



Date: 11 September 2020

Our Ref: RFI3054

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

██████████
By Email Only

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

Dear ██████████

RE: Request for Information – RFI3054

Thank you for your recent email, which was processed under the Freedom of Information Act 2000 (FOIA). You requested the following information:

Referring to the attached Chippenham HIF appendix inventory v1.1, I understand that you hold the information in these appendices. Of the forty-three, I have access to those in rows coloured green, which are available in the public domain.

Please will you provide the information listed in the rows coloured yellow?

For reference, the 'rows coloured yellow' in the appendix inventory v1.1 are as follows:

Chippenham HIF appendix inventory v1.1	
Appendix reference number	Document title
03	Atkins Transport modelling note
05	Wiltshire Council Spatial Planning letter of support
09	Atkins model LMVR
10a	Chippenham context map
10b	Chippenham Urban Expansion Scheme map
10c	Chippenham Urban Expansion Scheme Transport map
12	Options Assessment Report
13	Education Tables
15	Housing phasing schedule
16	Rawlings Green Railway Bridge Supporting Information
18	Risk Analysis for 4.8.1
20	Compulsory purchase note
21	Displacement Analysis for 4.1.6
22	Economic Case modelling assumptions for 4.1 to 4.5
23	Appendix for Economic Case Sensitivity Analysis
24a	Appendix for Options Analysis 3.2.5
24b	Appraisal summary Option 1 and 2 for 3.2.5



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25	Appendix for 5.1.1
26	Chippenham HIF - Chippenham Urban Expansion outline programme
28	Construction Phasing - HIF distributor Road
29	Wiltshire Council Vision for Chippenham
30	Supporting information for response 5.3.2 Housing Procurement Options
31	Environmental Constraints Map
32	Chippenham HIF AST V1.1
33	Chippenham HIF Environment TAG Report v1.0
34	Stakeholder Letters of Support Combined
35	Chippenham Planning Context Note
37	Concept Framework
38	Chippenham HIF Rail Assessment Technical Note
39	6.2.3 Appendix
40	Housing Policy Objectives supporting Information 2.3.1.
41	Distributional Impacts (DI) Report

Response

We can confirm that we do hold some of the requested information.

Applicable Regime

Homes England consider the contents of the HIF bid appendices to contain information that falls under both the FOIA and the EIR. Regulation 2(1) of the EIR define where information is “environmental” in nature. We have therefore reviewed the content of the appendices and assessed whether each document falls under FOIA or EIR as defined in Regulation 2(1).

FOIA Information

We are able to inform you that we do hold information that falls within the scope of your request that falls under the FOIA.

Some of the information that falls in scope under FOIA has been withheld or redacted 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.

The information requested relating to financial arrangements, planning applications and education costs 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 Housing Infrastructure Fund and the potential development in Chippenham.

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 an interest in the Housing Infrastructure Fund and the applications to this fund.

Arguments in favour of withholding:

- The financial information in the appendices should not be disclosed as this would impact the ability of Homes England, Wiltshire Council and potential developers to achieve value for public money. There is a high risk that disclosure would be likely to adversely impact the ability of these parties to negotiate effectively regarding procurement of services and land. This would not be in the public interest as interested parties could inflate the value of works, which would negatively impact public money;
- Information relating to ongoing planning applications or approvals should not be disclosed as it relates to ongoing works. Homes England have to support our relationships with councils in order to achieve best value for public money and best possible delivery of Homes. Releasing working information ahead of the proper process could prejudice Wiltshire Council's statutory role as a local authority;
- The consequences of releasing data that is part of a wider ongoing works 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 would undermine Homes England's position and ability to deliver against its objectives and targets in our Strategic Plan; and
- Homes England has been unable to identify a wider public interest in disclosing the information requested.



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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>

For ease, we have listed in the table below the appendices that fall under the FOIA and detailed any exemption that applies. The information able to be disclosed is attached to this response as **Annex A**.

Chippenham HIF appendix inventory v1.1 – FOIA (Annex A)		
Appendix reference number	Document title	
13	Education Tables	Withheld under S43(2)
15	Housing phasing schedule	Withheld under S43(2)
16	Rawlings Green Railway Bridge Supporting Information	Withheld under S43(2)
18	Risk Analysis for 4.8.1	Withheld under S43(2)
20	Compulsory purchase note	Released in Annex A
21	Displacement Analysis for 4.1.6	Released in Annex A – part redacted under S43(2)
22	Economic Case modelling assumptions for 4.1 to 4.5	Withheld under S43(2)
23	Appendix for Economic Case Sensitivity Analysis	Withheld under S43(2)
24a	Appendix for Options Analysis 3.2.5	Withheld under S43(2)
24b	Appraisal summary Option 1 and 2 for 3.2.5	Withheld under S43(2)
25	Appendix for 5.1.1	Released in Annex A
26	Chippenham HIF - Chippenham Urban Expansion outline programme	Withheld under S43(2)
30	Supporting information for response 5.3.2 Housing Procurement Options	Released in Annex A
34	Stakeholder Letters of Support Combined	Released in Annex A – part redacted under S40(2)
35	Chippenham Planning Context Note	Released in Annex A
40	Housing Policy Objectives supporting Information 2.3.1.	Released in Annex A

EIR Information

We are able to inform you that we do hold information that falls within the scope of your request that falls under the definition of Environmental Information (Regulation 2(1) EIR).

Some of the information that falls in scope under the EIR has been withheld or redacted under the following exceptions:



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Regulation 13(1)

Under regulation 13(1) of the EIR, Homes England may refuse to disclose information that constitutes third party personal data. 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. Regulation 13(1) is an absolute exception 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 exception is engaged.

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

<https://www.legislation.gov.uk/ukxi/2004/3391/regulation/13/made>

Regulation 12(5)(e)

Under regulation 12(5)(e) of the EIR, Homes England may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

In this case, the Chippenham HIF bid relating to the delivery of new homes is a commercial operation. HIF grants relate directly to a financial award and contain information on costs, budgets, proposed spend and the prospective terms relating to funding and development that is ongoing/under negotiation. The redacted EIR information is subject to confidentiality provided by law under a common law duty of confidence and contractual obligation. The confidentiality terms within the Housing Infrastructure Fund grant determination agreement shows the parties had the intention that a duty of confidentiality would be created between them. Homes England therefore recognises that this information was intended to be held in confidence between the parties.

The information in the redacted EIR Information is not trivial and is not otherwise in the public domain. Both Homes England and the Local Authority would suffer a commercial disadvantage in future negotiations if this information were to be disclosed to the public. The information therefore also has the necessary quality of confidence.

Public Interest Test

Regulation 12(5)(e) is subject to the public interest test. Once the exception has been engaged it is then necessary to consider the balance of the public interest in maintaining the exception or disclosing the information.

Under regulation 12(2) the public authority must apply a presumption in favour of disclosure, in both engaging the exception and carrying out the public interest test. In relation to engaging the exception, this means that there must be clear evidence that disclosure would have the adverse effect listed in 12(5).

Factors in favour of disclosure

- Homes England acknowledge that there is a presumption in disclosure regarding environmental information as well as a public interest in promoting transparency in how we undertake our work and allocate public money; and
- Homes England acknowledge that there is a public interest in the information submitted as part of an application for HIF Funding, and the surrounding information regarding the proposals for development in Chippenham.



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Factors in favour of withholding

- The redacted information relates to ongoing transactions and negotiations between the council and third parties. It is not in the public interest for Homes England to disclose the sensitive contents of Wiltshire Council's bid, because doing so will result in local authorities being deterred from including commercially sensitive information in their bids when submitting them. This will mean that Homes England has to evaluate bids that are less comprehensive than would otherwise have been the case, meaning the decisions will be less robust and less likely to deliver value for money; and
- The public interest is unlikely to be served where disclosure would result in a greater cost to the public purse. Wiltshire Council's negotiating position will be adversely affected if third parties are aware of the sensitive information resulting in poorer value for public money.
- The redacted information contains raw traffic data (either ANPR or count data collected). It is not in the public interest to release this information because it has a commercial value to Wiltshire Council. If the information were to be released it could be sold to interested third parties which would result in loss of value to a public body (Wiltshire Council). This would not be in the public interest as it would negatively affect the public purse.

Having considered the arguments for and against disclosure of the information, we have concluded that at this time disclosure of the information would have an adverse effect on both Homes England and the council. The balance of the public interest favours non-disclosure.

Regulation 12(4)(d)

Regulation 12(4)(d) of the EIR provides an exception to the duty to disclose environmental information where the material is still in the course of completion, an unfinished document or incomplete data. Documents 29 (Wiltshire Council Vision for Chippenham) and 37 (Concept Framework) engage this exception because they are draft documents.

Public Interest Test

Regulation 12(4)(d) is subject to a public interest test with a presumption in favour of disclosure.

Factors in favour of disclosure

- Homes England acknowledge that there is a presumption in disclosure regarding environmental information as well as a public interest in promoting transparency in how we undertake our work and allocate public money; and
- Homes England acknowledge that there is a public interest in the information submitted as part of an application for HIF Funding, and that even draft documentation may help provide a complete picture to the public regarding the proposals for development in Chippenham.

Factors in favour of withholding

- The withheld documents were submitted to Homes England in 'draft' format by Wiltshire Council. The council have stated that there would be a 'chilling effect' if the draft documents were to be released. The information in these draft documents has not been consulted on or finalised.
- The chilling effect is that the information presented in the documents relates to ongoing discussions and negotiations regarding possible proposals for development in Chippenham. The information



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contained within these documents is still under consideration. There is still a specific need for the decision makers to have frank discussions regarding this information and to disclose it at this time would prejudice this.

- This may not be the case once the project has progressed further or if these documents are finalised in the future.

Having considered the arguments for and against disclosure of the information, we have concluded that at this time disclosure of the information would have an adverse effect on both Homes England and the council. The balance of the public interest favours non-disclosure.

Regulation 14(4) of the EIR states that if the exception in regulation 12(4)(d) is specified in refusal, the authority shall also specify, if known, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed. In compliance with this regulation, we can advise that the public body responsible for the information is Wiltshire Council. Homes England are not aware of an estimation of when or if this information will be completed, and would suggest you contact Wiltshire Council regarding this.

For ease, we have listed in the table below the appendices that fall under the EIR and detailed the exemption that applies. The information able to be disclosed is attached to this response as Annex B.

Chippenham HIF appendix inventory v1.1 – EIR (Annex B)		
Appendix reference number	Document title	
03	Atkins Transport modelling note	Released in Annex B – part redacted under Reg 13(1) and Reg 12(5)(e)
05	Wiltshire Council Spatial Planning letter of support	Released in Annex B – part redacted under Reg 13(1)
09	Atkins model LMVR	Released in Annex B – part redacted under Reg 13(1) and Reg 12(5)(e)
10a	Chippenham context map	Released in Annex B
10b	Chippenham Urban Expansion Scheme map	Released in Annex B – part redacted under Reg 12(5)(e)
10c	Chippenham Urban Expansion Scheme Transport map	Released in Annex B – part redacted under Reg 12(5)(e)
12	Options Assessment Report	Withheld under Reg 12(5)(e)
28	Construction Phasing - HIF distributor Road	Released in Annex B
29	Wiltshire Council Vision for Chippenham	Withheld under Reg 12(4)(d)
31	Environmental Constraints Map	Released in Annex B
32	Chippenham HIF AST V1.1	Released in Annex B – part redacted under Reg 13(1)
33	Chippenham HIF Environment TAG Report v1.0	Released in Annex B – part redacted under Reg 13(1)
37	Concept Framework	Withheld under Reg 12(4)(d)



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38	Chippenham HIF Rail Assessment Technical Note	Released in Annex B – part redacted under Reg 13(1)
41	Distributional Impacts (DI) Report	Released in Annex B – part redacted under Reg 13(1)

Information not held by Homes England

In relation to '39 – 6.2.3 Appendix', we can confirm that we do not hold this information. This is because it was not submitted by the Local Authority to Homes England.

In order to conclude that the information is not held, we have searched with our Housing Infrastructure team who would have the requested information if held.

The FOIA does not oblige a public authority to create information to answer a request if the requested information is not held. The duty under section 1(1) is only to provide the recorded information held.

The full text of section 1 in the legislation can be found here:

<https://www.legislation.gov.uk/ukpga/2000/36/section/1>

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