



Homes
England

Making homes happen

Date: 19 February 2021
Our Ref: RFI3215 – Internal Review
Your Ref: Internal Review – Temple Quarter/Bristol Arena Reports
Tel: 0300 1234 500
Email: infogov@homesengland.gov.uk

Joseph Lloyd
By Email Only

Windsor House
Homes England – 6th Floor
50 Victoria Street
London
SW1H 0TL

Dear Mr Lloyd

Internal Review
Our reference: RFI3215

Further to your email of 17 December 2020, I am writing in response to your request for an internal review of the request for information submitted to Homes England on 20 November 2020.

First, please accept my apologies for the time it has taken for me to conclude the internal review.

I have carried out an internal review and I have set out my findings below. For the avoidance of doubt, I would like to confirm that I was not involved in any way in your original request for information and I am acting as an independent reviewer of it with authority to alter the response to the original request if appropriate.

Homes England was launched by the Secretary of State on 11 January 2018. Homes England is the trading name of Homes and Communities Agency (“HCA”) (HCA remains the legal entity). For ease of reference, I have used the expression “Homes England” in this letter.

Background

Homes England received your request for information on 20 November 2020 which requested the following:

I wish to see full copies of the following reports:

G4 -Temple Quay, Bristol, SSW (2016)

G4 -Temple Quay, Bristol, SSW (2017)

G4 –Temple Quay 3 –Arena Island –Diesel Depot

Bristol Arena - EX-Diesel Depot and 1-9 Bath Road variations to existing sale agreements

06 Bristol Arena (TQ3)]

OFFICIAL



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The Review

Homes England received your request for an internal review on 17 December 2020 which stated:

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Homes England's handling of my FOI request 'Temple Quarter / Bristol Arena reports'.

In conducting the review, I have assessed the following matters:

- Whether the correct access to information regime was adopted in considering your request
- The timing of response
- The scope of the request and, in particular, the review that was carried out to identify information held within scope of your request
- The applicability of exceptions relied upon to withhold the information

Outcome/Conclusions

Access to Information Regime

When considering the original request, the officer who dealt with the request treated it as a request under the Freedom of Information Act 2000 (**FOIA**). As the request was for reports which were produced for decision making purposes relating the disposal and future use of land, I have considered whether the correct regime under which to process the request is in fact, the Environmental Information Regulations 2004 (**EIR 2004**).

In undertaking this review, I have considered the EIR 2004, the Information Commissioner's Office (**ICO**) guidance "What is Environmental Information" and any relevant tribunal decisions.

Regulation 2(1)(c) of the EIR 2004 provides that environmental information includes any information on measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect land. In its guidance, the ICO confirms that information that affects or is likely to affect the use (*my emphasis*) and therefore the state of the land should be considered under EIR 2004 rather than under FOIA.

I also considered the first tier tribunal case, *Department for Education v Information Commissioner (EA/2013/0107 & 0108) (17 October 2013)*. In that case the tribunal was considering information relating to a Department for Education approval of consent to a local authority to dispose of a former school site. The tribunal found that if the approval was granted, that would result in the redevelopment of the land, and the redevelopment would be likely to affect the land. The tribunal concluded that, even though the information may not have a direct effect on the environment, it was still information "on" the environment within the meaning of regulation 2(1) of the EIR 2004.

Based on the above, as your request is for approval papers that consider the disposal of land by Homes England for redevelopment, my conclusion is that your request should have been considered under EIR 2004 rather than FOIA.



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Timing of the Response

Your original request for information was submitted on 20 November 2020. Homes England wrote to you on the same day to acknowledge receipt of your request. Section 10 of the FOIA and Regulation 5(2) of EIR 2004 provide that a public authority must comply with a request for information promptly and in any event not later than the twentieth working day following the date of receipt. Our acknowledgement confirmed that we aim to respond to all requests for information within 20 working days. We therefore aimed to respond to you by 18th December 2020.

A full response was provided to you on 17 December 2020.

I am therefore satisfied that both the acknowledgement and the full response were provided in accordance with statutory requirements and Homes England's service standards.

Scope of Request/Review of Information held

The request for information asked for copies of the following specific reports which I have numbered for ease of reference later in this letter:

1. G4 -Temple Quay, Bristol, SSW (2016)
2. G4 -Temple Quay, Bristol, SSW (2017)
3. G4 –Temple Quay 3 –Arena Island –Diesel Depot
4. Bristol Arena - EX-Diesel Depot and 1-9 Bath Road variations to existing sale agreements
5. 06 Bristol Arena (TQ3)].

When your original request for information was received, the officer within Homes England who currently has project management responsibility for Bristol Temple Quarter was asked to identify the information held by Homes England that is within the scope of your request.

In response to your request, you were informed that Home England does hold the reports numbered 3 and 5 above and that these are in fact one and the same report. I have reviewed information and I can confirm that I agree with this conclusion: By way of explanation, the reference to "06 Bristol Arena (TQ3)" that you may have seen referred to is an agenda item reference to the paper that is numbered 3.

The response confirmed that we do hold the information numbered 4 above and that we were withholding it under the exemption contained in s43 FOIA – Commercial Interests. My review has discovered that the information that was identified was in fact a deed of variation rather than a report. A further review has therefore been undertaken in order to locate the report that sought the approval to the deed of variation that had been identified. I can confirm that as a result of this, the report numbered 4 above has been located and that we do hold the information requested.



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Finally, in response to your request, we notified you that we do not hold copies of the reports numbered 1 and 2 above. Having carried out the further review of our files, the responsible officer has now identified the reports numbered 1 and 2. On review of these reports I can confirm that that are in fact one and the same report. The initial report was due to be considered at a decision meeting in December 2016 but was deferred to the next meeting in January 2017 which is why the reports appear to be separate reports. Having reviewed the reports, I can confirm that they are identical save for the date of the meeting to which they were referred.

In summary, I can confirm that we do hold copies of the all of reports that you have requested. Reports numbered 1 and 2 are one and the same report and reports numbers 3 and 5 are one and the same report. We have therefore identified three reports in scope of your request. Please accept my apologies for the incorrect information provided to you in the initial response.

The applicability of the exemptions relied on to withhold

The reports numbered 3 and 5 were identified as a result of your initial request for information. As previously explained, these are one and the same report. The decision was taken to withhold this report under the exemption is Section 43(2) of the FOIA: the disclosure of the information that would, or would be likely to, prejudice the commercial interests of any party.

As I have now concluded that the request for information should have been considered under the EIR 2004, I have considered the application of those regulations to the Information that we hold in scope of your request and provided a full response to your request below.

Response

There are three reports that have been identified as being within the scope of your request, I have reviewed these to ascertain whether these reports can be disclosed or whether any exemptions apply to the information identified.

The three reports are all reports which were prepared by officers of Homes England for the purposes of providing information to a decision making body within Homes England in order that a decision could be made concerning a disposal of land by Homes England. I have therefore concluded that the exception in Regulation 12(4)(e) EIR 2004: *“a public authority may refuse to disclose information to the extent that... the request involves the disclosure of internal communications”* applies to the information identified.

In coming to my conclusion, I have considered the content of the ICO Guidance on Internal Communications. The guidance explains that:

- EIR 2004 do not provide a definition of what constitutes an internal communication. Neither does European Directive 2003/4/EC on public access to environmental information.
- The underlying rationale behind the exception is that public authorities should have the necessary space to think in private.



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- The concept of a communication is broad and will encompass any information someone intends to communicate to others. It will therefore include not only letters, memos, and emails, but also notes of meetings or any other documents if these are circulated or filed so that they are available to others.

Regulation 12(4)(e) is a qualified exception. This means that once it has been decided that the exception is engaged, Homes England must carry out a public interest test to assess whether or not it is in the wider public interest for the information to be disclosed.

Arguments in favour of disclosure

- Homes England acknowledges there is a general public interest in promoting accountability, transparency, public understanding and involvement in how Homes England undertakes its work and how it spends public money.
- Homes England acknowledges that there is an interest in the development at Temple Island, Bristol.
- Homes England acknowledges that the timing of the request is an important factor. Once a public authority has made a decision, a safe space for deliberation may no longer be required.

Arguments in favour of withholding

- As a public authority, Homes England needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction.
- If Homes England discloses its internal reports compiled for the purposes of decision making, that would inhibit free and frank discussions in the future, and that the loss of frankness and candour would damage the quality of advice and lead to poorer decision making.
- There is a public interest in protecting effective discussions and decisions within the public authority

Following consideration of the public interest test, my conclusion is that:

The reports numbered 1 and 2 above (which are one and the same report) should not be disclosed. This report relates to a disposal that has not yet been completed and therefore Homes England needs to protect the safe space in which to debate a live issue. The public interest in protecting effective decision making outweighs the public interest in disclosure.

The reports numbered 4 and the reports numbered 3 and 5 (which are one and the same report) should be released but with some information redacted. The reasons for redacting the information falls into one of three categories:

1. The information relates to the processes and considerations that Homes England adopts when taking decisions relating to its land. There is a legitimate public interest in understanding the way in which a public body makes decisions. There is also a legitimate public interest in being fully informed about and equipped with the information required to challenge the decisions made by public bodies as this leads to increased accountability of public bodies and so protection the public purse.

Whilst the public interest considerations in this case are significant, I have concluded that they are outweighed in this case by the potential harm disclosure would cause. As a public authority, Homes England needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction and it cannot be in the public interest to disclose details of the factors that Homes England



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considers when disposing of its land as that may impede Homes England from achieving the optimum outcome.

2. The release of the information would inhibit free and frank discussions in the future, and that the loss of frankness and candour would damage the quality of advice and lead to poorer decision making.
3. The information relates to aspects of the transaction that remain to be performed and it is in the public interest to protect the effective future decision making of Homes England.

Right to Appeal

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 an appeal by writing to the Information Commissioner's Office.

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. We may be required to disclose your request and our response accordingly.

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Yours sincerely,

Clare Dodds

Solicitor

Head of Legal Development

For Homes England