



Homes  
England

The Housing and Regeneration Agency

Date: 13 August 2024

Our Ref: RFI4805

Tel: 0300 1234 500

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

[REDACTED]  
By Email Only

Dear [REDACTED]

**RE: Request for Information – RFI4805**

Thank you for your request for information which was initially processed in accordance with the Freedom of Information Act 2000 (FOIA).

In our letter to you dated 16 July 2024, we informed you that we required additional time to respond to your request as a qualified exemption applied to some of the information that fell within the scope of your request. We have determined that the exemption at Section 43 of the FOIA to withhold information that is commercial information is no longer engaged. However, we have now determined that the information in scope of your request should have been processed under the Environmental Information Regulations 2004 (EIR). Please therefore accept our sincere apologies for the delay in providing this response to you. We recognise that the handling of your request has now fallen outside of our standards and the time for compliance in the legislation.

You requested the following information:

[REDACTED]

**Background;**

On 11<sup>th</sup> November 2023, leaseholders of the aforementioned development were advised by the management company (Zenith Management) that an extensive "tanking and steelwork project" was required. It was further declared on record that "This it to ensure that we are eligible for the collateral warranty provided as part of the Building Safety Fund project."

**FOI specific request;**

6<sup>th</sup> Floor  
Windsor House  
42 - 50 Victoria Street, Westminster  
London, SW1H 0TL

0300 1234 500  
@HomesEngland  
[www.gov.uk/homes-england](http://www.gov.uk/homes-england)





Homes  
England

The Housing and Regeneration Agency

Date: 13 August 2024

Our Ref: RFI4805

Tel: 0300 1234 500

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

**"Please provide FULL details relating to this request, the background, the surveyors report that declared the "tanking and steelwork" to be of a suboptimal condition, include any reports and literature that formed part of the process and conclusion. Include any other data, reports, literature and correspondence that were transmitted whether by mail, wirelessly or by telegraph between the Building Safety Fund the applicant (Zenith) on behalf of [REDACTED] relating to the subject of tanking and steelwork"**

### Response

We can inform you that we do hold the information that you have requested. We are withholding the information from disclosure under the following exceptions of the EIR:

#### **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 surveyors reports and other documentation relating to the subject of tanking and steelwork contain commercial information for ongoing remediation works at the site. We have considered whether or not we can separate any information from the commercial information but consider that this represents a 'golden thread' throughout the information held and it is therefore not possible to separate any information from the commercial information. 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. There is no need for the public authority to have obtained the information from another or a third party for this duty to apply. The information was created in circumstances creating an obligation of confidence; it has been created internally to assist an internal decision making/approval process. Homes England therefore recognises that this information was intended to be held in confidence within the organisation.

6<sup>th</sup> Floor  
Windsor House  
42 - 50 Victoria Street, Westminster  
London, SW1H 0TL

0300 1234 500  
@HomesEngland  
[www.gov.uk/homes-england](http://www.gov.uk/homes-england)





Homes  
England

The Housing and Regeneration Agency

Date: 13 August 2024

Our Ref: RFI4805

Tel: 0300 1234 500

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

- 3) The confidentiality is providing a legitimate economic interest;  
The withheld information relates to ongoing remediation works at this 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;  
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 acknowledges there is a public interest in how it assesses proposed works and applications to its funding schemes.

#### Factors in favour of withholding

- The disclosure of the information held would reveal the estimation by Homes England and the Ministry of Housing, Communities and Local Government (MHCLG) of the assumed cost of potential works required at this building. Release of information under the EIR is considered to be 'to the world at large'. Therefore, if this information were in the public domain, third parties would be likely to use this information to influence the cost of any proposals for tenders or works at this building;

6<sup>th</sup> Floor  
Windsor House  
42 - 50 Victoria Street, Westminster  
London, SW1H 0TL

0300 1234 500  
[@HomesEngland](https://twitter.com/HomesEngland)  
[www.gov.uk/homes-england](http://www.gov.uk/homes-england)





Homes  
England

The Housing and Regeneration Agency

Date: 13 August 2024

Our Ref: RFI4805

Tel: 0300 1234 500

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

- Release would also be likely to put remediation at other buildings allocated funding under the BSF at risk. Homes England has to protect relationships with all parties and other recipients of BSF allocations. If other applicants became aware that Homes England were sharing confidential information other applicants may be distrustful of accessing the scheme for their own buildings. This in turn would have a significant impact on the individuals living at or owning properties in these buildings;
- 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 are 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;
- Some information relates to a site where there is still ongoing remediation works. If this information were released it would be likely to disadvantage the third parties commercial position and have a negative impact on the ongoing works at this site. By releasing this information, it would 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 developments at risk, inflate prices and damage Homes England's reputation as a partner. This would negatively affect public money and nullify work already undertaken;
- 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:

<https://www.legislation.gov.uk/ukxi/2004/3391/regulation/12/made>

**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. The applicant has provided information contained within the surveyors reports to Homes England and,

6<sup>th</sup> Floor  
Windsor House  
42 - 50 Victoria Street, Westminster  
London, SW1H 0TL

0300 1234 500  
@HomesEngland  
[www.gov.uk/homes-england](http://www.gov.uk/homes-england)





Homes  
England

The Housing and Regeneration Agency

Date: 13 August 2024

Our Ref: RFI4805

Tel: 0300 1234 500

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

consider at this time the release of the information would cause harm to its interests and the interests of the managing agents.

The third party has provided information contained within the reports 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 Homes England and the third party 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 the third party was not, and could not have been, under any legal obligation to provide the information contained within the surveyors report to Homes England.
- 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 surveyors reports or any other reports conducted.
- 3) The person who provided the information has not consented to its disclosure.  
We can confirm that the third party has not provided consent for disclosure.

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.







# Homes England

Date: 13 August 2024

Our Ref: RFI4805

Tel: 0300 1234 500

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

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 BSF;
- 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.

## Factors in favour of withholding

- Disclosure of the information contained in reports supplied to Homes England by a third-party could inflate costs and reduce competition on all of the third party's projects. There was a reasonable expectation that such information provided to Homes England in its capacity as administrators of the BSF would not be disclosed publicly and would not then potentially be relied upon by other parties;
- There is an inherent public interest in preventing harm to the interests of the third party who provided the information and the principle of confidentiality. To release any data and reports into the public domain would be likely to breach the confidentiality arrangements between ourselves and the third party as information contained within these reports has been provided to Homes England in confidence;
- 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 the third party's 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 Homes England's ability to carry out its functions, and in this case the continued operation of the BSF, which is not in the public interest.
- Disclosing the information contained within the reports will affect the third party's ability to secure and negotiate on potential future sources of funding for remedial works. Whilst this directly affects the third party, it also affects the leaseholders in the building. Whilst out of scope of this exception,





# Homes England

Date: 13 August 2024

Our Ref: RFI4805

Tel: 0300 1234 500

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

Homes England recognises there is also a strong public interest in safeguarding the interests of leaseholders in buildings that have applied to the BSF.

- Homes England considers that the harm to the third party'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.

## **Advice and Assistance**

We have a duty to provide advice and assistance in accordance with Regulation 9(1) of the EIR. As such we can advise that the tanking and steelworks is not something that MHCLG are currently funding and suggest that you contact the managing agent to obtain the information as it would not put the information in the public domain. Further to this, Homes England are only made aware of eligible works and therefore the information that we do hold about tanking and scoping is limited. We therefore advise that you contact MHCLG directly via the below link as they would be likely to hold further information.

<https://www.gov.uk/government/organisations/ministry-of-housing-communities-local-government>

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

The Information Governance Team  
Homes England  
6<sup>th</sup> Floor  
Windsor House  
42-50 Victoria Street  
London

6<sup>th</sup> Floor  
Windsor House  
42 - 50 Victoria Street, Westminster  
London, SW1H 0TL

0300 1234 500  
@HomesEngland  
[www.gov.uk/homes-england](http://www.gov.uk/homes-england)





# Homes England

Date: 13 August 2024

Our Ref: RFI4805

Tel: 0300 1234 500

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

SW1H 0TL

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

