



Homes
England

Date: 19/03/2020

Our Ref: RFI2893

Tel: 0300 1234 500

Email: infogov@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 – RFI2893

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:

MHLGC c£102m funding of the A40 corridor in Oxfordshire.

Please provide the full text of the HM Gov Department for Local Government, Housing and Communities, “invitation to bid” to Oxfordshire County Council, via the Housing Infrastructure Fund, including any other ancillary documents or guidance notes, that OCC may have processed in their bid submission to improve transport on the A40 corridor between Cuckoo lane, Eynsham and Oxford.

Please can you provide a copy of the full text submission made by Oxfordshire County Council and any other supporting evidence it may have offered or withdrawn to MHLG&C.

Response

We can confirm that we do hold the requested information. Please find attached Annex A.

Please note that we have redacted/are withholding 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.

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 in the legislation can be found on the following link;

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

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Section 43 - Commercial interests

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

Some of the information requested relating to the bid submission 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 other interested parties to the information.

Homes England has identified that the information requested, if released, would be likely to prejudice the effective operation of the HIF bidding process.

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 the particular local interest in the HIF bid regarding the A40 corridor and the significant impact that the proposals will have on the local area/residents.

Arguments in favour of withholding:

- Releasing the information could reveal financial information which would affect both the Local Authority's and Homes England's commercial interests. This financial information relates to unverified approvals or funding sources and releasing these would make a presumption on the outcome and influence the decision making process. This would prejudice the impartiality of the bidding process making it less competitive. If Homes England had to assess bids that were not competitive, or in which a decision-maker could be influenced, this could result in inflated allocation of public funding which would not be in the public interest;
- Releasing information in relation to unconfirmed consultants would not be in the public interest as these are subject to due-diligence that has not yet been completed. If this information were in the public domain it would prejudice competition between consultants and compromise the future of the bidding process, making it a less competitive process which would not be in the public interest;
- Releasing information relating to forecast milestones (ie. Planning permission/consents) would not be in the public interest as to do so could be seen as influencing planning consents that have not yet been obtained. This would damage both the public perception of Homes England and the local authority and damage our relationships with partners. Releasing the information could be seen to undermine the formation of policy or decision making before it is finalised. This would put potential funding allocations at risk which would not be in the public interest as it could put potential homes in jeopardy;
- Releasing information on procurement options or proposed contractual clauses may limit the Local Authority's ability to make commercial decisions. The market would be pre-aware of terms intended ahead of the final bid and funding confirmation. This would negatively affect future competitive bidding processes as interested parties may feel unable to provide all of the information required for fear of disclosure. This



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will mean that Homes England has to evaluate bids that are less comprehensive than would otherwise have been the case, meaning that Homes England's ability to undertake due diligence on the bids would be impaired. This would result in decision makers not taking all relevant information into account, meaning the decisions will be less robust and less likely to deliver value for public money. This would adversely affect the ability of government ministers and officials to be able to make effective, informed decisions;

- Releasing the information could lead to lobbying for future HIF bids that could impact the impact the impartiality of the decision maker (or give rise to concerns on the part of other that impartiality could be adversely affected). It is essential that decision makers make decisions based on the information provided via the bidding process and be seen to do so. Therefore release of the information would not be in the public interest as it would impact the ability of Homes England to deliver against its objectives in our Strategic Plan;
- Releasing the information would mean that bids may be approved without appropriate challenge, and other bids may be rejected because needs and dependencies are not comprehensively stated. This will result in the HIF programme as a whole not delivering the objectives and benefits that HM Treasury stipulated when it made the funding available to Homes England; and
- Homes England has been unable to identify a wider public interest in disclosing the information requested.

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>

21 - Information accessible to applicant by other means.

We are able to inform you that some of the information you have requested is available to the applicant elsewhere. This being, the consultation material which was made public by Oxfordshire County Council and West Oxfordshire District Council as part of the consultation process. However, in the interests of transparency and to aid the public, we have also included this information in the attached Annex A.

The full text of the legislation can be found on the following link and we have quoted section 21 below for ease.

<https://www.legislation.gov.uk/ukpga/2000/36/section/21>

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)—

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate



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(otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

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

Or by email to infogov@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,

The Information Governance Team
For Homes England

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