



Homes
England

Date: 24 August 2020

Our Ref: RFI3045

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Making homes happen

[REDACTED]
By Email Only

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

Dear [REDACTED]

RE: Request for Information – RFI3045

Thank you for your request for information which was processed in accordance with the Freedom of Information Act 2000 (FOIA).

For clarification, you requested the following information:

I would be grateful if you could provide me with a copy of the agreement between yourselves and Guildford Borough Council relating to the grant of £10 million for the Ash Station Bridge project.

I am specifically interested in an outline of the terms of the grant and if/when any refund of the grant would be applicable/due.

Response

We can confirm that we hold information that falls within the scope of your request however we rely on section 43 and section 41 of the FOIA to withhold the information held from disclosure.

Section 43 - Commercial interests

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

The information requested which is contained within the Grant Funding Agreement (GFA) 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 project and the funding programme.

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 it is in the wider public interest for the information to be disclosed.

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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.

Arguments in favour of withholding:

- While there is obviously a public interest in understanding the terms on which funding has been made available to Guildford Borough Council (GBC), the fact that those terms may be amended imminently means that the public interest in refusing disclosure for the time being outweighs the public interest in disclosure. The information in the cashflow, cashflow assumptions and baseline development appraisal (in particular) is now considered by GBC to be out-of-date and has potential to mislead the public were it to be disclosed;
- Furthermore, disclosure would also likely lead to GBC being required to pay more to landowners in order to secure the necessary land/rights to deliver the scheme. This would result in a worse outcome for the public purse;
- GBC intends to make details of the funding for the Ash Road Bridge (ARB) scheme public in due course. However, to do this at a time when negotiations are ongoing would significantly prejudice GBC's ability to deliver the ARB scheme. The ARB scheme is a key requirement of GBC's Local Plan and a failure to deliver could lead to significant planning harm to the local area as a result of unmitigated highways impacts;
- Disclosure would result in local authorities being deterred from including commercially sensitive information in future bids for grant funding. This will mean that Homes England would have 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 will be impaired. This will 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 money;
- The consequences of releasing data that is part of a wider ongoing matter could damage our relationships with partners and put these potential funding allocations at risk. This would not be in the public interest as this could put potential homes in jeopardy; 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>

Section 41 – Information provided in confidence

Under section 41(1)(b) of the FOIA Homes England is not obliged to disclose information to the public if it would constitute a breach of confidence.

Given that the GFA is subject to confidentiality provisions, section 41 of the FOIA is engaged. Information contained within the GFA includes information for the ARB scheme that have been provided to Homes England in confidence



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and with the expectation that they will not be publicly disclosed. We rely on this exemption to withhold from disclosure the financial and technical information contained in the GFA only.

Although section 41 of the FOIA is an absolute exemption and there is no requirement to conduct a full public interest test, we can confirm that we've considered the public interest as a breach of confidence may not be actionable if there is an overriding public interest in disclosure. We feel that there is no overriding public interest in favour of disclosure.

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

<https://www.legislation.gov.uk/ukpga/2000/36/section/41>

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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