



Homes  
England

Date: 2 May 2023

Our Ref: RFI4261

Tel: 0300 1234 500

Email: [infogov@homesengland.gov.uk](mailto:infogov@homesengland.gov.uk)

Making homes happen

██████████  
By Email Only

Information Governance Team  
Homes England  
Windsor House – 6<sup>th</sup> Floor  
50 Victoria Street  
London  
SW1H 0TL

Dear ██████████

**RE: Request for Information – RFI4261**

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:

*We attach a copy of the relevant clause of the 2013 transfer, Clause 11.6.2, for your information. We also attach a copy of the relevant definition in the transfer of "Country Park". (We are happy to forward a complete copy of the transfer, which we have obtained from the Land Registry, but you should already have a copy in your own archives as inherited from HCA.) The transfer refers to a "Funding Agreement" between the same parties of the same date, which should also be in your archives. We should be grateful if you could supply us with a copy of this, as we believe that it will also contain provisions relevant to the intended use of the land transferred.*

**Response**

We can inform you that we do hold the information that you have requested. However, we rely on the following exemptions of the FOIA to withhold the information from disclosure.

**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 such disclosure would constitute a breach of confidence.

I can confirm that the Funding Agreement referred to in your request includes confidentiality provisions and so section 41 of the FOIA is engaged. Information contained within the agreement includes information of cost components 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 funding agreement 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

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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 43 - Commercial interests**

Under section 43(2) Homes England is not obliged to disclose information that would, or would be likely to, prejudice the commercial interests of any party.

The information requested relating to the Funding Agreement 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 or other interested parties to the information.

Homes England has identified that the information requested, if released, would be likely to prejudice Homes England's interests being the effective operation of its projects and programmes. Releasing the information would be likely to negatively impact ongoing and future funding processes and proposals both because:

- (i) If the information were released, it would provide information to the world at large of the methodology and calculations used by Homes England when awarding grant under the programme from which the grant was awarded.

The information withheld reveals details of how Homes England assesses the provision of grant provided under a specific funding programme. Homes England's grant programmes operate on a process which relies on grant applications being made and grant being awarded for the minimum amount required by the grant recipient to deliver the project. The object of this process is to ensure that grant is not awarded above the level required thereby protecting the public purse.

The fact that the funding agreement is historic (2013) has not reduced the commercial sensitivity of the information. Homes England may still provide grant under a programme that operates on the same basis. The method for assessing bids will remain the same under current programmes and therefore the historic nature of the information withheld does not make it less likely to prejudice the commercial interests of Homes England or the public purse.

- (ii) Potential partners may be deterred from dealing or entering into agreements with Homes England for funding if they felt information related to their commercial and past/ongoing funding commitments would be released to the public domain.

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.



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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; 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:

- If information that demonstrates how Homes England assesses and allocates grant pursuant to its funding programmes were in the public domain, that would allow applicant for potential funding to design their bids to achieve greater funding than necessary for the delivery of the project. That would be detrimental to the public purse.
- If information regarding value that has been derived were in the public domain there could be expectations from the public and potential future partners about the value of the site and the value of potential works. This would mean that prices could be inflated and negotiating positions put at risk. This would not be in the public interest as it would be likely to result in poorer value for public money;
- Releasing the information could reveal financial information of a third party which may in turn affect their commercial interests. The consequences of releasing data that is part of a wider ongoing matter could damage our relationships with partners and put other potential funding allocations at risk. This would not be in the public interest as this could put potential homes in jeopardy and affect Homes England's ability to deliver against its objectives in our strategic plan;
- The funding agreement contains confidentiality provisions in relation to the third party'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 were 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; 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>



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### **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](mailto:infogov@homesengland.gov.uk)

The Information Governance Team  
Homes England – 6<sup>th</sup> 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

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