

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 April 2023

Public Authority: The 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 (DLUHC) relating to Building Safety Fund applications.
2. The Commissioner's decision is that the DLUHC is entitled to rely on section 12(1) (cost limit) of the FOIA to refuse to provide the requested information. He also finds that the DLUHC met its obligations under section 16(1) of the FOIA to offer advice and assistance.
3. The Commissioner does not require the DLUHC to take any steps.

Request and response

4. The complainant made the following information request to the DLUHC on 24 November 2022:

"This is an FOI request.

The DLUHC's The Building Safety Programme Monthly Data Release, England: 31 August 2022 states:

The Building Safety Fund has received 2824 Private Sector Registrations of which 936 registrations (1018 buildings) are proceeding with an application for funding.

222 Social Sector Grant Claims have been received of which 152 registrations (177 buildings) are proceeding with an application for funding.

£1,484 million has been approved for the remediation of unsafe non-ACM cladding from the Building Safety Fund, of which £1,345 million is for private sector remediation and £139 million for social sector remediation.

295 buildings have started remediation work, of which 50 have completed (including four that have also received building control sign off).

<https://www.gov.uk/guidance/remediation-...>

My request is as follows:

1. Please state how many private companies have had applications approved for the funded removal of non-ACM cladding.
2. For each approved application, please state
 - a. The funding allocated to the company
 - b. The type of non-ACM cladding to be removed
 - c. The name of the company which has had an application approved

Please ensure that any redactions you seek to make, based on the exemptions in the Act, are sufficiently granular.

Where you do cite exemptions, please explain how they directly relate to the withheld information, and, where applicable, how the public interest of withholding/releasing the information has informed your decision.

I would prefer to receive all information in electronic format and in machine-readable formats such as .xls where applicable."

5. The DLUHC responded on 28 December 2022 and provided the complainant with the information requested in part 1 of the request. However, it refused to provide the information requested in part 2 of the request citing section 38 (health and safety) of the FOIA.

6. On 17 January 2023, the complainant requested an internal review. The DLUHC provided the complainant with the outcome of its internal review on 14 February 2023. It revised its position. It stated that it was now relying on section 12 (cost limit) of the FOIA to refuse to provide the requested information.

Reasons for decision

7. This reasoning covers whether the DLUHC is entitled to rely on section 12(1) of the FOIA to refuse to provide the requested information.
8. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit. The appropriate limit for the central government public authorities is £600. As the cost of complying with a request must be calculated at the rate of £25 per hour, section 12(1) effectively imposes a time limit of 24 hours for the DLUHC.
9. A public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held
 - locating the information, or a document containing it
 - retrieving the information, or a document containing it
 - and extracting the information from a document containing it
10. In its submissions to the Commissioner, the DLUHC stated that the request relates to approved applications to the Building Safety Fund which funds the remediation of unsafe non-ACM cladding systems on residential buildings. The DLUHC considers that the cost of retrieving and locating the requested information would exceed the appropriate limit.
11. The DLUHC explained that at the time of the request, 322 private sector buildings had had their full works and cost approved by the Building Safety Fund. In order to provide the type of non-ACM cladding that has been removed from each building that has had a Building Safety Fund application approved as requested in part 2(b) of the request, the DLUHC explained that it would need to first obtain a unique building code from an electronic database maintained by delivery partners. The building code would then need to be cross referenced with electronic

records held by the DLUHC to ensure accurate identification of each building that has had its Building Safety Fund application approved.

12. The DLUHC explained that as its Building Safety Fund database does not hold the necessary information to provide a complete and accurate answer to part 2(b) of the request, it would need to review the application of each building that has had its Building Safety Fund application approved in order to provide the information requested in part 2(b) of the request. The DLUHC stated that this would involve reviewing several technical reports, some of which are over 30 pages long, and may require technical teams to be commissioned to clarify the specific type of cladding that has been removed.
13. The DLUHC estimates that it would take approximately 30-45 minutes to review each of the 322 Building Safety Fund applications that have been approved, depending on the complexity of a building's structure. This estimate is based on a sampling exercise for a similar request. The DLUHC calculated that in total it would take between 161 hours (322 buildings x 30 minutes = 161 hours) and 241.5 hours (322 buildings x 45 minutes = 241.5 hours) to provide the information requested in part 2(b) of the request. The DLUHC does not consider there to be a quicker means of locating, retrieving and extracting the information requested in part 2(b) of the request, and considers that it would likely take longer to respond to the request in its entirety.
14. The Commissioner recognises that there is a significant difference between the DLUHC's estimate of 161 hours and its estimate of 241.5 hours to provide the information requested in part 2(b) of the request. However, the Commissioner notes that even if the DLUHC was to take 5 minutes to review each of the 322 Building Safety Fund applications that have been approved, the cost of complying with part 2(b) of the request would exceed the appropriate limit. He therefore considers that the DLUHC has reasonably estimated that the cost of locating, retrieving and extracting the information requested in part 2(b) of the request would exceed the appropriate limit.
15. Furthermore, the Commissioner acknowledges that the DLUHC's estimate only takes into account the amount of time it would take to provide the information requested in part 2(b) of the request. If the DLUHC was to include the time it would take to respond to all parts of the request, it is likely that the cost of complying with the request would further exceed the appropriate limit.
16. The Commissioner's decision is that the cost of complying with the request would exceed the appropriate limit. Therefore, the DLUHC is entitled to apply section 12(1) of the FOIA to the request.

Section 16 – advice and assistance

17. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
18. In its submissions to the Commissioner, the DLUHC stated that in its internal review response, it informed the complainant that it was applying section 12(1) of the FOIA to the request due to the amount of time it would take to locate and retrieve the information requested in part 2(b) of the request. It also advised the complainant that they could refine the request to bring it within the appropriate limit. The DLUHC therefore considers that it met its obligations under section 16(1) of the FOIA.
19. The Commissioner considers that by advising the complainant that they could submit a refined request for information and by informing the complainant that part 2(b) of the request is the part of the request which takes the request over the appropriate limit, the DLUHC provided the complainant with adequate advice and assistance.
20. The Commissioner is aware that following receipt of the DLUHC's internal review response, the complainant submitted a refined request for information to the DLUHC which does not include part 2(b) of the original request. Therefore, the Commissioner is satisfied that the DLUHC has met its obligations under section 16(1) of the FOIA.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

21. 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

22. 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.
23. 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

Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF