



Homes
England

Date: 8 December 2022

Our Ref: RFI4060

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 – RFI4060

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

You requested the following information:

RE: BSF application for 41 Bengal Street

We would like a copy of:

The financial details provided in the application to demonstrate the value of warranty contributions and their associated excess payments.

The details provided by the applicant to make clear the situation regarding the Premier Guarantee settlement figure and associated excess amounts.

Any details provided by the applicant that relate to 'Buttress', 'commercial tenant', 'ground floor', 'first floor' or 'service charge'.

Our enquiry is specifically around the Premier Guarantee funded element of the works, rather than the BSF award itself; and specifically whether or not the Premier Guarantee policy excess payments were either referenced or included in the calculations presented to the BSF.

Our managing agent has been asked, but will not provide us with a copy of the BSF application. The residential units have the benefit of a Premier Guarantee but they are also obliged to pay the associated excess payments. The scant

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figures presented to us by the managing agents contain no reference to the payment of policy excess related to the Premier Guarantee settlement.

We would like to see whether a sum relating to the excess payments was included when the application was made in the application itself or in any commentary outlining the situation with the Premier Guarantees..

Either copies of anything specific relating to the excess payment or alternatively simply a copy of the BSF application for 41 Bengal Street, including any supplemental information provided by the applicant would provide the information we would like ideally.

Response

We can confirm that we do hold the information in scope, which is the Building Safety Fund (BSF) application for funding at 41 Bengal Steet. The BSF application is exempt from disclosure to the public domain under the following exception in the EIR:

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 amounts requested for funding 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. The information was created by two parties who have entered into contractually binding confidentially terms. These show that the parties had the intention that a duty of confidentiality would be created between them. Homes England therefore recognises that this information was intended to be held in confidence between the parties.
- 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 funding requested 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.



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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 personal interest from the requestor who is a leaseholder at the building in question and there is a potential dispute between themselves and the managing agent that the requestor believes disclosure of the application would assist with resolving.

Factors in favour of withholding

- The application and the amounts of funding contained within would reveal the 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;
- Furthermore, release of the amount of funding for this particular building would be likely to impact on the wider BSF scheme and other applicants to the scheme. If other funding recipients or applicants were able to compare applications and amounts of funding that relate to those applications future applications could be presented in a way that resulted in mis-allocation of funds. This would not be in the public interest as it would put public funds at risk and could result in buildings that require remediation having issues accessing the funding they are entitled to;
- Whilst we acknowledge the personal interest of the requestor, any disclosure under EIR would be 'to the world at large' and Homes England publish all responses to requests for information on our disclosure log. To release the application to the public domain would be likely to breach the confidentiality agreements between ourselves and the applicant as information contained within the application has been provided to Homes England in confidence. To make this information public would be likely to ultimately affect the requestor themselves as a leaseholder if the applicant were unable to trust that Homes England would not reveal sensitive application data to the wider public. This would put the funding application as a whole at risk and may result in the cladding remediation not progressing. The requestor should pursue alternative methods of obtaining the information from the managing agent that would not put the information in the public domain;



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- Furthermore, release would also be likely to put remediation at other buildings allocated funding under the BSF at risk. Homes England has to protect relationships with all parties and other recipients of BSF allocations. If other applicants became aware that Homes England were sharing confidential information other applicants may be distrustful of accessing the scheme for their own buildings. There is a risk this would result in buildings that require cladding remediation not undergoing the remediation required. This would have a significant impact on the individuals living at or owning properties in these buildings; 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).

Extension of time to consider the public interest test

On 28 October 2022, we wrote to advise that we had extended the deadline for response to your request by 20 working days in order to consider the public interest in disclosure. We were unable to issue this response by the revised deadline and therefore your request has not been progressed within the timescale set out in the legislation. We apologise for the delay in progressing your request and for any impact this has had on you.

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.

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.



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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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