

By email only to: [REDACTED]

11 March 2021

Dear [REDACTED]

Freedom of Information Act 2000 (FOIA)

Our reference: RFI3357

Thank you for your email of 4 March 2021. I am writing in response to your request for information held by Homes England which has been processed under the FOIA.

For clarification, you made the following request:

May I please request the current version of the Business Case on Pay and Grading Reform and Pay Offer (2019 – 20) – which is understood to have been submitted to MHCLG. Please provide the information by March 24 th at the latest.

We can confirm that Homes England holds the information that you have requested, however in this case we are withholding the information as it is exempt from disclosure under section 36(2).

In order to apply this exemption, we have sought the reasonable opinion of the 'qualified person'. Their reasonable opinion is that disclosure would be likely to prejudice the free and frank provision of advice (section 36(2)(b)(i)), the free and frank exchange of views for the purposes of deliberation (section 36(2)(b)(ii)), and otherwise prejudice the effective conduct of public affairs (section 36(2)(c)).

The exemptions at section 36(2)(b)(i) and 36(2)(b)(ii) of the Act are qualified. This means that once it is 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.

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 makes decisions; and
- Release of the information may lead to the public being better informed and better able to engage in the implementation of decisions that affect them.

Arguments in favour of withholding:

- In order to discuss the full range of options and impacts, Homes England needs to be able to exchange views, provide advice and deliberate the resulting decisions in a free and frank manner. Disclosure of the information would be likely to inhibit this and therefore impair the quality of internal decision making; and
- Disclosure would be likely to prejudice the ability of Homes England and the Ministry of Housing, Communities and Local Government (MHCLG) to express themselves openly, honestly and completely. Exchange of views is part of the evaluation of competing arguments. Loss of frankness would have a chilling effect and damage the quality of views and/or advice which could lead to poorer decision making.

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 withholding.

The exemption at section 36(2)(c) of the FOIA is also qualified. The public interest test for this exemption is shown below:

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 makes decisions; and
- Release of the information may lead to the public being better informed and better able to engage in the implementation of decisions that affect them.

Arguments in favour of withholding:

- Government needs a safe space in which to develop ideas and reach decisions. The information has been generated internally and is pertinent to considerations that ministers may wish to explore. Disclosure may lead to speculation around information when Ministers and officials need an appropriate degree of private space within which to evaluate these considerations; and
- The proposals contained within the business case are a 'live' issue and still open to change. The need for a safe space in this matter is therefore still applicable and to release information in relation to this matter prior to finalising the details would be likely to impair decision making; and
- Information in regard to this matter will be shared with the appropriate parties as part of the consultation process. This consultation process will allow the parties sight of the information required in order to ensure they are informed of the position and to express their views.

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 withholding.

The full text of section 36 in the legislation can be found here:

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

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. You can request an internal review by writing to Homes England via the details below, quoting the reference number at the top of this letter.

Email: infogov@homesengland.gov.uk

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

Your request for review must be made in writing, explain why you wish to appeal, and be received within 40 working days of the date of this response. Failure to meet this criteria may lead to your request being refused.

Upon receipt, your request for review will be passed to an independent party not involved in your original request. We aim to issue a response within 20 working days.

You may also complain to the Information Commissioner's Office (ICO) 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 Governance Team
Homes England