUHC's reasoning as to why it needs to consider whether any of the information is exempt under section 38 is that it considers that disclosing information that could reveal the identity of specific buildings with ACM cladding would be likely to endanger the safety of residents as there are concerns that this information could be used by those with malicious intent to attack or otherwise compromise the safety of these buildings and their residents. It argues, however, that it would need to consider the risk to each building individually to determine whether this exemption is engaged as the risk to each individual building varies for a variety of reasons including whether any remediation work has already been carried out mitigating the fire risk to a certain extent, whether information about the building is already in the public domain and due to factors that affect the individual risk profile of each building such as construction materials, height, placement of dangerous materials, numbers of residents and escape routes.
21. DLUHC's reasoning as to why it needs to consider whether any of the information is exempt under section 43 is that it considers that disclosure of the information may prejudice the commercial interests of Barratt Developments PLC and the owners of the properties in relation to selling or renting the properties. It argues that as the prejudice envisioned is not to its own commercial interest, but to those of third parties it would need to consult with third parties in order to determine whether this exemption is engaged with respect to specific buildings.

22. DLUHC has also argued that section 35 is likely to be engaged as building remediation is an ongoing process and, as such, the policy relating to it has not yet been completed. It argues it would need to examine the link between each building and any ongoing policy work.
23. It further argues that section 40 is likely to be engaged where the owners would be identifiable from the disclosure of the address due to other information in the public domain. It has argued that it needs to consider the information held about each individual building as, "the properties that Barretts [sic] have oversight of range in size from large blocks of flats to small groups of individual flats. It is the smaller flats where the identification of owners is more of a risk, as the flat number combined with a search of an electoral register or other open source might then identify an individual".
24. The Commissioner does not consider the number of individual properties covered by each address to be the principal factor affecting whether the owners would be identifiable from the address, even where the address is that of a large building multiple owners may be identifiable through information available in the public domain. Nor does he consider it likely that section 35 would apply to the address of some individual buildings due to a link with ongoing policy work.
25. However, he does accept that DLUHC would need to consider the circumstances relating to each building to determine whether the exemptions at section 38 and section 43 of FOIA apply as detailed in paragraphs 20 and 21 of this notice. On this basis he accepts DLUHC's estimate that it would take 5 minutes per building to consider if the information is exempt from disclosure.
26. DLUHC has used a figure of 1400 rows of data to give its total estimate of 117 hours. However, having viewed the withheld information, due to buildings appearing in more than one appendix, the Commissioner considers that the number of buildings to consider to be closer to 750. Therefore, taking the estimate of 5 minutes per building to consider if the information is exempt from disclosure, this gives a total of 62.5 hours.
27. The bar for refusing a request as "grossly oppressive" under section 14(1) is higher than for a section 12 refusal. Under section 12 the appropriate limit for central government departments, such as DLUHC, is 24 hours of work. As the time estimated it would take to consider whether any exemptions apply to the information held within the scope of the request, 62.5 hours, is more than 2.5 times the appropriate limit under section 12 the Commissioner considers that the burden that would be imposed upon DLUHC should it be required to comply with the request to be significant.

28. The Commissioner accepts that the request has a clear value and purpose. However, because of the volume of information in the scope of the request, the Commissioner accepts that the burden placed on DLUHC in complying with it will be a grossly oppressive one. In the Commissioner's opinion despite the clear value in the disclosure of the requested information, he does not accept that this is sufficient to justify placing such a burden on DLUHC.
29. The Commissioner's decision is therefore that DLUHC is entitled to refuse the request under section 14(1) of FOIA.

Right of appeal

30. 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

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Victoria James
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Information Commissioner's Office
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Water Lane
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