



Homes
England

Date: 6 April 2022

Our Ref: RFI3815

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 – RFI3815

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:

whether below terms are present in the funding administration agreement between Homes England and the developer (Bellway):

- a. non completion of the dwellings to the required standards constitute a default by the developer*
- b. On or after the occurrence of any developer Default, the developer shall pay on demand all Homes England's losses incurred as a result of the developer Default including any costs incurred by Homes England in investigating any developer default which has occurred.*

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 43(3) FOIA. The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2) which is that information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

The full text in the legislation can be found here:

[Freedom of Information Act 2000 \(legislation.gov.uk\)](https://legislation.gov.uk)

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Section 43 - Commercial interests

The information requested relating to terms within the agreement engages section 43(3) of the FOIA, the duty to confirm or deny does not arise if, would, or would be likely to, prejudice the interests mentioned in subsection (2).

Homes England has identified that the information requested, if released, would be likely to prejudice the effective operation of funding programme.

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:

- While there is obviously a public interest in understanding the terms in which funding has been made available to the third party (developer), disclosure would result in third parties being deterred from including commercially sensitive information in future bids for grant funding therefore, the public interest in refusing disclosure for the time being outweighs the public interest in disclosure. Releasing the information will have a negative impact on future funding agreements with other developers;
- Releasing the information would be likely to negatively impact future funding processes and proposals as potential developers 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 and directly affects ongoing commercial negotiations that Homes England and the third party are undertaking regarding future proposals of the wider site. If this information were released it would be likely to disadvantage Homes England's and the third party's commercial position and have a negative impact on the ongoing development of the wider site. 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 future 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;
- To disclose information contained within the Funding Administration Agreement would be likely to affect our ongoing relationship with the third party. There is a high risk that this would damage the performance of the contract if the relationship between Homes England and a developer were prejudiced. This would not be in the public interest as Homes England may be unable to fulfil our requirements as set out in our strategic plan; and
- Homes England has been unable to identify a wider public interest in disclosing the information requested.



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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>

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 template Help to Buy Equity Loan Funding Administration Agreement is available on the following link:

[201015_FINAL_HTB_Standard_Funding_Admin_agreement.pdf \(publishing.service.gov.uk\)](#).

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 by writing to;

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

Or by email to infogov@homesengland.gov.uk

You may also complain to the Information Commissioner 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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