



Homes
England

Date: 19 September 2023

Our Ref: RFI4456

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

The Housing and Regeneration Agency

██████████
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 – RFI4456

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

You requested the following information:

Under the Freedom of Information Act / Environmental Information Regulations, please provide the following within the 20 day timescales permitted:

- 1) A copy of the business case with all of the financial and other information that allow a clear understanding of the costs, including a breakdown of the proposed £227m Grant, which were redacted in response RFI14113.**
- 2) The business case appendices not published under RFI14113, including Appendices J, M, N, R/S, T, U, AC, AD.**

For clarity, you referred in your request to a previous request for information relating to the Housing Infrastructure Fund (HIF) Cambridge Waste Water Relocation scheme. A copy of our previous response is available using the link below.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1128039/RFI4113 - HIF Cambridge Waste Water Relocation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1128039/RFI4113_-_HIF_Cambridge_Waste_Water_Relocation.pdf)

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Response

We can confirm that we do hold the requested information.

The information that we hold that falls within the scope of your request is contained within the HIF Business Case and the following list of Appendices:

- Appendix J – Funding
- Appendix M – Economic Impact
- Appendix N – Market Analysis
- Appendix R/S – Cost Plans
- Appendix T – Development Appraisal
- Appendix U – Land Compensation
- Appendix AC – Risk Register
- Appendix AD – Developer Case Study

We are withholding these documents from disclosure under the following exceptions:

Regulation 13 – Personal Data

We have redacted/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>

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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 Business Case contains financial and economic appraisals, costings and values that relate to a live commercial activity regarding prospective development and procurement activities that are currently under negotiation. The withheld appendices contain financial information and information related to business strategy that mirrors the commercial information contained in the Business Case. 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 confidentiality terms. These terms 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 protecting a legitimate economic interest;
The commercial environmental information contained in the Business Case and requested appendices relates to the 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 negotiate effectively and receive value for money for land and services at the site. There is a legitimate economic interest in protecting the ability of Homes England and third parties to negotiate in current and future commercial agreements.
- 4) The confidentiality would be adversely affected by disclosure;



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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).

Homes England has considered the public interest arguments presented in our previous response, reference RFI4113, and considered whether or not they still apply, owing to the passage of time and development in proceedings. Homes England considers that the circumstances of the HIF programme and the interests of the involved parties has not materially changed since the public interest test was previously conducted.

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;
- Homes England recognise that the recent Development Consent Order submitted by Anglian Water in relation to the Cambridge Waste Water Relocation HIF programme has raised the public interest in the release of the requested information; and
- Homes England acknowledge that there is a public interest in large scale development processes and the robustness of the applications for funding submitted to the HIF.

Factors in favour of withholding

- Releasing the information would reveal financial information of Cambridge City Council 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;





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- The information relates to a site where Cambridge City Council will be procuring/undertaking works. If this information were released it would be likely to disadvantage the third party's commercial position and have a negative impact on the third party's ability to procure works for ongoing development at this site. Cambridge City 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 the Local Authority 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;
- The information is still subject to change and options contained within it are 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;
- Homes England considers that the recent application for a Development Consent Order (DCO) submitted by Anglian Water heightens the commercial sensitivity of the requested information at this time. Release of this information would harm the ability of all parties involved in the application to negotiate and speak freely without undue external pressure and may hinder the proper process of the DCO.
- 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





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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.

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).

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.

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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,

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For Homes England

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