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[REDACTED]

5 August 2013

Dear [REDACTED]

Thank you for your original Freedom of Information request of 7 June 2013 received by London Legacy Development Corporation (the Legacy Corporation) reference 13-014. The Legacy Company responded on 5 July 2013.

We received your request on 8 July asking for a review of the Legacy Corporation response to your Freedom of Information request ref: 13-014.

**Original request:**

On 7 June 2013, the applicant made the following request: "Please provide a copy of the contract awarded to Balfour Beatty for the Aquatics Centre. If this is a standard NEC type then the main terms and conditions including Contract Data will suffice."

**LLDC's original response:**

LLDC's original response dated 5 July 2013 stated that:

"London Legacy Development Corporation (LLDC) can confirm that we hold the information requested: the Aquatics Centre contract was novated to the LLDC from the Olympic Delivery Authority (ODA) to cover the legacy transformation phase of the Aquatics Centre. At present however, we are not releasing this information to you as we consider it exempt under Section 43 (2) of the Freedom of Information Act 2000 – Commercial Interests: disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). Further, we can confirm that we have given careful consideration to the public interest in the information contained in your request and in this instance consider that the balance of the public interest in non-disclosure outweighs the public interest in disclosing it.

Disclosure of this information may have the potential to prejudice commercial interests of the LLDC and other parties because it will reveal detail of fees and rates charged which will prejudice our position in receiving bona fide bids and proposals in future and impact on future negotiations. The public interest is clearly best served by ensuring that public authorities are able to achieve maximum value for money for the public purse in all their commercial ventures. We have, therefore, concluded that the balance of the public interest favours non-disclosure of the information at this time.

Though LLDC is unable to disclose the main terms and conditions including the contract data because of the exemption being applied, however, if you still would like a copy of the redacted contract please advise the writer."

**Comment from internal review request:**

On 8 July 2013, the applicant sent the following complaint "I wish to complain. This approach is inconsistent with the Government's transparency and openness agenda. Please reconsider and send me the information."

**Comment from the internal review team:**

The LLDC response of 5 July 2013 clearly sets out the reasons for not releasing the information on the basis of Section 43 (2). This exempts information which, if disclosed, would, or would be likely to prejudice the commercial interests of any person. The commercial interests are those of the LLDC and the contractor.

The contract for the Aquatics Centre, which was originally signed between ODA and Balfour Beatty Group Limited in March 2008, covers the legacy transformation phase of the works. It is therefore a live contract and the fees, percentages, and contract sums are still being applied to ongoing works. Releasing the main terms and conditions including Contract Data without redacting the commercially sensitive information relating to the fees, percentages, and contract sums would prejudice the LLDC's ability to negotiate terms on future works with other parties.

A new important consideration was the potential impact of disclosure on LLDC's commercial relations with Balfour Beatty. A good commercial relationship has been important for the effective management of the contract. Disclosure could have a negative impact on this relationship and on the effective delivery of the remaining contract as well as the final negotiations between the parties during the commercial close out of the contract.

Consideration was also given to the commercial interests of other parties. In the case of the ODA, they have stated that disclosure would prejudice the ability of the ODA to negotiate on any remaining contracts it may require. The ODA's response, to the request for the Aquatics Centre contract submitted to the ODA in November 2012 and on 7 June 2013 cited Section 43(2). The LLDC's original response was consistent with the ODA's response.

Although Balfour Beatty Group was not consulted during the internal review, they clearly had expectations of commercial confidence as they have marked various documents "Commercial in confidence". The reviewer noted that, in accordance with clause 74.7 of the Contract, the LLDC notified Balfour Beatty during June about the FOI request and of LLDC's obligation to disclose any confidential information under the FOI Act and its intention to withhold any information that is commercially sensitive to the extent permitted by the exemptions. The reviewer considered that disclosure of the main terms and conditions including contract data would reveal commercially sensitive information to Balfour Beatty Group's competitors. Importantly, disclosure of this information could also impact on Balfour Beatty Group's relationship with its sub-contractors which could prejudice its commercial interests and could impact the commercial close out of the contract which would be prejudicial to LLDC's commercial interests.

The LLDC response of 5 July 2013 also clearly set out that the public interest test had been applied and that on balance the non-disclosure outweighs the public interest in disclosure.

Section 43(2) is subject to the public interest test. This requires the evaluation of the likelihood and magnitude of the prejudice by disclosing the commercial interest. There is a public interest in disclosure of commercial information to ensure, amongst other things, that

there is transparency in the accountability of public funds and that public money being used effectively and achieving value for money. However, the reviewer agreed that there is a stronger public interest case in withholding the information as disclosure would be likely to prejudice the commercial interests of the LLDC by adversely affecting its bargaining position during future contractual negotiations and during the commercial close out of this contract which would result in less effective use of public money.

The reviewer recognises that the commercial sensitivity of the withheld information will diminish over time as the LLDC completes the transformation work and other capital projects.

The LLDC response offered a copy of the redacted contract. The requester did not request a copy of the redacted contract.

The information redacted was reviewed and the reviewer considered this information to be commercially sensitive.

**Internal Review Summary:**

In summary, the decision to withhold the information on the basis of exemption Section 43(2) is upheld. Whilst there is an inherent public interest in being open and transparent to promote accountability, in this case, it is believed that there is a stronger public interest in non-disclosure to ensure that public authorities are able to achieve value for money in its future commercial negotiations and in the conclusion of the contract in question. These decisions are in line with the Government's transparency and openness agenda. The reviewer noted that the LLDC publishes expenditure over £250 including costs to Balfour Beatty Construction Ltd.

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

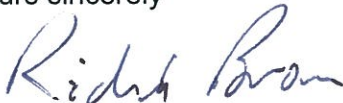
Further information on the Freedom of Information Act 2000 is available from the Information Commissioner's Office:

Wycliffe House  
Water Lane  
Wilmslow  
SK9 5AF

Telephone 08456 30 60 60 or 01625 54 57 45

Website [www.ico.gov.uk](http://www.ico.gov.uk)

Yours sincerely



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