



Homes
England

Date: 20/12/2019

Our Ref: RFI2839 & RFI2840

Tel: 0300 1234 500

Email: foi@homesengland.gov.uk

Making homes happen

██████████
By Email Only

Windsor House
Homes England – 6th Floor
50 Victoria Street
London
SW1H 0TL

Dear ██████████,

RE: Request for Information – RFI2839 and RFI2840

Thank you for your request for information, which was processed under the Freedom of Information Act 2000 (FOIA). For clarification, you requested the following information:

RFI2839:

I am writing to you under the Freedom of Information Act 2000 to request information about the Housing Infrastructure Fund (HIF) bid for forward funding that was submitted by Milton Keynes Council on 22 March 2019.

I would be grateful if you could provide copies of all communication between Homes England and Milton Keynes Council during January 2019 in relation to the HIF bid.

RFI2840:

I am writing to you under the Freedom of Information Act 2000 to request information about the Housing Infrastructure Fund (HIF) bid for forward funding that was submitted by Milton Keynes Council on 22 March 2019.

I would be grateful if you could provide copies of all communication between Homes England and Milton Keynes Council during February 2019 in relation to the HIF bid.

Response

We can confirm that we do hold information that falls within the scope of your requests. The attached Annex A contains all correspondence between Homes England and Milton Keynes council in relation to their HIF bid from January and February 2019.

Please note that we have redacted some information under the following exemptions:

Section 40 – Personal information

We have redacted information on the grounds that it constitutes third party personal data and therefore engages section 40(2) of the FOIA.

To disclose personal data, such as names, contact details, addresses, email addresses and personal opinions could lead to the identification of third parties and would breach one or more of the data protection principles.

OFFICIAL



Date: 20/12/2019

Our Ref: RFI2839 & RFI2840

Tel: 0300 1234 500

Email: foi@homesengland.gov.uk

Section 40 is an absolute exemption which means that we do not need to consider the public interest in disclosure. Once it is established that the information is personal data of a third party and release would breach one or more of the data protection principles, then the exemption is engaged.

The full text of the legislation can be found on the following link;

<https://www.legislation.gov.uk/ukpga/2000/36/section/40>

Section 43 - Commercial interests

Under section 43(2) a public authority is not obliged to disclose information that would, or would be likely to, prejudice the commercial interests of any party.

The information requested relates to communications between Homes England and Milton Keynes Council in regards to a Housing Infrastructure Fund (HIF) bid made by the Council. This engages section 43(2) of the FOIA as it is commercial in nature and its release would be likely to prejudice the commercial interests of Homes England and the Council.

Homes England has identified that the information requested, if released, would be likely to prejudice the effective operation of the HIF bidding process; in particular the decision making process on the HIF bid made by the council.

Section 43 is a qualified exemption. This means that once we have decided that the exemption is engaged, Homes England must carry out a public interest test to assess whether or not it is in the wider public interest for the information to be disclosed.

Arguments in favour of disclosure:

- Homes England acknowledges there is a general public interest in promoting accountability, transparency, public understanding and involvement in how Homes England undertakes its work and how it spends public money; and
- Homes England acknowledges there is a general public interest in the HIF and how it performs in assisting with the development of new homes.

Arguments in favour of withholding:

Releasing the information would be likely to:

- distort competition, making it a less competitive process, which would not be in the public interest;
- negatively impact future processes where advice is sought for preparing bids as interested parties may feel unable to discuss bidding strategies or seek advice to improve quality of bids for fear of disclosure, which could lead to weaker or poorer bids being submitted and lead to poorer outcomes which would not be an effective use of public money;
- lead to lobbying for future HIF bids that could impact the impartiality of the decision maker;
- damage our relationships with partners and put these potential funding allocations at risk which in turns would not be in the public interest as this could put potential homes in jeopardy; and
- jeopardise the security of Homes England's systems as disclosing details linking to systems and bid ID's could open up Homes England to a system security breach. The cost and resource needed to rectify a system security breach



Date: 20/12/2019

Our Ref: RFI2839 & RFI2840

Tel: 0300 1234 500

Email: foi@homesengland.gov.uk

created from information disclosed under FOIA would not be in the public interest as it could lead to impact on our ability to effectively run our public function.

Having considered the arguments for and against disclosure of the information, we have concluded that at this time, the balance of the public interest favours non-disclosure.

The full text of the legislation can be found on the following link;

<https://www.legislation.gov.uk/ukpga/2000/36/section/43>

Section 42(1) – Legal professional privilege

Under section 42(1) a public authority is not obliged to disclose information that is covered by legal professional privilege (LLP).

Information was provided by a legal advisor in the context of legal advice related to legal obligations and is covered by the “advice privilege”

Section 42(1) is a class-based qualified exemption. This means that once we have decided that the exemption is engaged, Homes England must carry out a public interest test to assess whether or not it is in the wider public interest for the information to be disclosed, but we do not need to demonstrate that a prejudice or adverse effect would be caused by disclosure of the information.

Arguments in favour of disclosure:

- Homes England acknowledges there is a general public interest in promoting accountability, transparency, public understanding and involvement in how Homes England undertakes its work; and
- Homes England acknowledges there is a general public interest in the HIF and how it performs in assisting with the development of new homes.

Arguments in favour of withholding:

- The concept of LLP is a fundamental principle of English law and to breach this principle by disclosing information would not be in the interests of the public and would be likely to set a precedent for future request for advice between legal advisors and their clients;
- Disclosure would be likely to prejudice the ability of legal advisors and their clients to speak freely and frankly in order to obtain appropriate legal advice; and
- The restriction placed on the provision of legal advice would prejudice the fairness of legal proceedings

Due to the very strong public interest in maintaining LLP, we concluded that the arguments favour withholding the information.

The full text of the legislation can be found on the following link;

<https://www.legislation.gov.uk/ukpga/2000/36/section/42>



Homes
England

Making homes happen

Date: 20/12/2019

Our Ref: RFI2839 & RFI2840

Tel: 0300 1234 500

Email: foi@homesengland.gov.uk

Right to Appeal

If you are not happy with the information that has been provided or the way in which your request has been handled you may request an internal review by writing to;

The Information Access Team
Homes England – 6th Floor
Windsor House
50 Victoria Street
London
SW1H 0TL

Or by email to foi@homesengland.gov.uk

You may also complain to the Information Commissioner however, the Information Commissioner does usually expect the internal review procedure to be exhausted in the first instance.

The Information Commissioner's details can be found via the following link

<https://ico.org.uk/>

Please note that the contents of your request and this response are also subject to the Freedom of Information Act 2000. Homes England may be required to disclose your request and our response accordingly.

Yours sincerely,

Information Access Team

For Homes England