



Homes
England

Date: 27 September 2021

Our Ref: RFI3599

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Making homes happen

[REDACTED]
[REDACTED]

By Email Only

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

Dear [REDACTED]

RE: Request for Information – RFI3599

Thank you for your recent correspondence to our legal team which, as advised, contained a request for recorded information that has been processed under the Environmental Information Regulations 2004 (EIR).

You requested the following information:

Whether any decision to vary the HIF GDA has been taken prior to the deed of variation being completed. If it has, please confirm the date any such decision was taken and provide details of that decision;

Response

We can confirm that we do hold the requested information.

The information that we hold that falls within the scope of your request is internal change request/approval papers. We are withholding these papers from disclosure under the following exception:

Regulation 12(4)(e) – Internal Communications

Under regulation 12(4)(e) of the EIR, Homes England may refuse to disclose information to the extent the request involves the disclosure of internal communications.

In engaging the exception it is only necessary that the information fall into the defined category, not that disclosure would have an adverse effect. However, under regulation 12(1)(b), the public authority can only withhold the information if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. Furthermore, under regulation 12(2), it must apply a presumption in favour of disclosure.

Public Interest Test

Regulation 12(4)(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.

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

OFFICIAL



Date: 27 September 2021

Our Ref: RFI3599

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

- Homes England acknowledge that there is an interest from the public in how Homes England makes decisions and considers any changes to agreed contractual clauses between us and our partners and the justifications for these, and that there is a level of transparency required from public servants making these decisions.

Factors in favour of withholding

- It is vital that Homes England have a 'safe space' to assess and deliberate decisions in relation to the clauses contained within ongoing funding agreements with third parties. Homes England is responsible for ensuring that a significant amount of public money is allocated to partners effectively and in a way that best ensures value for money and ensures deliverability. The deliberations undertaken by Homes England in the withheld information detail internal decision making processes in relation to ongoing contractual milestones between Homes England and a third party. Disclosure would prejudice the ability of decision makers to make impartial judgements about ongoing contractual negotiations without fear of external scrutiny and undue pressure. This would not be in the public interest as it would be likely to prejudice our position in the market as the government's housing accelerator and effectively manage the public funds entrusted to us;
- The Information Tribunal has confirmed that the need for a safe space will be strongest when the information relates to a 'live' matter. In this case, the information reveals proposed changes to ongoing contractual milestones that if not met, would constitute a fundamental default of the contract. Furthermore, the changes discussed are not yet agreed by the parties in a signed and completed Deed of Variation. If the information were public it would be likely that public pressure and external factors would detrimentally affect Homes England's ability to enter into contract with the third party. Additionally, this would affect the Council's ability to achieve further approvals and measures necessary to meet these proposed contractual obligations. This would be detrimental to the public interest as it could negate a substantial amount of public money already invested; and
- Disclosure of internal approval/change decisions would have a 'chilling effect' on Homes England's ability to progress with both current and future decisions and discussions regarding funding of this scheme. As previously stated, these discussions are currently ongoing and in relation to a live process. To disclose the information would result in a loss of frankness and candour in relation to continuing decisions about a large amount of public money and would damage the quality of these discussions. This would lead to poorer decision making which would directly affect spending of public money and decision making in relation to significant infrastructure works that will impact a large number of people. It is vital that the quality of these decisions is as robust as possible to ensure these decisions are made effectively and in the public interest.

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 and there is not a wider public interest in disclosing the information requested.

The full text of Regulation 12(4)(e) in the legislation can be found via the following link: [The Environmental Information Regulations 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukreg/2004/12/12/124e).

Right to make Representations

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 a reconsideration of our response (Internal Review). You can make this representation by writing to Homes England via the details below, quoting the reference number at the top of this letter.



Homes
England

Making homes happen

Date: 27 September 2021

Our Ref: RFI3599

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Email: infogov@homesengland.gov.uk

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

Your request for reconsideration must be made in writing, explain why you wish to appeal, and be received within 40 working days of the date of this response (Reg 11(2)). Failure to meet this criteria may lead to your request being refused.

Upon receipt, your request for reconsideration 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

OFFICIAL