



**Homes
England**

Making homes happen

Date: 24 December 2021

Our Ref: CD/IR/RFI3215

Your Ref: Internal Review – Temple Quarter/Bristol Arena Reports

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Joseph Lloyd
By Email Only

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Homes England – 6th Floor
50 Victoria Street
London
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Dear Mr Lloyd

Internal Review - Environmental Information Regulations 2004 (EIR)

Our reference: RFI3215

I write further to my letter of 19 February 2021 setting out my findings following an internal review of Homes England's response to your request for information submitted to Homes England on 20 November 2020.

As you know, the Information Commissioner's Office (ICO) has agreed to investigate your complaint regarding Homes England's response to your request for information and as part of that investigation, the ICO has asked that Homes England reviews the original response and considers whether it should reverse or amend its decision.

In the course of that review, I have noted that:

1. There was some information that was redacted/withheld from the reports that were released to you on the grounds that it constituted third party personal data and therefore engaged Regulation 13 of the EIR.
2. The exception in Regulation 12(5)(e) is engaged in relation to some of the information withheld in addition to the exception in regulation 12(4)(e)

The exception in regulation 13 – Personal data

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/uksi/2004/3391/regulation/13/made>

The reports provided to you did indicate that Regulation 13 had been relied upon to redact some information but my letter to you did not expressly state this nor explain that the exception had been engaged. Please accept my apologies for failing to address this in my internal review response.

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The exception in 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;
- 2) Confidentiality is provided by law;
- 3) The confidentiality is protecting a legitimate economic interest
- 4) The confidentiality would be adversely affected by disclosure.

It is my conclusion that the reports numbered 1 and 2 in your request for information (which you will recall are one and the same report) engage this exception. I have examined each of the elements above and conclude as follows:

- 1) The information is commercial in nature as it relates to a disposal of land by Homes England on commercial terms.
- 2) 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.
- 3) The confidentiality is protecting a legitimate economic interest of Homes England to ensure that it is able to dispose of its land on commercially favourable terms. If the confidentiality of this information was breached it would harm the ability of Homes England to achieve value for public money. There is a legitimate economic interest in protecting the ability of Homes England to achieve the best outcome for the public purse. Whilst contracts have been exchanged for the disposal, the contract is still conditional and completion of the disposal has yet to occur. The disclosure of the information may provide an advantage to the party it has contracted with and may provide an advantage to other parties if the disposal does not ultimately complete.
- 4) Disclosure would result in third parties gaining access to commercially valuable information. Disclosure of the confidential information would allow potential purchasers of the site (including the party which Homes England is in contract with) have access to the terms on which Homes England is prepared to dispose of the site which 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).



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Factors 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.

and the following 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 report should not be disclosed as it concerns a disposal that has not yet been completed. Homes England therefore needs to protect the safe space in which to debate a live issue. I maintain that the public interest in protecting effective decision making outweighs the public interest in disclosure in this case.

I confirm that a copy of this letter has been provided to the ICO.

Yours sincerely,

Clare Dodds

Solicitor

Head of Legal Development

For Homes England