



Homes
England

Date: 3 September 2021

Our Ref: RFI3574

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Making homes happen

██████████
By Email Only

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

Dear ██████████

RE: Request for Information – RFI3574

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:

May I please re-phrase my request for information as follows;

- a) May I see the legal documents relating to Homes England's acquisition of the Pirbright Site from BBSRC?*
- b) May I see the formal papers that ascertained how the cost of contamination remediation was, or was not, taken into account when agreeing the price paid for the Pirbright Site?*

Response

We can confirm that we do hold the requested information. However, we rely on Section 43(2) of the FOIA to withhold the information from disclosure.

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 requested information for documents relating to Homes England's acquisition and cost of remediation for the Pirbright Site 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 future development on this site.

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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.

Arguments in favour of withholding:

- The information relates to and directly affects ongoing commercial negotiations that Homes England and the third party are undertaking regarding future proposals at the site. If this information were released it would be likely to disadvantage Homes England's commercial position and have a negative impact on our ability to procure works for ongoing development at this site. We would not be able to negotiate effectively as this information could be used by third parties to distort or otherwise prejudice the ability of Homes England 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;
- Releasing the information would be likely to negatively impact future development processes and proposals as interested parties may feel unable to provide all the relevant information necessary to Homes England for fear of disclosure. This would impact the ability of Government officials to make effective, informed decisions regarding allocation of public funds;
- Releasing the information could reveal financial information between Homes England and third parties which may in turn affect their commercial interests. The consequences of releasing data that is part of wider ongoing proposals could damage our relationships with partners and put potential negotiations and planning 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;
- The information includes figures that are still under negotiation and have not yet been finalised and agreed. If this were to be release it could allow third parties to undermine agreed processes and procedures and negatively affect Homes England's negotiating position with third parties. This would not be in the public interest as it would negatively affect the public purse and put Homes England at risk of State Aid;
- If the market value assumptions 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 result in poorer value for public money and could result in mis-allocation of public funds. Therefore, release would negatively affect the public purse;
- The information would reveal Homes England decision-making and assessment process in relation to competitive bids for tender that will affect commercial enterprises. To release this information would not be in the public interest as it would undermine the necessity for public authorities to have a 'safe space' in which to assess and deliberate decisions that will directly affect commercial operations. Release of the information would inform future applicants of our scoring mechanisms and other assessment information



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that would prejudice the quality of future applications/submissions to tender. Furthermore, this could negatively distort competition amongst third parties putting Homes England at risk of breaching State Aid regulations;

- Disclosure could put Homes England at risk of breach of Regulation 18 of the Public Contracts Regulations 2015. Regulation 18 provides that “Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner”. Homes England is a contracting authority. The information relates to ongoing services/contracts that have been procured by Homes England. If this information were released it would be likely to prejudice future competitive tenders for Homes England contracts. Release of the information would be likely to result in third parties being placed at a commercial disadvantage in relation to other potential bidders if the wider public were aware of how an organisation had ranked those suppliers' bids. There would be significant reputational, commercial and financial loss to Homes England and our partners if third parties could use the information to distort the market for their own gain; 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>

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.



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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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