



Homes  
England

Date: 10 August 2021

Our Ref: RFI3528

Tel: 0300 1234 500

Email: [infogov@homesengland.gov.uk](mailto:infogov@homesengland.gov.uk)

Making homes happen

By Email Only

Information Governance Team  
Homes England  
Windsor House – 6<sup>th</sup> Floor  
50 Victoria Street  
London  
SW1H 0TL

Dear [REDACTED]

**RE: Request for Information – RFI3528**

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

You requested the following information:

*RE: BSF GRANT APPLICATION FOR WORKS AT HOLLIDAY WHARF, BIRMINGHAM  
Please may I request a copy of BSF grant application for above development?*

**Response**

Neither Confirm nor Deny

Homes England can neither confirm nor deny that we hold the information requested.

On receipt of a valid request for information, section 1(1) of the FOIA obliges a public authority to inform the requestor under section 1(a) if they hold the information requested, and under section 1(b) communicate that information to them.

However, the duty under section(1)(a) does not apply to your request by virtue of sections 41(2) and 38(2) FOIA.

The duty to confirm or deny does not arise if to comply with this duty would be likely to constitute an actionable breach of confidence (section 41(1)) or endanger physical health or the safety of an individual (section 38(1)(a)&(b)).

The full text in the legislation can be found here: [Freedom of Information Act 2000 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2000/62) and [Freedom of Information Act 2000 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2000/62).

Section 41 – Information provided in confidence

Section 41 is an absolute exemption. It applies when Homes England's view is that confirming or denying if information is held would, of itself, constitute a breach of confidence, and be likely to result in a successful legal action against Homes England for breach of confidence.

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Though there is no requirement under s41 to conduct a full public interest test, Homes England has considered that the degree of assurance provided by Homes England to applicants when submitting confidential information outweighs the public interest in disclosure of information of this type.

#### Section 38 – Health and Safety

Section 38 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 organisation to confirm or deny that we hold the information.

#### Public Interest Test

##### Arguments in favour of confirming or denying:

- 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 a public interest in transparency in matters concerning public concerns over safety and submissions to the Building Safety Fund.

##### Arguments in favour of neither confirming or denying:

- Confirming or denying that Homes England holds information that falls within scope of the request would identify whether the building in question had submitted an application to the Building Safety Fund. This would publicly classify and confirm a building as having cladding that has been deemed unsafe. There is a real and substantial risk that a building could be subject to malicious attack from criminals, terrorists and other malicious people should it be identified as above. This would not be in the public interest as it would result in a tangible threat to the physical health and safety of residents of an identified building. Homes England have a duty to protect the public from terrorist, malicious and criminal acts that are at risk of occurring should Homes England identify buildings that would be vulnerable to attack as a result of the type of cladding in place.

Having considered the arguments for and against, we have concluded that confirming or denying whether any information is held would be likely to be detrimental to the health and safety of individuals and therefore the balance of the public interest favours neither confirm nor deny.

The public interest arguments to confirm or deny should not be interpreted as evidence that Homes England does or does not hold information that falls within the scope of your request.

#### **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 the Ministry of Housing, Communities and Local Government (MHCLG) publish Building Safety Fund registration statistics here: [Remediation of non-ACM buildings - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/remediation-of-non-acm-buildings).

MHCLG also publish a monthly data release here: [Building Safety Programme: monthly data release - February 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/building-safety-programme-monthly-data-release-february-2021).



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### **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](mailto:infogov@homesengland.gov.uk)

The Information Governance Team  
Homes England – 6<sup>th</sup> Floor  
Windsor House  
50 Victoria Street  
London  
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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,

**The Information Governance Team**  
For Homes England

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