



Our Reference:

BY EMAIL ONLY

10 November 2016

Dear

**Request for Information**

Thank you for your email dated 16 October 2016 requesting information on the Garden Villages scheme.

We have now had the opportunity to investigate your request and are writing to communicate our response. Please note that your request has been considered under the Environmental Information Regulations 2004 (EIR) as the information relates to the state of the environment.

Like the Freedom of Information Act 2000, EIR provides a right of access to information held by a public authority, but where that information relates to the environment. The scope of what is considered to be environmental information is very broad so we have provided you with links to the Information Commissioners Office (ICO) website and the legislation website should you wish to obtain more information on EIR. An extract from the legislation is also provided to further assist you in your understanding of why this access regime was used.

ICO website: [www.ico.gov.uk](http://www.ico.gov.uk)

Legislation website: [www.legislation.gov.uk](http://www.legislation.gov.uk)

**Extract from Regulation 2 of the EIR - Interpretation**

*"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –*

*(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*

*(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*

*(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;*

*(d) reports on the implementation of environmental legislation;*  
*(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*

*(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*

Regulation 2(1)(c) has been highlighted as the information you have requested falls under this description. Environmental information can also include discussions on land/developments/proposals as those discussions can or will eventually affect the state of the environment.

The wording of your request and our responses are below:

**1. All maps, graphs, tables and documents relating to any submission in respect of a proposal for a Garden Village/Garden Town in the vicinity of the parish of Church Fenton or at any location within the Selby District Council area.**

We have identified a number of documents which fall within the scope of your request. These include an Expression of Interest for the Garden Village scheme and supporting documentation. These are attached alongside this letter. We have also identified an email from HCA requesting clarification on the Expression of Interest and a response to this; these emails are also enclosed alongside this letter. Some redactions have been made to the information where the information contains personal data. These redactions have been made under Regulation 12(3).

**Regulation 12(3) – Personal Data**

Regulation 12(3) of EIR requires that a public authority does not disclose personal data of a third party, except in accordance with Regulation 13. Regulation 13 prohibits disclosure of third party personal data if this would breach the Data Protection Act 1998 (DPA). In this instance we believe that Principle 1 of the DPA would be breached as disclosure would be unfair to the individuals concerned. Regulation 12(3) is not subject to the public interest test.

The document entitled “Project A – early wins Sept 2016” has some redactions made. These redactions are made under Regulation 12(5)(e) of the EIR. This Regulation is engaged as the information is commercial or industrial in its nature and it is confidential as it was provided to Selby District Council in confidence. This confidentiality is protecting a legitimate economic interest, as it relates to potential work to be undertaken by the third party. If the information were to be released, it would adversely affect these economic

interests as it would reveal the third party's intentions, which in turn would affect their ability to undertake the necessary negotiations in relation to this work.

### **Regulation 12(5)(e) - Confidentiality of Commercial or Industrial Information**

Regulation 12(5)(e) states:

12.—(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—  
(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

All exceptions under EIR are subject to a Public Interest Test and we have outlined the factors in favour of disclosure versus non-disclosure below.

#### **Public Interest Test – Factors in favour of disclosure**

The HCA recognises that there is a legitimate public interest in the disclosure of official information held by any public authority. Disclosure helps promote the principles of transparency and accountability, which are central to the effective operation of information access legislation.

We also understand that there is a legitimate public interest in the way in which public authorities make decisions, especially where those decisions impact upon the places in which people live and work, and the way in which we interact with the private sector.

Finally, we appreciate that in order for the public to be appropriately equipped to challenge the decisions and activities of public authorities and demand greater accountability and better value for money for the public purse, they need to be properly informed. The disclosure of information under the statutory regime can go a long way to helping promote this empowerment.

#### **Public Interest Test – Factors in favour of non-disclosure**

The information redacted was supplied to Selby District Council in confidence and it would be unfair to disclose the redacted information as the third party would not have a reasonable level of expectation that this information would be shared with the public.

In addition, disclosure could have a detrimental effect on Selby District Council's relationship with third parties and this in turn could affect the commercial and economic interests of both if the third party decided not to work with Selby District Council in the future. This is not in the public interest as this would hinder their ability to provide best value for money and therefore would not be able to pass this value for money onto the public.

All the above factors would legitimately affect the economic interests and prejudice the commercial interests of the parties involved and therefore the balance falls in favour of non-disclosure at this time. We would, however, stress that as the public interest is continually changing, we would be happy to reconsider the disclosure of this information in the future, at which time the balance may favour disclosure.

## **2. The date the submission was received.**

The Expression of Interest was received by HCA on 29 July 2016.

**3. The name of the organisation/s submitting the proposal.**

As detailed in the attached email submitting the Expression of Interest, it was submitted by the York, North Yorkshire & East Riding Local Enterprise Partnership on behalf of Selby District Council and a range of public sector partners.

**4. Dates and minutes of any meetings where this submission/proposal was discussed, both within the HCA and any external parties.**

We can confirm that we hold information in regard to this question, however this information has been withheld under Regulation 12(4)(e) (Internal Communications). This regulation provides for the withholding of information which is internal communication within the public body. The information HCA holds falls within this definition.

**Regulation 12(4)(e) – Internal Communications**

12.—(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—

(e) the request involves the disclosure of internal communications.

As stated earlier in the letter, all EIR exceptions from disclosure are subject to a public interest test and we have outlined the factors in favour of disclosure versus non-disclosure below.

**Public Interest Test – Factors in favour of disclosure**

The factors in favour of disclosure are similar to those stated in the previous public interest test listed above, in that there is a legitimate public interest in the disclosure of official information held by any public authority and that disclosure helps promote transparency and accountability.

There is a legitimate public interest in the way in which public authorities make decisions, especially where those decisions impact upon the places in which people live and work.

We also appreciate that in order for the public to be appropriately equipped to challenge the decisions and activities of public authorities and demand greater accountability and better value for money for the public purse, they need to be properly informed. The disclosure of information under the statutory regime can help promote this.

**Public Interest Test – Factors in favour of non-disclosure**

While we recognise the public interest in disclosing this information, we must also bear in mind HCA requires a 'safe space' to develop ideas and assess the proposals put forward. This is especially important for this information as this remains a live issue where the outcome of this proposal is not yet decided. An early release of information would negatively impact the assessment of this proposal and others under this scheme.

It would therefore be detrimental to the decision-making process if assessment information was made public prior to the decisions being made and announced and as such this consideration carries significant weight.

After consideration of the factors in favour of disclosure and non-disclosure, we have decided that the factors in favour of non-disclosure outweigh those for disclosure at this time, and so this information has been withheld. As stated previously, the public interest is an ever changing concept and in the future, the arguments for and against disclosure may change and a future request for this information may result in a different outcome of the consideration of the public interest.

If you have any questions regarding this response or any further queries you can contact us at the following addresses and quote your unique reference number found at the top of this letter:

**Email:** [mail@homesandcommunities.co.uk](mailto:mail@homesandcommunities.co.uk)

**Mail:** Information Access Officer  
Homes and Communities Agency  
Fry Building  
2 Marsham Street  
London  
SW1P 4DF

If you are unhappy with the way Homes and Communities Agency has handled your request you may ask for an internal review. You should contact

Head of Legal Services  
Homes and Communities Agency  
Fry Building  
2 Marsham Street  
London  
SW1P 4DF

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  
Online: <https://ico.org.uk/concerns/getting/>

Yours sincerely

Naomi McMaster  
Information Access Officer  
Homes and Communities Agency

Homes and Communities Agency  
Fry Building, 2 Marsham Street, London, SW1P 4DF

0300 1234 500  
[homesandcommunities.co.uk](http://homesandcommunities.co.uk)