



21 February 2014

BY EMAIL

Dear 

Request for Internal Review under the Freedom of Information Act 2000 (Ref: FOI 13-024)

I refer to your email dated 1st November 2013, in which you requested an internal review with regard to the response by the London Legacy Development Corporation (the Legacy Corporation) of 30th September 2013 to your request for information dated 1st August 2013 (the original request).

Correspondence leading up to this Internal Review

In your original request, you asked the Legacy Corporation for the following information:

"The iCity Press and Broadcast Centres lease agreement and its terms and any associated documents".

In response, the Legacy Corporation provided you with redacted copies of the requested materials. In your request for an internal review, you expressed dissatisfaction with aspects of the Legacy Corporation's response, as quoted below:

- (1) *"The plans listed in Appendix 2 (P93) have not been supplied - I had requested 'any associated documents' to make it clear that items such as these should be included.*

- (2) *Redactions have been made on 15 pages of the lease agreement under the FOIA s41 exemption. I believe this has been incorrectly applied. Information engaging s41 must be genuinely obtained from another person, possess a necessary "quality of confidence" and have the potential to give rise to an action for breach of confidence - it is unlikely the redacted information meets these criteria. In particular, the potential requirement to disclose information under the FOIA is*

anticipated in clauses 16 and 18 - such a disclosure would not be contrary to the non-disclosure clause 18 and hence not actionable.

- (3) *With regard to the redactions under s43(2) - 'Commercial interest', there is no reason to believe that in the context of the overall circumstances the commercial interests of the LLDC have potential to be prejudiced, given the unique nature of this lease agreement and that nothing similar will recur for the foreseeable future. Similarly with regard to the interests of the lessee, there is no reason to believe that disclosure of financial arrangements in this particular case would compromise negotiations in other circumstances.*

Should there be any doubt regarding these exemptions, I believe the public interest favours disclosure."

We have now conducted that review and can reply as follows. Upon reviewing this matter, we conclude that the original response should be upheld to the extent that the material should be partially redacted and that the relevant exemptions apply; however, we apologise that we did not release some of the redacted information.

In providing our reasoning, we have summarised your comments in your request dated 1st November and, for clarity, have addressed them in the order in which you raised. Please note that the Legacy Corporation has also consulted the affected third parties and taken note of relevant third party interests in reaching their conclusions in this internal review.

(1) The plans listed in Appendix 2 (P93) have not been supplied.

We regret that we did not provide you with these plans in our initial response. Upon review, we conclude that there was an omission and the relevant exemptions do not apply to the requested material and have enclosed the plans as requested for your reference.

(2) The s.41(b) Confidential Information exemption was incorrectly applied.

In our initial response, we redacted information on the basis that it was exempt pursuant to section 41(b) of the Freedom of Information Act 2000, where such information was provided in confidence. Disclosure of such information by the public authority holding it would constitute a breach of confidence actionable by the other person. Upon review, we uphold the application of the exemption, due to the Confidentiality Agreement with iCity dated 2nd February 2012, which imposes an obligation of confidence on the Legacy Corporation. Furthermore, the content of the lease is sufficiently commercially sensitive to warrant protection. Providers of such information should be permitted to apply relevant protection to their communications and to expect the confidentiality to be maintained.

Public interest

An obligation of confidence requires that information should be withheld unless the public interest in disclosure outweighs the public interest in maintaining the confidence, for example if it would highlight any misconduct, wrongdoing or risks to the public. Other factors in favour of the public interest in disclosure are that disclosure would promote openness and transparency or freedom of expression.

We accept that there is an inherent public interest in public authorities being transparent in the decisions they take in order to promote accountability. If the background information to the decision making process is made public, there is also a strong argument that this should improve the quality of future decisions and will ensure public authorities are acting appropriately. However, we are also concerned that disclosure of confidential information may undermine the principle of confidentiality and that contracting parties and other persons would be discouraged from confiding in public authorities if they did not have a degree of certainty that such confidences would be respected.

There is also a public interest in maintaining trust and preserving a free flow of information to a public authority where this is necessary for the public authority to perform its statutory functions. The Legacy Corporation also does not believe that this is a case where disclosure of the relevant information as requested, is required to address any form of misconduct or wrongdoing or to promote openness and transparency in respect of accountability.

The Legacy Corporation has sought to balance any public interests in disclosing the requested information that you have asked for against the public interest in protecting the confidential and commercially sensitive information of that information.

We apologise that our initial response could have identified this information more clearly regarding the Confidentiality Agreement that has been entered between the parties and the risk of releasing this information.

(3) S.43(2) Commercial Interest exemption- there is no reason to believe that in the context of the overall circumstances the commercial interests of the LLDC have potential to be prejudiced.

Upon review, we uphold the application of the s.43(2) of the Freedom of Information Act 2000, Commercial Interests exemption, subject to our determination that some the information was incorrectly redacted on this basis and ought to be released. We apologise that some of the requested information was redacted. Please see attached schedule as it provides you with information regarding the release of information following this review.

Where information has been redacted under s.43(2): 'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)'. 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. There is a public interest in promoting the transparency of Legacy Corporation decisions and accountability in respect of agreements into which it enters; however, disclosure of this information may have the potential to prejudice commercial interests of the Legacy Corporation and the other parties involved, as it will reveal detail of fees and rates charged.

This would prejudice the commercial position of the Legacy Corporation, or the position of third parties, in future bona fide bids and proposals, impacting upon future negotiations of the Legacy Corporation or other third parties. We have therefore determined that the public interest is best served by ensuring that the Legacy Corporation, in its capacity as a public authority, and other third parties are able to achieve maximum value for money in their commercial ventures. Accordingly, there is a substantial public interest in maintaining this exemption at this time. We have, therefore, concluded that the balance of the public interest favours non-disclosure of some of the requested material at this time.

In conclusion, we uphold the initial response to the extent that the material should be partially redacted and that the relevant exemptions apply, but we apologise that some of the information ought not to have been redacted; accordingly, we have enclosed this information for your reference. We have also enclosed a table that sets out where we have decided to release information upon review, as against the original application of the exemptions.

If you are not content with the outcome of this 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

Yours sincerely



Jonathan Dutton

Executive Director of Finance and Corporate Services