



Homes
England

Date: 25 September 2023

Our Ref: RFI4465

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 – RFI4465

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

You requested the following information:

we write to you under a Freedom Of Information to request:

- 1. A copy of the Agreement for sale and purchase of property at Gardiners Lane, Basildon made between (1) Homes and Communities Agency (trading as Homes England) and (2) Basildon Developments Limited and (3) Inland Homes, dated 26th March 2020. And**
- 2. List detailing all the site issues for Gardiners Lane South site and when they were identified.**

Response

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

A copy of the Agreement for sale and purchase of property at Gardiners Lane, Basildon made between (1) Homes and Communities Agency (trading as Homes England) and (2) Basildon Developments Limited and (3) Inland Homes, dated 26th March 2020.

We can confirm that we do hold this information. We are withholding this document 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.

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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 has considered whether we can partially disclose information contained in the Agreement for sale, but we consider that the commercial information runs as a golden thread throughout the document, and it would therefore not be possible to separate the exempt information from the remaining contents.

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

- 1) The information is commercial or industrial in nature;
The information relates to an Agreement for sale between Homes and Communities Agency (now Homes England), Basildon Developments Limited and Inland Homes. The Agreement contains information concerning the financial and contractual commitments and contractual between the parties. 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 three parties who have entered into 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 contains information about the sale and purchase of land. If the confidentiality of this information was breached it would harm the ability of Homes England and third parties to negotiate effectively on current and future transactions involving the sale and purchase of land. There is

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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;
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 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; and
- Homes England acknowledge that there is a public interest in the sale and purchase of land.

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 live agreement. 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 information disclosed to Homes England that was 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 and financial information. To release this information would undermine future agreements 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



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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 financial information 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; 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 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).

List detailing all the site issues for Gardiners Lane South site and when they were identified

Regulation 12(4)(a) – Information not Held

Under regulation 12(4)(a) of the EIR, Homes England may refuse to disclose information if the requested information is not held by that public authority.

Regulation 9(1) provides that an authority must provide advice and assistance to applicants and in accordance with this we can advise that Homes England does not hold this information because there is no business or legal reason to do so. Issues relating to the development of sites are a matter for the developer of a site.

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

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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.

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