

[REDACTED]

20 December 2013

**Ref: FOI 13-033**

Dear [REDACTED]

Thank you for your request for information, received on 12 September 2013, with clarification received 16 October 2013. You asked us for following questions:

*"I would like to request the following information -*

*Copies in electronic format of all emails and any other written records of communications with the London Borough of Hackney in relation to any matters concerning East Marsh (Northern Transport Mall), including its reinstatement and any construction works."*

With further clarification -

*"The information I am requesting should be all correspondence and records of communications with London Borough of Hackney including minutes of meetings, dating back to the beginning of 2012, and concerning any matters relating to the leasing, occupation and usage of East Marsh and any construction works or reinstatement activities undertaken there since September 2012."*

We also sought an extension of time to deal with this request for information.

The London Legacy Development Corporation (the Legacy Corporation) can confirm that we hold the information on the subject requested. The relevant information, as defined below, is contained in **Appendix A**.

However, we have had to consider the following factors:

The Legacy Corporation has conducted a search of the email archive system using the search term "East Marsh", sent or received from an email address containing "Hackney" and sent or received from 1 January 2012.

There were 758 items / 140.08MB found as a result of this search.

A further search was conducted on the email archive system using the search term "hackney marsh", sent or received from an email address containing "Hackney" and sent or received from 1 January 2012.

There were 1765 items (emails) / 380.98MB found as a result of this search.

The Legacy Corporation considered that narrowing the parameters of the search would make it possible to review the results of the first search without 'the impact on resources engaging

the 'manifestly unreasonable' exception to disclosure in Regulation 12(4)(b) of the Environmental Regulations 2004; however the results of the second search were not reviewed because the search was considered 'manifestly unreasonable'.

Regulation 12(4)(b) permits a public authority to refuse a request if it is "manifestly unreasonable", for example if:

- It is too burdensome to deal with in terms of unreasonable costs or unreasonable diversion of resources; and/or
- It disrupts the public authority's ability to perform its core functions; and/or
- It seems to be aimed at disrupting the public authority's performance.

In this case we consider that the request is manifestly unreasonable. The process of excessively reviewing documents to identify relevant material, review any potentially exempt information within them, redact exempt information and collate the material for disclosure would be a too burdensome and it would result in an unreasonable diversion of limited resources and disruption to our ability to perform our functions.

This exemption is subject to the public interest test which requires us to consider whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The Legacy Corporation accepts that there is a general public interest in transparency and accountability in respect of the activities undertaken by it, particularly on matters of general public importance or involving the use of public money. There is also a general public interest in allowing the public to understand the matters concerning East Marsh. However, the Legacy Corporation believes that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information because it is an unreasonable strain on the Legacy Corporation's limited resources.

The results of the first search were reviewed against these factors:

1. Communication was between the Legacy Corporation and the London Borough of Hackney. Third parties could be included; however the main dialogue should be between these two parties. The email addresses were used to identify these.
2. Communication could be confirmed as final and did not represent information that could be considered work in progress or information in a draft form. Although the Legacy Corporation accepts a general public interest in transparency, we consider that it would be inappropriate to release the entirety of the correspondence, which contained communications in draft form. This is in line with the exception within Regulation 12(4)(d) of the Environmental Information Regulations 2004 as "*it relates to material which is still in the course of completion, to unfinished documents or to incomplete data*". The fact that the draft communications may have related to completed documents does not change the material's status as incomplete. Disclosure would be required only if public interest in disclosure outweighed the public interest in maintaining the exception. Although disclosure of draft material may shed light on how the final communications have been arrived at, we consider that the public interest in maintaining the exception would outweigh the interest in disclosure for the following reasons:
  - In considering the balance of public interest, we take into account the content of the material, which was incomplete and therefore not representative of the parties'

thinking regarding the matters concerned; as such, releasing this incomplete material might be misleading to the public.

- We also consider that the exception seeks to protect the interest in the public authority being able to freely discuss and analyse drafts, without being concerned that early draft material will be disclosed; disclosure might result in a loss of candour and frankness in communications by and within the public authority.
3. Communication covered financial information that would engage the exception within Regulation 12(5)(e) of the Environmental Information Regulations 2004, which relates to confidentiality of commercial or industrial information. The purpose of this exception is to protect any legitimate economic interests underlying commercial confidentiality. The information in question triggers the exception: it is commercial in nature; it is subject to a common law duty of confidence; and disclosure would adversely affect the confidentiality required to protect legitimate economic interests held by the Legacy Corporation and a third party. The Legacy Corporation would only be required to disclose this information if the public interest in disclosure outweighed the public interest in maintaining the exception. The Legacy Corporation has taken into account that disclosure would serve the public interest by enabling the public to participate in the public authority's decision-making processes and ensuring that public authorities act scrupulously in decisions in which they have a vested interest. However, we consider that the public interest in maintaining the exception would outweigh the public interest in disclosure on the following grounds:
- We take into account the public interest in public authorities abiding by agreements, made in good faith, in respect of information provided on a voluntary basis.
  - We also consider that disclosure would damage the Legacy Corporation's reputation for maintaining confidential information, which may deter third parties from dealing with, or supplying information to, the Legacy Corporation; furthermore, if third parties are unwilling or unable to continue supplying information to the Legacy Corporation voluntarily, this would hinder the Legacy Corporation's ability to fulfil its statutory functions.
  - Disclosure would result in the Legacy Corporation being exposed to an action for breach of confidence.

Therefore, we determine that it would be inappropriate to release the information in question.

4. Communication covered the areas as specified – the subject was East Marsh with consideration of leasing, occupation and / or usage, and also from September 2012, construction works and reinstatement activities.

No search was conducted of the information stored on the organisation's networked fileserver. Other searches of a similar nature have proven to be extremely resource and system intensive. Conducting a search of the fileserver and then reviewing the results to ascertain whether they represented communication between the Legacy Corporation and the London Borough of Hackney would be considered manifestly unreasonable as outlined in Regulation 12(4)(b) of the Environmental Information Regulations 2004. The public interest test is discussed above.

No record of the content of phone conversations is held within the Legacy Corporation.

Also the majority of recorded information between the two parties was undertaken via email. The Legacy Corporation switched IT service providers in June 2012 and the email archive does not exist before this time. Individual email accounts could be searched for relevant information however this would not represent a reasonable use of resources and would escalate the costs to the request to the level where they might be considered manifestly unreasonable as outlined in Regulation 12(4)(b) of the Environmental Information Regulations 2004, and the public interest test is discussed above.

It is the standard practice of the Legacy Corporation to redact personal information. As such, names and other contact details have been redacted from **Appendix A**, in line with Regulation 13(1) of the Environmental Information Regulations 2004 regarding personal data. This Regulation states that a public authority shall not disclose personal data, to the extent that the requested information includes personal data of which the applicant is not the data subject and as respects which the conditions in either Regulation 13(2) or Regulation 13(3) apply. In this instance, the relevant condition that applies is Regulation 13(2)(a)(i), whereby the information is defined as personal data within Section 1(1)(a) of the Data Protection Act 1998. As we have not received consent of the data subjects, release of the requested information at this time would contravene the first data principle under Schedule 2(1).

If you are unhappy with our response to your request and wish to make a complaint or request a review of our decision, you should write to:

Executive Director of Finance and Corporate Services  
London Legacy Development Corporation  
Level 10  
1 Stratford Place  
Montfichet Road  
London  
E20 1EJ

Please note: complaints and requests for internal review received more than two months after the initial decision will not be handled.

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



FOI/EIR Co-ordinator  
London Legacy Development Corporation