

To: Owen Boswarva

BY EMAIL: owen.boswarva@gmail.com

31 August 2023

Dear Owen Boswarva,

Re: Freedom of Information Act (FOIA) Request – Internal Review

Thank you for your Internal Review request regarding your Freedom of Information request dated 21st February 2023.

Request

In summary you have requested a review of:

“I would like to request an internal review of the LGA’s response to the access to information request that I submitted on 21 February 2023.

My request was for the following information: agendas and minutes of any meeting of the IDeA Company Board held or scheduled to be held from July 2020 to date. My request for minutes included any papers, action logs, presentations, or attachments circulated to attendees with the minutes or for the purposes of their participation in the meetings.

I received the LGA’s substantive response on 26 June 2023, in the form of nine PDF files containing the disclosed information and a cover letter explaining the exemptions in FOIA that the LGA has relied on to redact and withhold other information. The nine PDF files contain 848 pages of material in total (including redactions).

I request that you review all of the redactions in the disclosures, to ensure the LGA is confident that it has only redacted information to which exemptions legitimately apply.”

Response

May I start by apologising for the delay in our initial response to you. Your request came in at an extremely difficult time in terms of resource in the team and given the extent of documentation in play, we were not able to respond substantively within the timescales that we would have liked.

Given the nature of your request and the number of different papers and officers involved, your initial request was dealt with by the relevant individual officers across the organisation. Having

reviewed the initial response it is clear to me that redactions were not applied consistently across all the documents and that there was not the level of overarching oversight that we would usually apply to our responses.

Following a comprehensive review of all of the information that falls within your request and the previous handling of your request, we are able to provide significantly more information to you. In part this is due to the passage of time and the validity of applying certain exemptions diminishing with time passing.

You will see that personal data, especially that of LGA officers has been redacted throughout the Board papers. This information is being withheld under section 40(2) of the Freedom of Information Act as the information constitutes 3rd party personal data. Section 40(2) provides that personal data about third parties is exempt information if one of the conditions set out in section 40(3) is satisfied. Under the FOI Act disclosure of this information would breach the fair processing principle contained in the Data Protection Act (DPA), where it would be unfair to that person or is confidential. The LGA is of the view that both these are met and releasing this information would breach the rights and freedoms of individuals referred to and as such is exempting this information.

We have set out below each of the packs of IDeA Board papers below and have indicated where redactions have been applied and the exemption(s) relied on for these redactions.

September 2020 IDeA Board papers

Minutes

Information has been redacted in relation to Geoplace as we consider releasing it would, or would be likely to, prejudice commercial interests. Specifically, we are satisfied that disclosure would lead to a detriment to a competitive position as this information relates to commercial agreements, commercial negotiations along with future investment and strategy. As such releasing it would be to provide commercially sensitive information to other organisations and jeopardise confidential discussions and future financial planning along with the ability to operate in a commercial environment. The IDeA considers that there is a weighty and substantial risk of this prejudice arising if the requested information were disclosed.

Having concluded that some of the requested information is exempt under s43, we have gone on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information as required by s2(2)(b) FOIA. In relation to those factors favouring disclosure, we recognise that there is, of course, a general public interest in transparency and the accountability of public bodies.

Against this, we note that there is already considerable information in the public domain concerning the activities of the IDeA and Geoplace and the work that they do. Furthermore, we

consider the disclosure would be to the detriment of the public interest, as it would negatively impact on the IDeA's ability to conduct its work to support for and help to improve local authorities in the future. Having regard to the very real risk of prejudice that disclosure of the requested information would cause we are satisfied that the balance of the public interest favours the maintenance of the exemption under s43(2) in this case.

Some information from the minutes relating to Geoplace has been redacted as it is confidential.

We consider that this information is exempt as—

- (a) it was obtained from other person (including another public authority), and (we believe)
- (b) the disclosure of the information would constitute an actionable breach of confidence.

We are clear that the information has the quality of confidence and that it was imparted in circumstances importing an obligation of confidence, and finally that disclosure would be an unauthorised use of the information to the detriment of the confider.

As the information relates to commercial information disclosing this would breach the confidence with which it was relayed. The discussion with the IDeA Board was conducted with the understanding by all parties that the information would be treated as confidential. As such any "reasonable person" would realise that the information provided to the IDeA was being given to it in confidence and hence the obligations of confidence are imposed on the IDeA and its treatment of that information. We are of the view that some of the information would not have been included or presented in the way that it was if there was a suggestion that it would be released unredacted. We do not consider that there are any substantial public interest arguments that would outweigh the importance of maintaining confidence.

Financial Report paper

Some information has been redacted as it relates to commercial interests. This information relates to risks and opportunities and could provide information to other organisations that would constitute commercial exposure and unfair competitive information and advantage. We do not consider that there are substantial public interest arguments for releasing this specific information not least because we consider the disclosure would be to the detriment of the public interest, as it would negatively impact on the IDeA's ability to conduct its work to support for and help to improve local authorities in the future.

January 2021 IDeA Board papers

Geoplace paper

Some information has been redacted as it relates to commercial interests and is commercially sensitivity. The information that has been redacted relates to commercial agreements and commercial future strategy planning. Releasing this information would hinder the ability to take advantage of future commercial opportunities and negotiations. If disclosed, it would seriously

prejudice the commercial position of Geoplace and IDeA and reveal sensitive information to potential competitors. Commercial proposals in documents may not, in fact, be used and as such could jeopardise and undermine the negotiating and commercial future positions. Please see entry above regarding the public interest test as the same arguments hold for the engagement of the exemption in this instance.

Finance Report

The redactions made here are identical to those in the September 2020 IDeA financial report paper and so please see the above entry for our reliance on the commercial interest exemption.

June 2021 IDeA Board papers

Minutes

Geoplace minutes reflect the conversation and paper from the January 2021 meeting and so the redactions made to the minutes are consistent with the redactions to the main paper. Additionally, they contain future commercial strategy planning and commercial opportunities. As such these have been redacted as they pertain to commercial interests. We consider there would be a prejudice to releasing this information as it may alert competitors to the financial and commercial intentions, opportunities and strategy of Geoplace and thereby provide a competitive advantage to potential competitors. Again, we do not see any persuasive public interest arguments for releasing this specific information given the extent of information already in the public domain.

Finance update minutes have been redacted as some of the information is commercially sensitive as it relates to a discussion on commercial negotiations that are potential and ongoing. Releasing this information would undermine the negotiating position and prejudice the commercial interests of the IDeA. Again, we do not consider it to be in the public interest for such specific and future planning discussions to be made public.

Joint Inspection Team (JIT)

Information relating to a draft contract and indemnity has been redacted as it is commercially sensitive and releasing it would prejudice commercial interests. The agreement contains specific commercial arrangements and details which are acutely commercially sensitive. There is a clear link between this information being released and a prejudice being suffered by the parties to the agreement. The public interest is, in our view, very much in favour of not releasing this information as our concern would be that it would negatively impact on the ability to secure and make income if it was released which we do not consider to be in the public interest in any way.

Additionally, this information is legally privileged. The entire contract and indemnity were drafted by legal advisors and on the basis that it was covered by legal professional privilege. We consider that there is an unarguable position that once legal privilege has been established it must be maintained to protect the integrity of legal advice and as such, we are of the position that there are no countervailing arguments in favour of disclosure based on public interest.

Furthermore, we consider this information to be confidential. The contract and indemnity were shared with the IDeA Board on the clear understanding that it would be treated as confidential and was shared with the belief that confidence would apply. Releasing this information, given that it relates to legal arrangements and commercial matters would constitute an actionable breach by one of the parties to the agreement. This information would not have been shared but for the understanding that it would be treated with confidence.

September 2021 IDeA Board papers

Minutes

Some information relating to MHCLG grant has been redacted as it is commercially sensitive and relates to current commercial activities. Releasing this information would, or would be likely to, prejudice the IDeA's ability to conduct itself in a commercial environment. Please see the previous entries relating to the public interest in not disclosing information that relates to the IDeA's commercial activities.

Financial Report

Some information has been redacted as it relates to commercial interests. This information relates to risks and opportunities and could provide information to other organisations that would constitute commercial exposure and unfair competitive information and advantage. We do not consider that there are substantial public interest arguments for releasing this specific information not least because we consider the disclosure would be to the detriment of the public interest, as it would negatively impact on the IDeA's ability to conduct its work to support for and help to improve local authorities in the future.

Additionally, some information relating to funding and grants for individual programmes has been redacted as it relates to commercial interests. This is granular information and releasing it would be prejudicial to commercial interests as it would provide details of financial and commercial positions of the programmes to other organisations/ individual and undermine the commercial position of those programmes. As there is significant information already in the public domain relating to the IDeA funding, grants and programmes we do not consider that it is necessary or in the public interest to release this level of detail given that releasing it could prejudice those programmes.

January 2022 IDeA Board papers

IDeA 2022/23 Budget Assumptions

Some information has been redacted in this paper as it is commercial sensitivity and releasing would prejudice the commercial interests of the IDeA. The information relates to commercial negotiations and strategy and future planning. As such we are of the view that releasing this would

put the IDeA and other organisations in a compromised position as some of this information is future planning and therefore not certain and would potentially alert other organisations to our strategic commercial approach. While there is always an argument for transparency being in the public interest, we do not consider that this outweighs the importance of keeping the information referenced above out of the public domain. It is clear that it is in the public interest for the IDeA to have a safe space for open discussions relating to commercial activities that will shape future decisions.

Finance Update

Some information has been redacted as it relates to commercial interests. This information relates to risks and opportunities and could provide information to other organisations that would constitute commercial exposure and unfair competitive information and advantage. We consider the disclosure would be to the detriment of the public interest, as it would negatively impact on the IDeA's ability to conduct its work to support for and help to improve local authorities in the future.

June 2022 IDeA Board papers

IDeA Grants and Ringfenced Funding Update

Information has been redacted as it relates to live litigation and/or potential litigation that has a real prospect of becoming live litigation and as such is exempt by virtue of legal privilege.

As well as being exempt by virtue of legal privilege the information has been redacted as it is exempt as it was obtained for purposes relating to investigations undertaken by public authorities to justify regulatory action, and as its disclosure could prejudice public authorities in ascertaining whether circumstances that justify regulatory action exist or may exist.

It is clear that there is a public interest in allowing investigations to be conducted properly, in an unprejudiced way and in a protected way without information being released to the public particularly if this release is prior to the completion of any investigation. A safe space to conduct these investigations is essential not least due to media pressure that early release of information may draw and thereby hinder the efficient running of the investigation. While we do accept the importance of the process and performance of investigations being scrutinised, we do not think this outweighs the above arguments of the public interest in maintaining the exemption.

Additionally, some information has been redacted in line with section 38 FOIA- Health and Safety. We are of the view that releasing this information would or would be likely to endanger the physical or mental health of any individual and/ or endanger the safety of any individual. We consider that the degree of endangerment is sufficient enough to warrant engaging the exemption- by this we mean the potential detriment is far beyond trivial.

We have particular concerns about adverse effects on public health, public unrest and groups of individuals being threatened or harassed. There is a clear causal link between the endangerment

and disclosure of the information as releasing the information could identify the locations of individuals and buildings. Not releasing this information, in our view, will protect individuals.

Given the risk to individuals that we consider releasing this information poses we do not think there are public interest arguments in favour of releasing this information that outweigh the clear public interest of the safety of the public and/ or individuals. This is the case not least as speculative or incomplete information that could mislead the general public and cause them to fail to act or act against their own interests and that the information could allow for individuals to be targeted.

Along with the information being privileged we consider it is also exempt as it is covered by confidence. The information was shared with the IDeA Board on the clear understanding that it would be treated as confidential and was shared with the belief that confidence would apply. Releasing this information, given that it relates to legal proceedings would constitute an actionable breach by a number of organisations not least as it could prejudice the proper conduct of current and future legal action. This information would not have been shared but for the understanding that it would be treated with confidence.

Care and Health Improvement Programme (CHIP)

Information has been redacted as it is commercial sensitivity and release would be prejudicial to commercial interests as it refers to future planning based on commercial activities and decisions by LGA and other organisations. The release of this information would, or would be likely to, prejudice the commercial interests of the programme but also other organisations as it contains details of commercial/ procurement strategies and could provide competitors with inside knowledge of intended courses of action. We do not consider it to be in the public interest to disclose this information as jeopardising the options available in terms of commercial planning would hinder the ability to deliver the programme which is in and of itself in the public interest.

Additionally, some information has been redacted as it was provided in confidence to the IDeA Board. The relevant information was provided to IDeA Board in circumstances importing an obligation of confidence and disclosing this information would constitute a breach of confidence. When the relevant information was presented in some of the Board papers it was done under a commitment and understanding of confidence. As such any "reasonable person" would realise that the information provided to the IDeA was being given to it in confidence and hence the obligations of confidence are imposed on the IDeA and its treatment of that information. We are of the view that some of the information would not have been included or presented in the way that it was if there was a suggestion that it would be released unredacted. We are of the view that disclosing it now would constitute an actionable breach of this confidence and that there is an inherent public interest in maintaining confidence when the obligation is present.

September 2022 IDeA Board papers

Care and Health Improvement Programme

Certain information has been redacted as it covers and provides details of current and future tenders and bids including Annexes 1 and 2. Releasing this information would prejudice the commercial interests of the programme along with other organisations as it would provide details of future commercial strategy along with intended commercial responses. Releasing this information could well lead to significant financial implications. We cannot see any public interest arguments that would outweigh what could be providing competitors with commercial activity information of this nature.

Some information has also been redacted as it constitutes legal advice privilege. We consider that there is an unarguable position that once legal privilege has been established it must be maintained to protect the integrity of legal advice and as such, we are of the position that there are no countervailing arguments in favour of disclosure based on public interest.

We have relied on the exemption of confidence for some information, held in the Annex 3 to the paper, that was provided to the IDeA Board and disclosing this may lead to an actionable breach of confidence. Additionally, there is a duty of confidence to another party who could bring a claim for breach of confidence if this information was released. This information is also legally privileged as it was drafted by legal advisors and with the purpose of providing legal professional advice. As previously stated in this letter where privilege exists it should be protected to protect the integrity of the relationship between legal advisors and client.

October 2022 IDeA Board papers

Minutes

The minutes relating to the CHIP paper of the previous IDeA Board meeting have been redacted as they contain the same information as the paper. The exemptions relied on are, therefore, the same as the above.

Financial report

Some information has been redacted as it relates to commercial interests. This information relates to risks and opportunities and could provide information to other organisations that would constitute commercial exposure and unfair competitive information and advantage. We do not consider that there are substantial public interest arguments for releasing this specific information not least because we consider the disclosure would be to the detriment of the public interest, as it would negatively impact on the IDeA's ability to conduct its work to support for and help to improve local authorities in the future.

Care and Health Improvement Programme

Certain information has been redacted as it covers and provides details of current and future tenders and bids including. Releasing this information would prejudice the commercial interests of

the programme along with other organisations as it would provide details of future commercial strategy along with intended commercial responses. Releasing this information could well lead to significant financial implications. We cannot see any public interest arguments that would outweigh what could be providing competitors with commercial activity information of this nature.

IDeA grants and Ringfenced funding

Information has been redacted as it is exempt as it was obtained for purposes relating to investigations undertaken by public authorities to justify regulatory action, and as its disclosure could prejudice public authorities in ascertaining whether circumstances that justify regulatory action exist or may exist.

It is clear that there is a public interest in allowing investigations to be conducted properly, in an unprejudiced way and in a protected way without information being released to the public particularly if this release is prior to the completion of any investigation. A safe space to conduct these investigations is essential not least due to media pressure that early release of information may draw and thereby hinder the efficient running of the investigation. While we do accept the importance of the process and performance of investigations being scrutinised, we do not think this outweighs the above arguments of the public interest in maintaining the exemption.

Additionally, some information has been redacted in line with section 38 FOIA- Health and Safety. We are of the view that releasing this information would or would be likely to endanger the physical or mental health of any individual and/ or endanger the safety of any individual. We consider that the degree of endangerment is sufficient enough to warrant engaging the exemption- by this we mean the potential detriment is far beyond trivial.

We have particular concerns about adverse effects on public health, public unrest and groups of individuals being threatened or harassed. There is a clear causal link between the endangerment and disclosure of the information as releasing the information could identify the locations of individuals and buildings. Not releasing this information, in our view, will protect individuals.

Given the risk to individuals that we consider releasing this information poses we do not think there are public interest arguments in favour of releasing this information that outweigh the clear public interest of the safety of the public and/ or individuals. This is the case not least as speculative or incomplete information that could mislead the general public and cause them to fail to act or act against their own interests and that the information could allow for individuals to be targeted.

Some of the information in this paper is redacted as it is covered by confidence. The JIT relayed this information to the IDeA Boards on the clear understanding it was doing so under the circumstances of confidence. The potential for there to be an actionable breach of confidence claim is clear in relation to this information and it would not have been provided to the Board if there was any suggestion that it would not be treated as confidential. In relation to this information and exemption, other than the general argument of transparency, we cannot see any prevailing

argument in favour of disclose and consider it in the public interest that this information remains redacted.

January 2023 IDeA Board papers

Minutes

Financial reports are commercially sensitive, and release would prejudice the commercial interests of the IDeA. The information relates to commercial negotiations and strategy, future planning, and funding and pay scales. As such we are of the view that release would put the IDeA in a compromised position as some of this information is future planning and therefore not certain and would potentially alert other organisations to our strategic commercial approaches, options appraisals, and considerations. While there is always an argument for transparency being in the public interest, we do not consider that this outweighs the importance of being able to keep the information referenced above out of the public domain. It is clear that it is in the public interest for the IDeA to have a safe space for open discussions relating to commercial activities that will shape future decisions.

We are also applying the exemption of confidence to this information as a disclosing this could lead to a detriment that would ensue an actionable breach of confidence. As before this information would not have been provided to the Board but for the understanding it was being so done under confidence. We do not consider that there are any public interest arguments for releasing this information that outweigh the importance of maintaining confidence when it is established.

All of the minutes relating to CHIP have been redacted as they contain the same information as in the CHIP paper from the previous meeting and as such the same exemptions apply.

IDeA 2023/24 Budget Assumptions

Some information has been redacted as it relates to commercial interests. This information relates to risks and opportunities and could provide information to other organisations that would constitute commercial exposure and unfair competitive information and advantage to others. We do not consider that there are substantial public interest arguments for releasing this specific information not least because we consider the disclosure would be to the detriment of the public interest, as it would negatively impact on the IDeA's ability to conduct its work to support for and help to improve local authorities in the future.

IDeA Grants and Ringfenced Funding

Information has been redacted from this paper as it is exempt as it was obtained for purposes relating to investigations undertaken by public authorities to justify regulatory action, and as its disclosure could prejudice public authorities in ascertaining whether circumstances that justify regulatory action exist or may exist.

It is clear that there is a public interest in allowing investigations to be conducted properly, in an unprejudiced way and in a protected way without information being released to the public particularly if this release is prior to the completion of any investigation. A safe space to conduct these investigations is essential not least due to media pressure that early release of information may draw and thereby hinder the efficient running of the investigation. While we do accept the importance of the process and performance of investigations being scrutinised, we do not think this outweighs the above arguments of the public interest in maintaining the exemption.

Some information has been redacted in line with section 38 FOIA- Health and Safety. We are of the view that releasing this information or would be likely to endanger the physical or mental health of any individual and/ or endanger the safety of any individual. We consider that the degree of endangerment is sufficient enough to warrant engaging the exemption- by this we mean the potential detriment is far beyond trivial. We have particular concerns around there being adverse effects on public health, public unrest and groups of individuals being threatened or harassed. There is a clear causal link between the endangerment and disclosure of the information as releasing the information could identify the locations. Not releasing this information, in our view will protect individuals.

Given the risk to individuals that we consider releasing this information poses we do not think there are public interest arguments in favour of releasing this information that outweigh the clear public interest of the safety of the public and/ or individuals. This is the case not least as speculative or incomplete information that could mislead the general public and cause them to fail to act or act against their own interests and that the information could allow for individuals to be targeted.

Information has been redacted as it relates to live litigation and/or potential litigation that has a real prospect of becoming live litigation and as such is exempt by virtue of legal privilege.

Along with the information being privileged we consider it is also exempt as it is covered by confidence. The information was shared with the IDeA Board on the clear understanding that it would be treated as confidential and was shared with the belief that confidence would apply. Releasing this information, given that it relates to legal proceedings would constitute an actionable breach by one a number of organisations not least as it could prejudice the proper conduct of current and future legal administration. This information would not have been shared but for the understanding that it would be treated with confidence.

Some information has been redacted as if released it would impact on the commercial interests in a prejudicial way as it contains information about commercial negotiations and funding. We do not consider it in any way to be in the public interest to include information which is commercially speculative at this stage.

Furthermore, this section of the paper includes information which is confidential and as such exempt. The information was shared with the IDeA Board on the clear understanding that it would

be treated as confidential and was shared with the belief that confidence would apply. Releasing this information, would constitute an actionable breach by a number of organisations not least as it could give rise to legal proceedings and significant financial implications for other organisations. This information would not have been shared but for the understanding that it would be treated with confidence not least as it is speculative at this stage and as such not for public sight.

Partners in Care and Health (PCH)

The commercial interest exemption is engaged in relation to the redacted information here as the information relates to future planning of contracts and negotiations, which is potentially subject to change so deals with future strategy of a commercial nature and as such is commercially sensitive. Releasing this information could expose vulnerabilities and thereby provide competitors with a commercial advantage. Please see previous passages in this response letter that deals with the public interest test for commercial interests and CHIP/ PCH release.

As this information covers future commercial positions and intentions, we also believe that this information is covered by the exemption of confidence. As stated in the letter previously the information provided to the IDeA Board is done so with the understanding that confidence applies. Releasing this information could jeopardise future commercial positions/ negotiations/ strategies for PCH and other organisations that would lead to an actionable breach of confidence and also potential loss. As such this information would not have been provided but for the understanding that confidence would apply. As previously stated, we do not consider there to be any public interest arguments in favour of releasing this information that would outweigh the argument of the importance of maintaining confidence.

Additionally, please find included the minutes from the meeting of the **25th January 2023 of the IDeA Board** which were not included in our original response. Some information relating to the budget assumptions minutes are redacted as they relate to commercial interests and could prejudice future commercial negotiations and relate to the paper of the previous meeting and so the same rationale for applying the exemption stands.

The minutes in relation to PCH have been redacted as they refer to and include the same information as the paper that was presented to the Board in January 2023. As such the same exemptions as above are relied on for the same reasons.

Having conducted the review of all the redactions and application of exemptions in our original response please note that we are not relying on section 36 FOIA (prejudice to the effective conduct of public affairs) or section 39 (environmental information).

If you are dissatisfied with the handling of this review, please do contact us within 40 working days of the date of our response and should be sent to the IT and Business Management Team at:

18 Smith Square

London
SW1P 3HZ
E-mail: foi@local.gov.ukb

If you are still not content, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire,
SK9 5AF.

Email: <https://ico.org.uk/global/contact-us/>

Tel: 0303 123 1113

Kind regards,


Local Government Association