



Homes
England

Date: 28 April 2023

Our Ref: RFI4245

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 – RFI4245

Thank you for your request for information which was processed in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR).

You requested the following information:

Could you supply the Business Case for the HIF bid for the South Lancaster Growth Catalyst (submitted by Lancashire County Council in 2019) along with all relevant documentation and associated reports, the HIF bid itself and the Determination Agreement.

Response

We can confirm that we do hold the requested information. We will address each point in turn.

Applicable Regime

On 21 March 2023, we wrote to advise you that the deadline for Homes England to issue a response had been extended by 20 working days. We advised that we required additional time to take a decision on where the balance of public interest lies, as we considered the qualified exemption in Section 43(2) under the FOIA. During the course of this consideration, we have determined that some parts of your request concerned information about the environment and should therefore be considered under the EIR not the FOIA.

Your request was originally considered solely under the FOIA, and it has been determined that the exemption in Section 39 of the FOIA applies. Section 39 of the FOIA provides that information is exempt information if the public authority holding it:

- (a) *"is obliged by environmental information regulations to make the information available to the public in accordance with the regulations, or*
- (b) *would be so obliged but for any exemption contained in the regulations."*

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Environmental information is defined in Regulation 2(1) of the EIR. This provides that environmental information is:

“any information in written, visual, aural, electronic or any other material form on:

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;...¹*

The Information Commissioner’s Office (ICO) guidance advises that public authorities should interpret ‘any information...on’ broadly. Information that would inform the public about matters affecting the environment or enable them to participate in decision making and help to achieve that purpose is likely to be environmental information, even if the information itself does not directly mention the environment.

It further advises that the test that public authorities should apply is whether the information is on or about something falling within the definitions in regulations 2(1)(a)-(f), and not whether the information directly mentions the environment or any environmental matter.

We have determined, based upon this guidance, that some of the information that you have requested is environmental information and therefore that the exemption in Section 39 of the FOIA does apply to it.

The exemption in Section 39 of the FOIA is a qualified exemption which means that we must apply the Public Interest Test to it. Having considered the ICO guidance, which provides, “... *given the fact that authorities have an obligation to respond to requests for environmental information under the EIR it is hard to envisage any circumstances where it would be in the public interest for the authority to also consider that information under FOIA*”, we have determined that it is not in the public interest to consider the request under the FOIA and rather that we should process it in accordance with the EIR.

1. Could you supply the Business Case for the HIF bid for the South Lancaster Growth Catalyst (submitted by Lancashire County Council in 2019) along with all relevant documentation and associated reports, the HIF bid itself.

We can confirm that the environmental information that we hold consists of the business case for the Housing Infrastructure Fund bid for the South Lancaster Growth Catalyst, the Housing Infrastructure Fund bid and associated documentation and reports. We are withholding this information from disclosure under the following exception:

¹ Note there are further paragraphs (d) to (f) which are not set out here.



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Regulation 12(4)(b) – Manifestly unreasonable

Regulation 12(4)(b) of the EIR provides an exception to the duty to disclose environmental information where the request is manifestly unreasonable. The information requested engages this exception because the Housing Infrastructure Bid, Business Case relating to the bid and all relevant documentation and associated reports represent a substantial volume of information which we consider would cause a disproportionate burden on Homes England's resources.

We have identified 83 documents that fall within the scope of your request for environmental information. Those documents relate to applications for funding which contain commercially confidential information of both Homes England and Lancashire County Council. Due to the nature of the documents that contain the environmental information requested, commercially confidential information which may fall under regulation 12(5)(e) would be woven intrinsically throughout each document.

We consider that it would present a disproportionate burden on our resources to consider regulation 12(5)(e) in each document. Many of these documents are large, with some documents exceeding 100 pages in length and one document in excess of 800 pages.

We have considered whether it would be appropriate to rely on regulation 7(1) of the EIR, which would permit Homes England to extend the time limit for compliance to a maximum of 40 working days in order to facilitate compliance with the request. However, we still consider that the complexity and volume of information requested means that it is impracticable to comply with the request within 40 working days.

Public Interest Test

Regulation 12(4)(b) 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) Homes England 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 regulation 12(4)(b).

Public interest in favour of disclosure:

- Homes England acknowledges that there is a presumption in favour of 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 acknowledges that there is a public interest in large scale development processes and the robustness of the applications for funding submitted to the Housing Infrastructure Fund (HIF).

Public interest in maintaining the exception:

- Homes England is a small public authority with limited resources. Identifying the environmental information that would engage regulation 12(5)(e) in all of the documents identified in scope of this request would place a disproportionate burden on our resources and would prevent us from answering other requests.
- The majority of the requested environmental information consists of information that was provided to Homes England by Lancashire County Council, as part of an application for funding. Homes England would be required to consult with Lancashire County Council about the disclosure of the environmental



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information and considers that the review of this information would place a disproportionate burden on Lancashire County Council.

- The largest document with the 83 documents that form the environmental information in scope of this request consists of 805 pages. This document consists of text, data and data analysis, drawings and plans relating to the HIF Business Case. We estimate that this document alone would take in excess of 67 hours of staff time to review. This is calculated at five minutes per page and includes identifying any environmental information that would engage regulation 12(5)(e), conducting the Public Interest Test and applying redactions if appropriate. We do not consider that this is a proportionate use of our limited resources and will impact our ability to respond to other requests and disrupt the delivery of our HIF programme.
- Homes England has been unable to identify a wider public interest in disclosing the information requested.

Having considered the argument for and against disclosure of the information, we have concluded that at this time, the balance of the public interest continues to favour non-disclosure.

Advice and Assistance

We have a duty to provide advice and assistance in accordance with regulation 9(1) of the EIR. In accordance with this duty, we can advise that you may wish to consider narrowing the scope of your request. Your original request for environmental information consisted of "*the Business Case for the HIF bid for the South Lancaster Growth Catalyst (submitted by Lancashire County Council in 2019) along with all relevant documentation and associated reports, the HIF bid itself*". "*All relevant documentation and associated reports*" consist of a large volume of information which has caused regulation 12(4)(b) to be engaged.

When considering a further request, we must advise that some environmental information contained within the Business Case consists of personal data, which engages regulation 13 of the EIR and is an absolute exemption, meaning it is not subject to the Public Interest Test. The Business Case also contains environmental information that would engage regulation 12(5)(e) – Confidentiality of commercial or industrial information, which is subject to a Public Interest Test.

Please note that due to the broad scope of your request we cannot confirm that any further request would not also be considered manifestly unreasonable pursuant to regulation 12(4)(b) EIR.

2. Could you supply ... the Determination Agreement

For clarity, the Grant Determination Agreement (GDA) does not consist of environmental information and so this part of your request is being considered under the FOIA.

We can confirm that we do hold the requested information. However, we rely on section 43(2), section 41 and section 21 to withhold this information from disclosure.

Section 43 - Commercial interests

Information contained within the GDA engages section 43(2) of the FOIA as it is commercial in nature and its release would be likely to prejudice the commercial interests of Homes England and other interested parties to the information.

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



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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 that 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; and
- Homes England acknowledges that there is an interest in the terms of the funding it delivers and the arrangements between the organisation and our partners.

Arguments in favour of withholding:

- The GDA between Homes England and Lancashire County Council sets out performance criteria in relation to ongoing milestones and targets, delivery and operational obligations, performance criteria, and information relating to payments/repayments. To release the detail of these ongoing contractual obligations between the parties would be likely to prejudice their ability to fulfil the requirements agreed between the parties in the GDA. It is imperative that Lancashire County Council be able to work to achieve the obligations set out in the contract without undue influence from third parties that could disrupt the development, contracting process, or prejudice other funding sources that could put the overall scheme at risk. This would affect value for public money and prejudice new homes which would not be in line with the strategic objectives set out by government that Homes England is tasked with achieving as per our strategic plan;
- The GDA sets out requirements on Lancashire County Council and furthermore failure to meet the agreed deadlines could result in a material breach of contract. This would have significant cost implications on both Lancashire County Council and Homes England. This would directly nullify public funds already spent and would be likely to inflate the cost of future spend on the site, which would not be in the public interest as it would directly affect the public purse;
- The GDA contains confidentiality provisions in relation to Lancashire County Council's obligations and release of the information would breach these undertakings. This would be likely to cause significant detriment to Homes England in our relationship with a partner. As the Government's housing accelerator Homes England has to support relationships with partners in order to achieve our strategic objectives and support home delivery with best value for public money. If partners felt that Homes England would reveal confidential commercial information in relation to projects where we are collaborating it would be likely that future partners would be unwilling to work with us or be wary of being open and transparent. This would cause significant risk in Homes England being able to invest public money and resources in the widest possible net of partners in order to achieve best value for money. It is imperative that Homes England is able to attract competitive partners and is respected in the market as a positive force;
- The requested information relates to a current and ongoing project where all opportunities/proposals have not yet been determined or concluded. If other potential or confirmed sources of funding became aware of the terms of the HIF funding and the obligations placed on Lancashire County Council regarding this funding as contained in the GDA, it would be likely to prejudice the ability of Lancashire County Council to negotiate for and secure other sources of funding. This would result in Homes England having to pay a



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higher grant than would have otherwise been the case, meaning greater cost to the public purse which would not be in the public interest;

- Releasing the information would be likely to negatively impact future funding processes and proposals to our funding schemes as potential partners may be deterred from applying to Homes England for grant funding if they felt information relating to their commercial and ongoing funding commitments would then be released to the public domain. This would be likely to result in a substantial impact on potential financial outcomes and delivery of the HIF. Furthermore, 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 consequences of releasing data at a time when negotiations/proposals are ongoing would significantly prejudice Lancashire County Council's ability to deliver the program. The program is a key scheme and failure to deliver could lead to significant planning harm to the local area and affect Lancashire County Council's ability to achieve the targets set out in their Local Plan. Therefore, release would be likely to put potential homes in jeopardy and affect Homes England's ability to deliver against its objectives in our strategic plan, which is not in the public interest; 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 the legislation can be found on the following link;

<https://www.legislation.gov.uk/ukpga/2000/36/section/43>

Section 41 – Information provided in confidence

Under section 41(1)(b) of the FOIA Homes England is not obliged to disclose information to the public if it would constitute a breach of confidence.

Given that the GDA is subject to confidentiality provisions, section 41 of the FOIA is engaged. Information contained within the GDA includes information for the HIF funding scheme that has been provided to Homes England in confidence and with the expectation that it will not be publicly disclosed. We rely on this exemption to withhold from disclosure the financial and technical information contained in the GDA only.

Although section 41 of the FOIA is an absolute exemption and there is no requirement to conduct a full public interest test, we can confirm that we have considered the balance of the public interest, as a breach of confidence may not be actionable if there is an overriding public interest in disclosure. In this case, we feel that there is no overriding public interest in favour of disclosure.

The full text of the legislation can be found on the following link;

<https://www.legislation.gov.uk/ukpga/2000/36/section/41>

Section 21 - Information accessible to applicant by other means

Subject to the exemptions above, we can advise that some of the information requested is available elsewhere, and therefore section 21 FOIA also applies to this part of your request.



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The full text of the legislation can be found on the following link:

<https://www.legislation.gov.uk/ukpga/2000/36/section/21>

Advice and Assistance

We have a duty to provide advice and assistance in accordance with Section 16 of the FOIA. Therefore, we can advise that the template GDA for Forward Funding has been published in response to previous FOI requests and is available on our disclosure log via the following link:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941667/RFI3100 - HIF Grant Determination Agreements.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941667/RFI3100_-_HIF_Grant_Determination_Agreements.pdf).

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 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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