

Monday, 12 August 2013

Dear [REDACTED]

Freedom of Information Act 2000 (the Act) – Review of Request – Ref: 13-007

We refer to your e-mail of 15 June 2013 where you requested an internal review with regard to our response of 29 April 2013 to your request for information dated 28 March 2013.

You have asked us to provide you with a full and detailed breakdown of the public interest in withholding some of the information you requested. In addition, you asked us to confirm whether we are also withholding our response to your 8th question on the grounds of Section 43(2) of the Freedom of Information Act 2000.

We have now conducted that review and we can reply as follows. For clarity and ease of reference, we have set out again the various questions you raised, although we have addressed some of these jointly, as the factors to be weighed in assessing the public interest test are essentially the same in relation to many of those queries. We should also note that, since your request for a review was received, the competition to select some of the contractors for the conversion work on the Olympic Stadium has been completed, with the result that certain information which you have requested has ceased to be commercially sensitive and has been publicly released.

1. **Of the figures listed for 'South Park transformation' on page 41 of the LLDC's Business Plan for 2012/13 to 2014/15, how much is allocated specifically for the legacy conversion of the Olympic Stadium?**
2. **What is the current total projected cost of converting the Olympic Stadium with West Ham United Football Club as anchor tenant? What is the breakdown of funding between the LLDC, West Ham, Newham Council and other sources for this projected cost?**
- 4 **What is the current allocation of funding of the budget at (2) for conversion works, broken down by separate spends (such as installation of retractable seating, roof conversion, installation of toilets, installation of corporate hospitality areas, etc.). Please be as specific as possible.**

Upon reviewing this matter, it appeared to us that the above queries all in essence sought the same information, albeit in a greater level of detail in relation to request 4. To the extent that the second part of request 2 seeks different information, this has already been provided in our response dated 29 April 2013.

Application of exemption(s)

In our response dated 29 April 2013, we declined to disclose this information on the basis that it was exempt pursuant to Section 43(2) (Prejudice to Commercial Interests) of the Freedom of Information Act (**FOIA**), noting that the release of such information could impact on the procurement of the transformation works contractors. As noted above, some of those procurement processes have now been concluded, with the result that some of the information that you have sought can now be made publicly available – please see the attached press release.

However, the procurement of the various contractors, operators and service providers is undertaken in stages, and many of the contracts still remain to be procured. If the rest of the financial information that you seek were to be disclosed, it would jeopardise the Legacy Corporation's ability to ensure best value through the procurement process, as bidders would then have a firm idea of the amount of money potentially available for certain works, and could tailor their bids accordingly. These figures will become publically available in due course, but only once the procurement process in question has been completed.

Public Interest

The Legacy Corporation is committed to openness and transparency and is mindful of public interest considerations. We have sought to balance any public interest in disclosing the information that you asked for against the public interest in protecting the commercial sensitivity of that information, both when we reviewed your original request and during this review. Although the application of the public interest test was not recorded in writing during the procedure of responding to your request, our investigations have shown that this was considered as part of the process.

As noted above, this information is commercially sensitive because disclosure would jeopardise the Legacy Corporation's ability to achieve best value in relation to a number of procurements that are ongoing or are planned for the future. The Legacy Corporation considers that there is a strong public interest in protecting that commercial sensitivity and withholding disclosure, as this would help ensure that any public money is spent in a manner which achieves best value for the taxpayer.

Against that, the Legacy Corporation acknowledges that there is also a public interest in knowing how public money is spent. However, we believe that this public interest consideration will be addressed by the release of the relevant figures once the relevant tendering exercise is over, as has already been demonstrated through the release of the figures for some parts of the work as per the attached press release.

Any prejudice to the public interest from the delay in releasing this information is likely to be minimal, and in our view is greatly outweighed by the likely prejudice to the ability to achieve best value for the taxpayer if the information were to be released now.

3. [What] would have been the breakdown of funding for a legacy conversion with no football club involved (in other words, the fallback position had West Ham and the LLDC failed to reach an agreement)?

In our response dated 29 April 2013, we declined to disclose this information on the basis that it was exempt pursuant to Section 43(2) of FOIA, noting that the release of such information could impact on the procurement of the transformation works contractors and the risk of potential parties being able to break down the cost of various elements of the transformation scheme with consequential impact on the public purse. We remain of that view, and consider that the same public interest considerations and balancing exercise applies as per points 1, 2 and 4 above. Furthermore, although there are significant legal protections in place in the relevant contracts with West Ham United Football Club (**WHUFC**), the fallback option retains relevance and commercial confidentiality should any unforeseen circumstances affect the current scheme. Releasing information relating to its scope and funding could prejudice future procurements. However, we can confirm that there would have been no funding available from WHUFC in the fallback scenario.

5. What would have been the allocation of funding of the budget at (3) for conversion works, again broken down by separate spends, and again please be as specific as possible.

In our letter of 29 April 2013, we indicated that this information was being withheld under Section 42 (Commercial Interests) on the basis that its release would prejudice the ongoing procurement exercises. This is the case even though the overall scope of the conversion works would have been different under this scenario, as many of the elements would have been the same. Therefore the prejudice to commercial interests described in our response to requests 1, 2 and 4 above applies equally here, and the same public interest considerations also apply.

6. Is the reported rent agreed with West Ham subject to rent review, and if so at what intervals and under what terms?

Upon reviewing this query, it is apparent to us that it was answered incorrectly in our letter of 29 April 2013. WHUFC is not leasing the stadium; instead they are a concessionaire who will be sharing the stadium with a variety of other users. Accordingly, WHUFC will not be paying "rent" for the use of the stadium, and therefore the premise of the question is incorrect, and the reference to a "rent review" is inapposite. WHUFC pay, as the pre-qualification questionnaire and Invitation to Tender invited all parties to offer, a Usage Fee for their events held at the Stadium which is subject to indexation.

7. Is West Ham's £15m contribution to the budget a one-off payment or under a schedule of repayment? If the latter, under what terms?

Our letter of 29 April 2013 confirmed that this information was being withheld under section 43(2) (Commercial Interests) and section 41 (Confidentiality) of FOIA. Having reviewed the matter, we can confirm that the £15m capital contribution from WHUFC is a one-off payment. The reference to a "schedule of repayment" is inapposite, as no funds have or will be advanced to WHUFC as part of the contractual arrangements.

8. Are any of the other elements of the conversion budget subject to repayment by West Ham, and if so under what terms?

Our letter of 29 April 2013 stated that this information was being withheld under section 43(2) (Commercial Interests) and section 41 (Confidentiality) of FOIA. Having reviewed the matter, we can confirm that the £15m is the only direct capital contribution by WHUFC to the conversion budget. In relation to the use of the term "repayment", we repeat our comments in relation to request 7.

If you are not content with the outcome of this internal review, you may appeal directly to the Information Commissioner at the address below. You should do this within two months of our final decision. There is no charge for making an appeal.

Further information on the Freedom of Information Act 2000 is available from the Information Commissioner's Office:

Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Telephone: 08456 30 60 60 or 01625 54 57 45

website: www.ico.gov.uk

Yours sincerely



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Enc – Press release