

Department for **Transport**

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7th February 2012

Dear XXXX

Our Ref: F0008250

Thank you for your information request of 17th November regarding the Growing Places Fund and the formula used to allocate the funding. As mentioned in the letter to you from XXXXXX, dated 16th December, your request raised complex Public Interest considerations that needed to be analysed before deciding whether some of the information you requested should be released.

The Department has decided that some of this information you requested cannot be disclosed for the reasons given below. The information that can be released is attached at Annex B and consists of email extracts and relevant attachments to these emails along with the relevant section from a submission from officials at the Department for Communities and Local Government to the Secretary of State for Transport, the Secretary of State for Communities and Local Government and the Chief Secretary to the Treasury relating to the Growing Places formula.

I am withholding information contained within email exchanges between officials in my Department, the Department for Communities and Local Government and HM Treasury concerning the formula for London in reliance on the exemption at section 35 (1)(a) of the Freedom of Information Act 2000 which relates to policy in development.

I am also withholding a letter between XXXXXX and the Secretary of State for Communities and Local Government to the Chancellor dated 26th October in reliance on the exemption at section 35 (1)(b) of the Freedom of Information Act 2000 which relates to communication between Ministers.

In applying these qualified exemptions we have had to balance the public interest in withholding the information against the public interest in disclosure. The attached Annex A to this letter sets out the exemptions in full and details of why the public interest test favours withholding the information.

The names of Departmental junior officials, that is staff below the senior civil service, have been withheld in reliance on the personal information exemption at section 40(2) and 40(3) of the Freedom of Information Act 2000 (the full section 40 wording from the

Act is attached at Annex A). These individuals are not in public facing roles and therefore have an expectation that their names will not be put into the public domain. It would be unfair for us to disclose their names and would contravene the first data protection principle.

Development of the allocation formula relating to this fund followed discussions between the Department for Transport, the Department for Communities and Local Government, HM Treasury and the Department for Business, Innovation and Skills. As explained in the letter from Grant Shapps to you dated 2nd December, in designing the Fund, we wanted to use a simple and transparent formula, and our view remains that a combination of population data plus employed earnings produces an appropriate distribution, which will allow all areas to benefit from funding subject to meeting the pre-qualification criteria.

In keeping with the spirit and effect of the Freedom of Information Act, all information is assumed to be releasable to the public unless exempt. A copy of this response and the information provided may now be published on our website together with any related information that will provide a key to its wider context.

If you are unhappy with the way the Department has handled your request or with the decisions made in relation to your request you may complain within two calendar months of the date of this letter by writing to the Department's Information Rights Unit at:

Zone D/01,
Ashdown House,
Sedlescombe Road North,
Hastings,
East Sussex
TN37 7GA;

or by email to: FOI-Advice-Team-DFT@dft.gsi.gov.uk

Please see attached details of DfT's complaints procedure and your right to complain to the Information Commissioner. If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

XXXXX

Your right to complain to DfT and the Information Commissioner

You have the right to complain within two calendar months of the date of this letter about the way in which your request for information was handled and/or about the decision not to disclose all or part of the information requested. In addition a complaint can be made that DfT has not complied with its FOI publication scheme.

Your complaint will be acknowledged and you will be advised of a target date by which to expect a response. Initially your complaint will be re-considered by the official who dealt with your request for information. If, after careful consideration, that official decides that his/her decision was correct, your complaint will automatically be referred to a senior independent official who will conduct a further review. You will be advised of the outcome of your complaint and if a decision is taken to disclose information originally withheld this will be done as soon as possible.

If you are not content with the outcome of the internal review, 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

Exemptions

Section 40 of the FOIA- Personal Information

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject’s right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

(7) In this section—

“the data protection principles” means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

“data subject” has the same meaning as in section 1(1) of that Act;

“personal data” has the same meaning as in section 1(1) of that Act.

Section 35(1)(a) of the FOIA

Exemption in full	
Section 35(1)(a) of the FOIA - Part of the information falling within the scope of the request relates to the formulation or development of government policy.	
Public interest test factors for disclosure	Public interest test factors against disclosure
<p>The public interest in being able to assess the options being considered with regards the allocation for London.</p> <p>Inform those who have raised particular concerns to see how various policies and procedures are considered within Government.</p> <p>Promotes transparency of the policy making process.</p>	<p>Discussions regarding the future of how London is Funded, going more widely than just Growing Places Fund, are ongoing. Disclosure of information regarding the options considered for London’s Growing Places Fund allocations, at this time may mislead or confuse the public into thinking that the approaches discussed in the Growing Places Fund documents represent the agreed policy for all future London funding.</p> <p>Officials need to be able to conduct rigorous and candid risk assessments of the proposed policy for London Funding including considerations of the pros and cons without there being premature disclosure on one particular aspect of London’s funding which might close off better options for how we fund London on other aspects in the future.</p>
<p><u>Decision</u></p> <p>On balance we consider that the Public Interest in ensuring policy around London’s funding that is currently under development is not influenced by disclosure of information relating to the options considered for London’s allocation of the Growing Places Fund and therefore in maintaining the exemption, outweighs the Public Interest in disclosing the information at this particular time.</p>	

Section 35(1)(b) of the FOIA

Exemption in full	
Section 35(1)(b) of the FOIA - Part of the information falling within the scope of the request relates to correspondence between Ministers.	
Public interest test factors for disclosure	Public interest test factors against disclosure
<p>Release of Ministerial correspondence about the Growing Places initiative would promote greater transparency and accountability.</p> <p>Release of Ministerial correspondence about the Growing Places initiative would inform those who have raised particular concerns to see how various policies and procedures are considered within Government.</p>	<p>Disclosure of Ministerial correspondence and in particular recent exchanges about the Growing Places initiative would undermine the collective responsibility of the Government.</p> <p>It is important that Ministers have a space in which to fully discuss the development of policies and when this is in correspondence they can fully record their thoughts and opinions.</p> <p>If ministers feel inhibited from being frank and candid with one another because of the risk of subsequent disclosure, the quality of debate lying behind the collective decision will be diminished.</p>
<p><u>Decision</u></p> <p>On balance we consider that the public interest in ensuring Ministers can continue to communicate in a free and frank way and therefore maintaining the exemption, outweighs that in disclosing the information at this particular time.</p>	