



Homes
England

Date: 10 December 2021

Our Ref: RFI3698

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Making homes happen

[REDACTED]

By Email Only

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

Dear Sir/Madam

RE: Request for Information – RFI3698

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

You requested the following information in relation to the Housing Infrastructure Fund Grant Determination Agreement between Medway Council and Homes England:

- a. Any decision by the IP to agree the GDA variation;
- b. Minutes of that decision;
- c. Any internal documents (such as memos, reports or presentations) relating to that decision; and
- d. Any guidance that the IP applies when making decisions under HIF.

Response

We can confirm that we do hold some of the requested information.

In order to provide clarity on the matter we can advise that there have been two Deeds of Variation (DoV) drafted in relation to this scheme. In accordance with the duty to provide advice and assistance in the Freedom of Information Act 2000 (FOIA) and the EIR we have provided a response to your questions in relation to both of the DoVs for complete clarity.

In relation to the parts of your request referenced a, b & c:

We can confirm that on 27 September 2021 we responded to a request for information from yourselves referenced RFI3599 for which the information that fell in scope was internal change request/approval papers relating to the first DoV for this scheme. The information was withheld under Regulation 12(4)(e) of the EIR and the response is available on the following link: [RFI3599 - Medway HIF GDA Deed of Variation.pdf \(publishing.service.gov.uk\)](#).

There is a second DoV in relation to the scheme and therefore we also hold internal change request/approval papers in relation to this DoV, which were not in the scope of your previous request.

In relation to the first DoV, given the time passed since our response to RFI3599 we have again considered the applicability of the exemption applied and the public interest in release of this information. We can confirm that we

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consider the public interest arguments to still be applicable and continue to conclude that the public interest continues to favour withholding of the information.

In relation to the second DoV we can confirm that the information held is also exempt from disclosure under Regulation 12(4)(e):

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
- 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



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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).

In relation to the part of your request referenced d:

Regulation 12(4)(a) – Information not Held

Under regulation 12(4)(a) of the EIR, Homes England may refuse to disclose information if the requested information is not held by that public authority.

Regulation 9(1) provides that an authority must provide advice and assistance to applicants and in accordance with this we can advise that in relation to recorded "guidance" for decisions to amend or extend a GDA there is no recorded information held.

Under the Forward Funding stream of the Housing Infrastructure Fund (HIF), change requests are considered by Homes England, the Department of Levelling up, Housing and Communities (DLUHC) and HM Treasury (HMT) as appropriate, on a case-by-case basis depending on the nature of the request and that of the project. There are a number of factors taken into account, including ensuring that the project still supports the HIF programme objectives.

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.

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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

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