



Homes
England

The Housing and Regeneration Agency

Date: 15 September 2023

Our Ref: RFI4367

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

██████████
By Email Only

Information Governance Team
Homes England
Windsor House
6th Floor
42-50 Victoria Street
London
SW1H 0TL
United Kingdom

Dear ██████████

RE: Request for Information – RFI4367

Thank you for your recent email, which was processed under the Environmental Information Regulations 2004 (EIR). Please accept our apologies for the delay in issuing this response to you.

You requested the following information:

I am therefore resubmitting my request, limiting it to just the Business Case.

For context, you had previously submitted a request for information about the South Lancaster Growth Catalyst Housing Infrastructure Fund (HIF) scheme. The previous request and our response is available via the following link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1155071/RFI4245-HIF-South-Lancaster-Growth-Catalyst.pdf

Response

We can confirm that we do hold the requested information, however we are withholding the information contained within the South Lancaster Growth Catalyst HIF Business Case from disclosure in accordance with Regulation 13, 12(5)(e) and 12(5)(f) of the EIR.

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Regulation 13 – Personal Data

We have withheld information on the grounds that it constitutes third party personal data and therefore engages Regulation 13 of the EIR.

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 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.

The full text in the legislation can be found on the following link;
<http://www.legislation.gov.uk/ukxi/2004/3391/regulation/13/made>

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. Homes England recognises that Lancashire County Council has announced its intention to suspend further work on the project. However, the aim of Lancashire County Council still remains to develop plans for the provision of housing in this area.

Four elements are required for Regulation 12(5)(e) to be engaged:

- 1) The information is commercial or industrial in nature.

The Business Case contains financial and economic appraisals, costings and values that relate to an ongoing commercial operation regarding prospective/potential development and procurement activities that are ongoing/under negotiation. 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 shared between parties who have entered into legal agreements that





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contain 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.

The withheld information relates to financial and economic appraisals of a site that is subject to development proposals. If the confidentiality of this information was breached, it would harm the ability of Homes England and third parties to receive value for money for land and services at this site. There is a legitimate economic interest in protecting the ability of Homes England and third parties to negotiate 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 acknowledges 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 acknowledges that there is a public interest in large scale development processes and the robustness of the applications for funding submitted to the HIF.





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Factors in favour of withholding

- Releasing the information would 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 information relates to a site where a third party (Lancashire County Council) will be procuring/undertaking works. If this information were released it would be likely to disadvantage Lancashire County Council's commercial position and have a negative impact on its ability to procure works for ongoing development at this site. Lancashire County Council would not be able to negotiate effectively as this information could be used by third parties to distort or otherwise prejudice the ability of Lancashire County Council to secure works for market value, resulting in damage to the public purse. This would also be likely to have the same negative effect on future commercial activity and other Homes England funding. This would not be in the public interest as it would put development at risk, inflate prices and damage Homes England's reputation as a partner. This would negatively affect public money and nullify work already undertaken;
- Lancashire County Council has announced the suspension of further works on this scheme and plan to re-evaluate their proposals. This means the information contained within the Business Case is still subject to change and options contained within 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. The interests of the third parties involved would also be similarly affected by disclosure, as this would reveal financial strategies and analysis disclosed to Homes England that were not meant for release into the public domain. If released, their interests would be adversely affected as it could be used against them in negotiations for similar matters as other parties would have this prior knowledge of their business' operating models, forecasts and financial information. To release this information would undermine future bids for similar works as it would reveal what has been agreed in this instance which could be used as a basis for obtaining an unfair advantage by other third parties. This would put them at a commercial disadvantage which would not be in the public interest as it would hinder their ability to conduct business in a competitive market if their bidding and pricing strategies were revealed in this way. 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;





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- Disclosure would result in local authorities being deterred from including commercially sensitive information in future bids for grant funding. This will mean that Homes England would have to evaluate bids that are less comprehensive than would otherwise have been the case, meaning that Homes England's ability to undertake due diligence on the bids will be impaired. This would impact the ability of Government officials to make effective, informed decisions regarding allocation of public funds, meaning the decisions will be less robust and less likely to deliver value for money; 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 continues to favour non-disclosure.

Regulation 12(5)(f) – Interests of the person that provided the information to the public authority

Under Regulation 12(5)(f) of the EIR, Homes England may refuse to disclose information to the extent that its disclosure would adversely affect the interests of the person who provided the information. Lancashire County Council has voluntarily provided information contained within the Business Case to Homes England and, considering the recent announcement of the suspension of the scheme, consider at this time the release of the information would cause harm to its interests.

Lancashire County Council has provided information contained within the Business Case that relates to not only commercial activity, but also internal governance relating to decision making and the interests of third parties. This information was never intended to be released into the public domain and would negatively impact Lancashire County Council in current and future negotiations relating to this scheme and any future work that may replace it.

Three elements are required for Regulation 12(5)(f) to be engaged:

- 1) The person who provided the information was not under, and could not have been put under, any legal obligation to supply the information to Homes England or any other public authority. We can confirm that Lancashire County Council was not, and could not have been, under any legal obligation to provide the information contained within the Business Case to Homes England.





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- 2) The person who provided the information did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it.
We can confirm there are no other circumstances where Homes England were entitled to disclose the information contained within the Business Case.

- 3) The person who provided the information has not consented to its disclosure.
Considering the circumstances surrounding the information have changed since it was provided to Homes England, we have consulted with Lancashire County Council about the disclosure of this information and Lancashire County Council has expressly refused consent to disclose the requested information.

Where the three stages of the test are satisfied, it is considered that a public authority will owe the person that supplied the information a duty of confidence. The public interest test will then determine whether or not the information should be disclosed.

Public Interest Test

Regulation 12(5)(f) 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 acknowledges 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 acknowledges that there is a public interest in large scale development processes and the robustness of the applications for funding submitted to the HIF.
- Homes England recognises that, with the recent announcement of the suspension of the scheme, there will be additional public interest at this time in the requested information.





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Factors in favour of withholding

- Whilst Lancashire County Council has announced the suspension of the scheme, there are still ongoing discussions with third parties in relation to any future work which may replace the HIF scheme. There is information contained in the business case that, if released, would harm Lancashire County Council's ability to plan and negotiate on future schemes and the development of land. These discussions are currently being held in a controlled manner strictly under Non-Disclosure Agreements. Disclosure of information in the Business Case will undermine these arrangements and harm Lancashire County Council's position. Disclosure of this information is also likely to harm Lancaster City Council, which is also involved in the discussions. Disclosure of information relating to Lancashire County Council's internal governance and decision-making processes would undermine this exchange of information and ultimately undermine the delivery of housing and housing infrastructure, which would not be in the public interest.
- The disclosure of information contained within the Business Case, which is both commercial in nature and relating to internal governance processes, would undermine Lancashire County Council's ability to negotiate competitively in relation to bidding for grant funding and delivering public infrastructure works. Disclosure would harm the ability to form efficient and cost effective partnering and tendering, negatively impacting future delivery and Lancashire County Council's ability to secure value for money, which negatively effects the public purse.
- Homes England considers that the timing of the request adds significant weight to the likelihood of harm caused to Lancashire County Council. Discussions and negotiations regarding the scheme and possible alternatives are likely and, as previously expressed, currently being held in strict confidence due to the recent withdrawal of Lancashire County Council from the scheme. It is not in the public interest to cause harm to Lancashire County Council's negotiating position at a decisive point in time for the delivery of housing infrastructure.
- Should the requested information be disclosed, we consider that it would be likely that other third party organisations would be discouraged from providing information to Homes England when applying for funding. We consider that this would not only directly and substantially harm Lancashire County Council interests, it would also likely threaten the voluntary supply of information to Homes England, and public authorities more broadly. The disclosure of voluntarily supplied, confidential information ultimately harms public authority's ability to carry out their functions, which is not in the public interest.





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- Homes England considers that the harm to Lancashire County Council's commercial, business and strategic interests is real, actual and of substance and disclosure would, on the balance of probabilities, directly cause the harm outlined this Public Interest Test.

Having considered the arguments 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.

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
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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,

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For Homes England

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