



Homes
England

Date: 17 June 2022

Our Ref: RFI3859

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 – RFI3859

Thank you for your recent email, which was processed under the Environmental Information Regulations 2004 (EIR).

You requested the following information:

BSF building claim - B4_New_Ipswich_2

51 Patteson Road.

Could you please advise the pre application fees granted to the responsible entity for this application and the approved contract date.

We asked for clarification regarding your request in relation to “approved contract date” and you clarified as follows:

To clarify I mean the date the funding was approved and contract sent to responsible entity .

Your clarification email also contained a further request for information:

Can you also advise fees paid to date on this application. I am referring to costs involved in the preparation of the application to BSF surveyors investigation etc.

Response

We can confirm that we do hold some of the requested information. We will address each of your points in turn.

Could you please advise the pre application fees granted to the responsible entity for this application

The information that we hold that falls within the scope of your request is the pre-tender support amount. We are withholding this information from disclosure under the following exception:

OFFICIAL



Date: 17 June 2022

Our Ref: RFI3859

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Regulation 12(5)(e) – Confidentiality of commercial or industrial information

Under regulation 12(5)(e) of the EIR, Homes England may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

Four elements are required for Regulation 12(5)(e) to be engaged:

- 1) The information is commercial or industrial in nature;
The pre-tender amount allocated represents funds that will result in procurement of services for works at this building. Therefore it is commercial in nature as it relates to commercial activity.
- 2) Confidentiality is provided by law;
The withheld information is subject to confidentiality provided by law under a common law duty of confidence. The information has a common law duty of confidence because it is not trivial and not in the public domain. There is no need for the public authority to have obtained the information from another or a third party for this duty to apply. The information was created in circumstances creating an obligation of confidence; it has been created internally as part of an internal decision making/approval process. Homes England therefore recognises that this information was intended to be held in confidence within the organisation.
- 3) The confidentiality is providing a legitimate economic interest;
If the confidentiality of this information was breached it would harm the ability of the entity in receipt of the funding to achieve value for money on the necessary works the funding is provided for. If potential providers of services knew the amount of pre-tender support the costs of works could be inflated and not represent best value for money. There is a legitimate economic interest in protecting the ability of Homes England via the receiving entity to negotiate in current and future commercial agreements.
- 4) The confidentiality would be adversely affected by disclosure;
Disclosure would result in third parties gaining access to commercially valuable information. Disclosure of the confidential information would harm the ability of Homes England to achieve good value for public money.

Public Interest Test

Regulation 12(5)(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.

Under regulation 12(2) the public authority must apply a presumption in favour of disclosure, in both engaging the exception and carrying out the public interest test. In relation to engaging the exception, this means that there must be clear evidence that disclosure would have the adverse effect listed in 12(5).

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 a public interest in the allocation of funds under the Building Safety Fund.



Date: 17 June 2022

Our Ref: RFI3859

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Factors in favour of withholding

- The pre-tender support amount is an estimation by Homes England and the Department for Levelling Up, Housing and Communities (DLUHC) of the assumed cost of potential works required at this building, based on the submissions received and evaluations undertaken. Release of information under the EIR is considered to be 'to the world at large'. Therefore if this information were in the public domain, third parties would be likely to use this information to influence the cost of any proposals for tenders or works at this building. This could result in inflated value or cost if third parties were aware of the potential amount allocated by Homes England and DLUHC available to be spent. This would not be in the public interest as it would be likely to result in mis-allocation of public funds and greater cost to the public purse; 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 Regulation 12(5)(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/2004/12/12/12(5)(e)).

The approved contract date: date the funding was approved and contract sent to responsible entity

The Funding was approved on 12 January 2022. The date that the contract was sent to the responsible entity (for signing) was 14th April 2022.

Can you also advise fees paid to date on this application. I am referring to costs involved in the preparation of the application to BSF surveyors investigation etc.

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 Homes England do not hold information paid to individual consultants pre-application. Homes England will only know the amount of fees requested across the project as a whole, and how much funding we have paid on the application. We can advise that this information would be held by the applicant, you may wish to contact them directly.

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

Date: 17 June 2022

Our Ref: RFI3859

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Making homes happen

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