



Homes
England

Date: 17 August 2022

Our Ref: RFI3941

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Making homes happen

[REDACTED]
By Email Only

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

Dear [REDACTED]

RE: Request for Information – RFI3941

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

You requested the following information:

This is a request for all information held on groundwater levels taken from boreholes at or near Northstowe Phases 1, 2, 3A, or 3B and all information held on ground investigations at Northstowe Phases 1, 2, 3A, or 3B.

This request excludes any information already accessible to the public in an Environmental Statement published in the local planning authority's planning register or already published on a publicly accessible website of any other public authority.

Response

We can confirm that we do hold information that falls within the scope of your request. The information that we hold is provided as the following Annexes:

Annex A – Assessment & Reports

Annex B – Borehole Report

Annex C – Monitoring Report Data

Annex D – Correspondence

Annex E – Ground Investigation Report

Annex F – Investigation & Interpretative Reports

Annex G – Test Reports

Annex H – Correspondence (not included in Annex D)

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Please note information in relation to Phases 1,2, 3A and 3B were released as part of a previous response which is available via the below link, see RFI3368. We have also provided these to you (Annexes A-D).

[Homes England RFI releases for April 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/homes-england-rfi-releases-for-april-2021) -
<https://www.gov.uk/government/publications/homes-england-rfi-releases-for-april-2021>

The remaining information that falls within the scope of your request is contained within Annexes E – G.

Annexes A-H: Regulation 13(1)

We have redacted information contained within Annexes A-H under Regulation 13(1) of the EIR.

Under regulation 13(1) of the EIR, Homes England may refuse to disclose information that constitutes third party personal data. To disclose personal data, such as names, contact details, addresses, email addresses and personal opinions could lead to the identification of third parties and would breach one or more of the data protection principles. Regulation 13(1) is an absolute exception which means that we do not need to consider the public interest in disclosure. Once it is established that the information is personal data of a third party and release would breach one or more of the data protection principles, then the exception is engaged.

Annex A & H - Regulation 12(5)(e)

We have withheld a report from disclosure in Annex A under the following exception:

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;
In this case, the report contains information that relates to an ongoing commercial operation regarding prospective/potential development that is ongoing. 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. The information was created in circumstances creating an obligation of confidence; it has been commissioned by Homes England to assist an internal decision-making process that will influence future planning consents. 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;
The withheld information relates to appraisals of a site that is subject to development/planning proposals. If the confidentiality of this information was breached it would harm the ability of Homes England and our contractors to receive value for money for services at this site and could delay future planning consents.



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There is a legitimate economic interest in protecting the ability of Homes England and third parties 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 water levels at Northstowe and the effect development may have on them.

Factors in favour of withholding

- The information directly affects ongoing commercial negotiations and works being undertaken by our contactors. If this information were released it would be likely to disadvantage Homes England's commercial position. Homes England would not be able to negotiate effectively as this information could be used by third parties to distort or otherwise prejudice the procurement of goods/services/works at this site. This would not be in the public interest as it would put development at risk and inflate prices. This would negatively affect public money and nullify work already undertaken;
- The information includes figures that relate to current remediation works that are ongoing. If this information were released it could allow third parties to undermine agreed processes and procedures to support waterworks at this site. This could put current infrastructure works on the site at risk and negatively affect Homes England's contracting 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;
- The information is currently being used to develop options and support current and future planning consents that are not yet finalised. The consequences of releasing data that is part of a wider ongoing proposal 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 would undermine Homes England's position and ability to deliver against its objectives and targets in our Strategic Plan;
- 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 for fear of disclosure.



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This would impact the ability of Government officials to make effective, informed decisions regarding allocation of public funds; 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.

Annex D - Regulation 12(4)(d)

We have withheld a report from disclosure in Annex D under the following exception:

Regulation 12(4)(d) of the EIR provides an exception to the duty to disclose environmental information where the material is still in the course of completion, an unfinished document or incomplete data.

Public Interest Test

Regulation 12(4)(d) is subject to a public interest test with a presumption in favour of disclosure.

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 information reviewed and considered by public authorities involved in development at Northstowe and that even draft documentation may be of interest to the public.

Factors in favour of withholding

- The report is a document created by a third party and shared with Homes England before full publication. It is necessary that Homes England and other public bodies are able to have a 'safe space' in which to gather and appraise information away from public scrutiny or intervention. Disclosure of draft documents would harm the ability of public bodies to independently discuss and act upon information collected. Release of the information could lead to lobbying that could impact the impartiality of the decision maker (or give rise to concerns on the part of others that impartiality could be adversely affected). It is essential that decision makers make decisions based on the information produced as part of the official process and also be seen to do so;
- There is also a 'chilling effect' argument regarding future information of a similar nature if disclosed. If the information were released it would prejudice the quality of information contained within future documents of a similar nature if those drafting thought that the information would be disclosed before it had been approved and finalised for publication. There is a specific need for the decision makers to have frank discussions regarding this type of information in order to fully and adequately appraise the information contained within. To disclose the information would affect the ability of decision makers to make effective, informed decisions. Any decision based on incomplete information could lead to poorer outcomes which would not be in the public interest as it would not be an effective use of public money;



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Having considered the arguments for and against disclosure of the information, we have concluded that at this time disclosure of the information would have an adverse effect on Homes England. The balance of the public interest favours non-disclosure.

Regulation 14(4) of the EIR states that if the exception in regulation 12(4)(d) is specified in refusal, the authority shall also specify, if known, the estimated time in which the information will be finished or completed. In compliance with this regulation, we can advise that the final version of the draft report is publicly available on the following link: [Baseline Conceptual Report \(longstanton-pc.gov.uk\)](https://www.longstanton-pc.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. 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.

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



Homes
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