



# Homes England

Date: 28 July 2023

Our Ref: RFI4183

Tel: 0300 1234 500

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

[REDACTED]  
By Email Only

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

Dear [REDACTED]

## **RE: Request for Information – RFI4183**

We write further to our initial response to your request for information which was processed in accordance with the Freedom of Information Act 2000 (FOIA).

[REDACTED]  
Upon a review of our file we have determined that part (e) of your request was not accurately responded to in line with the FOIA.

Therefore, herewith follows our revised response to that part of your request.

You requested the following information:

**e. has home england ever been made aware of possible fraud by [REDACTED] while applying for shared ownership grants and what was the outcome**

### **Response**

**e. has home england ever been made aware of possible fraud by [REDACTED] while applying for shared ownership grants and what was the outcome**

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Windsor House  
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0300 1234 500  
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## Neither Confirm nor Deny

Homes England can neither confirm nor deny that we hold the information requested.

On receipt of a valid request for information, section 1(1) of the FOIA obliges a public authority to inform the requestor under section 1(a) if they hold the information requested, and under section 1(b) communicate that information to them.

However, the duty under section(1)(a) does not apply to your request by virtue of section 31(3) – Law Enforcement and section 43(2) – Commercial Interests.

Under section 31(3) the duty to confirm nor deny does not arise if to comply with this duty would be likely to prejudice the prevention or detection of crime (Section 31(1)(a)).

The full text of section 31 in the legislation can be found here:

<http://www.legislation.gov.uk/ukpga/2000/36/section/31>

Under section 43(3) the duty to confirm nor deny does not arise if to comply with this duty would be likely to prejudice the commercial interests of any person (section 43(2)).

The full text of section 43 in the legislation can be found here:

[Freedom of Information Act 2000 \(legislation.gov.uk\)](http://www.legislation.gov.uk/ukpga/2000/36/section/43).

Section 31 and section 43 are qualified exemptions. 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 organisation to confirm or deny that we hold the information.

## Public Interest Test – Section 31

### Arguments in favour of confirming or denying:

- 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 a public interest in the enforcement we take against allegations of mis-use of public funds.





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## Arguments in favour of neither confirming or denying:

- Confirming or denying that Homes England holds information that falls within scope of the request would be likely to undermine Homes England's ability to investigate and take action regarding potential fraud;
- Confirming or denying would be likely to increase the risk of the law being broken if the public were aware of information relating to the investigation and enforcement process;
- Confirming or denying would be likely to negatively affect any ongoing investigations and could prejudice Homes England's ability to take action against any allegations of fraud; and
- Confirming or denying would be likely to prejudice the terms of the Shared Ownership Agreement between Homes England and the Housing Association. The Agreement is a legal agreement between the parties, the terms of which are enforceable by Homes England through common law. Under the Agreement, Homes England have the duty to investigate any suspicion of fraud in relation to providers, and has the power to instigate civil proceedings in order to enforce repayment following these investigations.

## Public Interest Test – section 43

### Arguments in favour of confirming or denying:

- 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 a public interest in our relationships with our third party partners where they are involved in distribution of public funds.

### Arguments in favour of neither confirming or denying:

- Confirming or denying that Homes England holds information that falls within scope of the request would be likely to undermine the third party's commercial interest and place in the market. Other partners may not want to be involved with the third party if there was a public admission of potential fraud from a public authority. This would not be in the public interest as companies would not wish to work with Homes England if they felt that Homes England would disclose information that would negatively impact their opportunities and financial interests. This would result in Homes England not receiving value for public money allocated to partners;
- To confirm or deny would be likely to diminish the market of potential future partners which would not be in the public interest. It would result in a less competitive application process if third parties felt they may have





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their interests disclosed, or information disclosed that could inaccurately affect their reputation. This would narrow the pool of applicants, negatively affecting value for public money; and

- Confirming or denying would be likely to negatively affect ongoing and future relationships with our partners if they felt that Homes England would release information that could affect their commercial interest. This would not be in the public interest as Homes England has to maintain relationships in order to achieve our objectives as set out in our Strategic Plan.

Having considered the arguments for and against, we have concluded that confirming or denying whether any information is held would be likely to be detrimental to our internal investigations process, and the commercial interest of the third party and Homes England. Therefore, the balance of the public interest favours neither confirm nor deny.

The public interest arguments to confirm or deny should not be interpreted as evidence that Homes England does or does not hold information that falls within the scope of your request.

## **RFI4183 – Internal Review**

For completeness, we note in this letter that another part of your request has been investigated by an independent third party under our internal review procedure. Your request for an internal review was in relation to question (b) in your original request, repeated below for clarity. The internal review is independent to this response.

## **b. in accordance with homes England policy what action do you take in the event that a housing association lies on their application form when procuring shared ownership grant funding (contract fraud)**

You have the right to complain to the Information Commissioner's Office (ICO) if you are unhappy with Homes England's processing of your request. 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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