National Audit Office

The UK's independent public spending watchdog

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IMPROVING LOCAL AREAS

Thank you for your Freedom of Information (FOI) request of 17 October. You asked for information about 'improving local areas through developer funding,' and specifically requested:

1. *The underlying data which was used to prepare the map featured in Figure 2 on page 16. In practice this data seems likely to amount to a list of CIL charging authorities. This should include any and all of the relevant source data described as "MHCLG data" in the source note to the figure.*
2. *If MHCLG provided any other data about the date on which these CIL authorities started charging CIL, please also provide that data.*
3. *The entirety of the "reports" and "internal, unpublished reviews of IFSs" provided to NAO by MHCLG, which are described in notes 1 and 5 of Figure 6 on page 27. Please provide these reviews and reports whether or not NAO used them as the basis for any analysis, and whether or not the data they contain is summarised within the NAO's report.*

We have handled your request under the terms of the FOI Act 2000. We have searched our records and can confirm that we hold some of the information falling within the scope of your request. In relation to Question 1, we are providing you with the information you asked for in a separate document enclosed with our response. With regards to Question 2, we do not hold any more data relating to CIL charging authorities, and in respect of Question 3, the FOIA provides a legal right of access to recorded information held by a public authority, but it is subject to certain exemptions that may apply. While we hold information within the scope of your request, we consider the information you have asked for regarding Question 3 to be exempt from disclosure under Section 33 (public audit functions) of the FOIA. The details of the exemption and our reasons for applying are provided below.

Section 33 Freedom of Information Act 2000 – Public Audit

Section 33 of the FOIA provides that:

(1) This section applies to any public authority which has functions in relation to -

(a) the audit of the accounts of other public authorities, or

(b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

(2) Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).

Reasons why we have applied the Section 33 exemption:

We have applied Section 33 exemption to the information we hold to Question 3 because this information was provided exclusively to us by the Ministry of Housing, Communities and Local Government in confidence. It was to allow us to report on MHCLG's reforms and the actions they had taken to challenge developers to build more affordable housing, and other infrastructure such as new roads, health facilities, schools and open spaces. We believe that disclosing this information under the FOI Act would be likely to prejudice the effective performance of our public audit functions going forward and therefore we have applied Section 33 exemption to your request.

Disclosure by the NAO of sensitive information beyond that required for audit reporting purposes would impair the provision of audit information in the future. It would reduce, if not cut off, critical information flows. It would also incentivise audited bodies to take a minimalist approach to NAO information requests or, in the case of bodies whose engagement is optional, serve to discourage such information sharing altogether.

An effective, efficient audit is supported through an open and constructive approach between the NAO and the audited body. As such it is critically important that we have a safe space to gather information and knowledge and can engage in a free and frank way with audited bodies. The release of this information would remove this safe space - precipitating a backdrop of increased challenge and procedure around requests for audit information. This would require the NAO to formally assert our statutory access rights more frequently and potentially seek to enforce them, leading to significant delay, escalation of issues and increased audit costs.

Section 17(3) of the Budget Responsibility and National Audit Act 2011 places a duty on the C&AG to "aim to carry out functions effectively and cost effectively". Given the above factors, we consider that our disclosure of the information requested would be at odds with this statutory requirement – it would serve to undermine the effectiveness and increase the cost of the C&AG's public audit functions. For the reasons set out above, we consider it appropriate to apply the public audit exemption available under Section 33(2) of the FOIA.

The Public Interest Test in this Case:

The NAO is independent of government and scrutinises public spending on behalf of Parliament. Our work serves the public interest by providing transparency on matters of public interest and driving improvement in the use of public resources. We recognise there is a public interest in knowing the use of public money is subject to appropriate levels of accountability and transparency. However, we consider the disclosure of the specific information we have withheld would be likely to reduce the effectiveness of the audit process for the reasons set out above.

The NAO's work puts information into the public domain and helps Parliament hold government to account. In our view, the balance of public interest rests with the NAO being able to deliver an effective and efficient public audit function and report our findings in public. Consequently, given the negative impact that would result from disclosure, we consider it appropriate to maintain the Section 33 public audit exemption. The information you have requested in Question 3 is based on publicly available information and can be found in local authority infrastructure funding statements should you wish to access the underlying data.

I hope this information is useful and you are happy with the way we have handled your request. If you are not happy with this response, you can ask for an internal review within 40 working days by writing to the NAO FOI Team at FOI@nao.org.uk. 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 primary way of escalating your concerns to the Information Commissioner is at: https://ico.org.uk/foicomplaints.

Yours sincerely,

FOI and Correspondence Manager