



17 November 2014

INFORMATION REQUEST REFERENCE 14-038

Dear 

Thank you for your information request, received on 22 September 2014. The Legacy Corporation requested an extension to the 20 working days in order to consider the public interest test. You asked us to provide the following information under the Freedom of Information Act 2000 (FOIA):

“Could you please provide the winning submission from balfour beatty to complete the Olympic Stadium transformation works. Please include all drawings, artists impressions and graphic images of completed works.”

The information you requested from the London Legacy Development Corporation (Legacy Corporation) is attached. Some of the information is considered exempt and that information has been redacted. The exemptions applied and our conclusion on the public interest test for each, where applicable, is summarised below. Balfour Beatty has been consulted and their response taken into consideration when balancing the public interest factors for and against disclosure, with consideration for the recommendations of the OGC FOI (Civil Procurement) Policy and Guidance v2.0.

Appendix B identifies what redactions have been made and the exemption that was applied. The basis for our decisions to withhold the redacted information is set out below.

FOIA Section 40 (2) – Personal Information.

- (2) Any information to which a request for information relates is also exempt information if—
 - (a) it constitutes personal data which do not fall within subsection (1), and
 - (b) either the first or the second condition below is satisfied.
- (3) The first condition is—
 - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—
 - (i) any of the data protection principles

It is standard practice for the Legacy Corporation to redact personal information unless explicit consent to release the personal information has been received. As such, personal

information has been redacted from the Balfour Beatty submission in line with section 40(2)(b) of the FOIA as detailed above. The redacted information is defined as data under the Data Protection Act 1998 section 1(1) and disclosing the information would contravene the first data protection principle, DPA 1998 Schedule 1, Part 1, 1(a) where personal data should be processed fairly and lawfully and not processed unless at least one of the conditions of schedule 2 is met. The relevant condition for this request is Schedule 2 (1) which requires the consent of the data subject. None of the individuals named within the submission have given consent for their personal information to be disclosed and given that their roles are not public facing, they have a reasonable expectation of privacy, therefore this information has been redacted.

FOIA Section 41 – Information provided in confidence

(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

There is information on third parties provided by Balfour Beatty within the submission that was only provided on the understanding that the information was provided in confidence and the Legacy Corporation would respect the duty of confidence that Balfour Beatty has in relation to these third parties. Disclosure of this information would be likely to cause significant harm between Balfour Beatty and the third parties and would constitute an actionable breach of confidence. It also would be likely to have a significant impact on the future procurement exercises of the Legacy Corporation which is dependent of the quality of the information provided by third parties in order to achieve best value for the public purse.

FOIA Section 43(2) – Commercial interests

(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).

The Information Commissioner's Office (ICO) considers that a commercial interest "relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of materials, goods or services." Further, the ICO "recognises that companies compete by offering something different from their rivals." Accordingly, the likely prejudice that would be suffered by disclosure of the information withheld using this exemption is as follows:

There are a limited number of suppliers that can realistically bid for this type of work. The information redacted under this exemption is considered unique to the business of Balfour Beatty. The disclosure of the methods and processes that Balfour Beatty have invested in developing would reduce the ability of Balfour Beatty to distinguish itself from its competitors. They consider that disclosure would be likely to have a discernible impact on their business given that Balfour Beatty is continuing to pursue and tender for other stadium projects of a similar nature to the Stadium Works.

This exemption also cover details of pricing schedules, financial and risk models and other financial information that if disclosed would put Balfour Beatty at a material disadvantage for any future competitions of this nature against the other competitors within this market whose information was not public.

The sensitivity of commercial information reduces as time passes, however the Legacy Corporation recognises that this is a recent tender and as such the redacted information is still current and, if disclosed, would commercially impact on Balfour Beatty.

The Legacy Corporation has balanced the public interest factors for and against disclosure of the information withheld when considering this request. As already stated, there is a limited number of suppliers who bid for work of this nature. It is likely that any disclosure that would put one supplier at a disadvantage to the others would negatively impact on the competitiveness of the market and therefore impact on the Legacy Corporation's ability to achieve the best outcome and secure the best return for the public purse.

In providing this response we have weighed up the balance in being transparent and accountable in respect of our public functions against the need to run a commercial process that is robust in its confidentiality and fairness. We therefore consider the effect on the commercial interests of LLDC and Balfour Beatty outweighs the public interest of disclosing it at this time.

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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

Yours sincerely



FOI / EIR Co-ordinator
London Legacy Development Corporation