

Date: 18 February 2025

Our Ref: RFI5020

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

By Email Only

Dear

RE: Request for Information – RFI5020

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

You requested the following information:

I am writing to request information under the Freedom of Information Act 2000 regarding Section 106 properties listed or about to be listed by Homes England via the Section 106 Affordable Housing Clearing Service. Specifically, I seek details on the number of empty Section 106 properties. I request that this data be provided in a format that includes a breakdown by the following categories:

1. City or Town: The geographic location of the properties by city or town.
2. Region: The regional breakdown (e.g., South East, North West, etc.).
3. Country: The breakdown of properties by country (e.g., England, Scotland, Wales, Northern Ireland).
4. Timeframe: The date range during which these properties were listed or are expected to be listed.
5. Type of Property: Details of the property type (e.g., residential, commercial, mixed-use).

If possible, please also provide any additional details or supporting documentation, such as trends or projections related to Section 106 properties becoming available for listing.

Response

We can confirm that we do hold some of the requested information.

It may be of some assistance to you to know that the primary purpose of the service is to share opportunities regarding uncontracted and unsold homes, most of which have yet to be built. Please be advised the service is solely for residential properties in England, excluding London. Further information is available online via the following link:

2nd Floor
The Lumen
St James Boulevard, Newcastle Helix
Newcastle upon Tyne, NE4 5BZ

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





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<https://www.gov.uk/government/collections/the-section-106-affordable-housing-clearing-service>

We will answer your questions in turn below:

I am writing to request information under the Freedom of Information Act 2000 regarding Section 106 properties listed or about to be listed by Homes England via the Section 106 Affordable Housing Clearing Service. Specifically, I seek details on the number of empty Section 106 properties. I request that this data be provided in a format that includes a breakdown by the following categories:

1. City or Town: The geographic location of the properties by city or town.
2. Region: The regional breakdown (e.g., South East, North West, etc.).
3. Country: The breakdown of properties by country (e.g., England, Scotland, Wales, Northern Ireland).
4. Timeframe: The date range during which these properties were listed or are expected to be listed.

Type of Property: Details of the property type (e.g., residential, commercial, mixed-use).

We can inform you that we do hold this information. We are withholding this information from disclosure under the following exception:

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 requested environmental information consists of information that has been provided to Homes England by commercial organisations about their business. 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.

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3) The confidentiality is providing a legitimate economic interest;

There is a legitimate economic interest in commercial organisations being able to conduct their business and seek partnership and collaboration away from public scrutiny. If the confidentiality of this information was breached it would harm the ability of third parties to collaborate effectively. 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 that there is a public interest in the development of affordable housing.

Factors in favour of withholding

- The Section 106 Affordable Housing Clearing Service (the 'Service') has been established to support the delivery of Section 106 affordable housing. Access to the Service is explicitly limited to housebuilders, registered providers and local authorities – all of whom have been verified by Homes England to ensure they have a genuine interest and role in selling, buying and/or enabling the selling and buying of Section 106 affordable homes. Housebuilders have shared information with Homes England on the understanding that it will only be shared with verified parties.





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Therefore, disclosure is likely to harm the trust and cooperation with our partners. This would undermine the Service, which would not be in the public interest and would not be in accordance with Homes England's core ambition to build trusting and collaborative relationships with our partners.

- The information requested is commercial in nature, and its release would be likely to prejudice the commercial interests of Homes England and other interested parties. Disclosure is likely to result in housebuilders being less inclined to shared information with Homes England, especially where they felt their commercial interests would be put at risk. This would negatively impact the development of affordable housing across England. This would not be in public interest and would not be in accordance without strategic objectives.
- Releasing this information into the public domain would be likely to prejudice any future intervention Homes England may take to support its partners with Section 106 affordable housing delivery.
- 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>

If possible, please also provide any additional details or supporting documentation, such as trends or projections related to Section 106 properties becoming available for listing.

We can confirm that Homes England does not hold the information detailed in your request.

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.

When relying on Regulation 12(4)(a), Homes England must also advise details of any other public authority to whom the requestor could redirect their request to, and in accordance with this we can advise that it unlikely another Public Authority will hold this information.

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Regulation 9(1) provides that an authority must provide advice and assistance to applicants and in accordance with this we can advise that the service is market led and entirely dependent on our partners. We intend to use future information to better enhance our understanding of Section 106 delivery, but as the service only launched in December 2024, it's still very early in its deployment.

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
2nd Floor
The Lumen
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Newcastle Helix
Newcastle upon Tyne
NE4 5BZ

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/>

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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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