



Homes
England

Date: 14 May 2021

Our Ref: RFI3320

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 – RFI3320

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

Could you please provide any documentation (including but not limited to reports, emails, agreements, financial updates) for the above related to the 'value derived from the site to be shared between the Council and the HCA, based on a priority returns basis'.

We asked for clarification regarding your request and you advised as follows:

This refers to Fareham Borough Council

I believe the final agreement with Fareham Council for the transfer of the airfield land contained clauses regarding sharing value derived from the site.

A copy of this original agreement would be a good starting place and then a check for any information that has been provided by Fareham Council to this effect and any records you hold as your follow up process to this contractual arrangement.

Response

We can confirm that we do hold information that falls within the scope of your request. However, we are withholding the information held from disclosure under the following exemptions:

Section 21 - Information accessible to applicant by other means

Under section 21 Homes England is not obliged to disclose information that is available to the applicant elsewhere.

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.

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(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 (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.

Advice and Assistance

We have a duty to provide advice and assistance in accordance with Section 16 of the FOIA. As such we can advise that we hold a copy of 'Daedalus Vision and Outline Strategy, Three Years on' which is publicly available via Fareham Borough Council on the following link: [Attachment 1-Review of Vision for Daedalus report-2018.pdf \(fareham.gov.uk\)](#).

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 Investment Funding Agreement and associated legal agreements as well as information contained within emails regarding approvals, terms and conditions of funding, ongoing milestones and financial information 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 our funding programmes.

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;
- Homes England acknowledges there may be a general interest in how we engage with partners and arrangements we have regarding funding; and
- Homes England acknowledges there is a public interest in the plans for the Daedalus site.



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Arguments in favour of withholding:

- Releasing the information would be likely to negatively impact future funding processes and proposals as potential partners may be deterred from applying to Homes England for grant funding if they felt information related to their commercial and ongoing funding commitments would be released to the public domain. This would impact the ability of Government officials to make effective, informed decisions regarding allocation of public funds. This would not be in the public interest as public funds could be allocated in a way that would distort regional need for development;
- The information relates to a site where a third party (the council) is still procuring/undertaking works. If this information were released it would be likely to disadvantage the third party's commercial position and have a negative impact on the third party's ability to procure works for ongoing development at this site. The council would not be able to negotiate effectively as this information could be used by third parties to distort or otherwise prejudice the ability of the council being able to secure works for market value, resulting in damage to the public purse. This would also be likely to have the same negative effect on future commercial activity and other Homes England funding. This would not be in the public interest as it would put development at risk, inflate prices and damage Homes England's reputation as a partner. This would negatively affect public money and nullify work already undertaken;
- If information regarding value that has been/will be derived were in the public domain there could be expectations from the public and potential future partners about the value of the site and the value of potential works. This would mean that prices could be inflated and negotiating positions put at risk. This would not be in the public interest as it would be likely to result in poorer value for public money;
- Releasing the information would be likely to negatively impact future processes as third parties may feel unable to provide all the information requested for fear of disclosure, which would impact the ability of Government officials to make effective, informed decisions and work effectively with partners. This would be likely to negatively impact allocation of public money;
- Releasing the information could reveal financial information of a third party which may in turn affect their commercial interests. The consequences of releasing data that is part of a wider ongoing matter could damage our relationships with partners and put other potential funding allocations at risk. This would not be in the public interest as this could put potential homes in jeopardy and affect Homes England's ability to deliver against its objectives in our strategic plan; 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>



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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.

The Investment Funding Agreement which falls within scope of your request is subject to confidentiality provisions, and therefore section 41 of the FOIA is engaged. Information contained within the Agreement includes information that has been provided to Homes England in confidence and with the expectation that it will not be publicly disclosed. We rely on this exemption to withhold from disclosure the financial and technical information contained in the Agreement.

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. 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/>



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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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