



16 November 2015

INTERNAL REVIEW - REFERENCE 15-060

Dear 

We refer to your email of 13 October 2015 where you requested an internal review under the Freedom of Information Act 2000 (FOIA) with regard to the response you received from the London Legacy Development Corporation (Legacy Corporation) in relation to your information request reference as above.

The internal review has been completed and the findings and recommendations of the internal review are as follows:

Background and scope:

1. The original request was refused on the basis of section 12 of the Freedom of Information Act 2000 (FOIA).

FOIA Section 12 Exemption where cost of compliance exceeds appropriate limit.

- (1) *Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.*
- (2) *Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.*
- (3) *In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.*
- (4) *The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—*
 - (a) *by one person, or*
 - (b) *by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,*

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) *The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.*

2. The appropriate limit for the London Legacy Development Corporation (Legacy Corporation) is £450, calculated as 18 hours at the rate of £25 per hour, however, only the time taken to:
 - a. establishing if the information is held;
 - b. locating the information;
 - c. retrieving the information; and
 - d. extracting the information,

can be taken into consideration when calculating the estimated costs of answering the request.

3. The internal review request, see Annex C, had six points. The first point was that *"claims that it would exceed the £450 ceiling limit is factually incorrect because all of the data I have requested is on an electronic database, thus the sought after data could be retrieved in less than a couple of hours by a competent IT Specialist."* The second point was that *"The Public Safety Factor FAR outweighs any COST ceiling limitation."*
4. Only points 1 and 2 were considered in by the internal review panel. The review focused on the complainant's argument that it should not take over 18 hours to download 166,000 items from an electronic database (67,000 items from the fileserver and 99,000 items from the email archive) and irrespective of that, however much it would cost to respond, then the alleged risk to public safety outweighed that cost.
5. The third point was that *"HM The Queen has been placed in Mortal Danger every time she visits the Olympic Park. Ditto for any other Royal Household Member. It is tantamount to TREASON that you consider £450 is TOO HIGH price to pay for HM Security. If it was down to me, I would send you to the Tower for Treason?!"*
6. The alleged danger to HM Queen, accusations of treason and threat of incarnation were not relevant to the review, although the personal threat was discussed with the Legacy Corporation Human Resources as concerns had been raised in the past over the language and tone that the requestor uses and the impact that this might have on the staff that deal with the requestor.
7. The fourth point clarified the original request *"In the event I need to downgrade my FOIA request, I am willing to do so to include the Olympic Stadium and a radius of 300mts circumference of the Olympic Stadium. Let's say 300mts x 360 degrees from the Centre Spot of the Pitch."* This clarification of the initial request is being answered as a separate information request under reference 15-069.
8. The original response, Annex B, applied relevant Environmental Information Regulations 2004 (EIR) exception as well as the section 12 FOIA exemption as although the original request quoted FOIA, the subject matter of the request was related to the environment and as such was better addressed by EIR and in relation to this, the fifth point was that *"you now claim section 12(4)(b) as the correct*

exemption for the EIR 2004 but you fail to inform me which Court Authority you have relied upon. I would assume it is the GIA/3037/2011 Dransfield v ICO. Please give me verse and chapter which Presidency you are reliant upon.”

9. The complainant has misunderstood the application of the EIR exception and wrongly appears to consider that the Legacy Corporation considered that his request was vexatious, despite the justifications within the original response not referencing the term vexatious or the FOIA section 14 exemption.
10. The EIR exception 12(4)(b) covers requests that could be considered “manifestly unreasonable”, and while this can include considerations of vexatiousness, in this instance the exception was applied on the basis that the request was considered too burdensome and it would result in an unreasonable diversion of limited resources and disruption to our ability to perform our functions. This interpretation of the EIR exception was explained in the original response and reiterated to the requestor in the acknowledgement of the internal review request - Annex D.
11. The final point was a “*request for a copy of the SHE Plan and the approved copy if the EIA Plan. I do not accept you comment that this case should now be treated as a new FOIA. I will however concede my request for the SHE and EIA data is a brand new request.*” The new information request in relation to a SHE plan and an EIA plan is being answered as a separate information request under reference 15-70. This new request was acknowledged in the email response to the internal review request Annex D. This email response also addressed the fact that the revised request would have to have a separate reference in order to avoid conflict with the internal review of the initial request.

Review

12. The requestor suggested that the cost ceiling claims in the original request were “*factually incorrect because all of the data [I] have requested is on an electronic database, thus the sought after data could be retrieved in less than a couple of hours by a competent IT specialist*”.
13. Our IT Service Delivery Manager within the IT & Information Services team was consulted in order to address this comment.
14. The Legacy Corporation information is not held on an electronic database, it is held on a fileservier which has a much lower level of search functionality than a database would provide. The IT Service Delivery Manager described the fileservier search functionality as similar to what would be expected within a word document. The Legacy Corporation do have access to software, called TreeSize Professional, that allows us to run more effective searches across the fileservier, and this was used during the original request to search the fileservier, however the software search results provide a list with active links for the locations of the relevant information, it does not have the functionality to copy all of the search results and it does not group the information. The search results on the fileservier are in multiple locations throughout the folder directory, and in order to copy them, each location would have to be accessed, the specific document(s) identified and reviewed and then copied if appropriate.
15. The search results for the original request were for two separate systems, the fileservier and the email archive. The fileservier search results, using the TreeSize professional software, exceeded 67,000 items and were over 105GB in total size.

The email archive search results, using the Discovery archive application, exceeded 99,000 items and were over 29GB in size.

16. Treesize / Fileserver: The original request asked for contamination remediation information for the Stadium site. Throughout its construction and then the post-Olympic transformation the stadium site has multiple terms that are used to reference it, including Zone 2 and 3, rarely was it referred to just as the Stadium or Stadium site. A search run on the terms contamination remediation stadium would not have identified much relevant information, if any.
17. For the internal review a member of the review panel undertook a review of the 67,000 items from the Treesize fileserver search results from the original request, and made a note of the time taken to identify if the result was relevant to the original request.
18. The Panel member reviewed 606 records which took a total time of 6 hours, 29 minutes; this time includes calculating the radius of the Stadium area to identify which areas were relevant to the FOI request and obtaining a Zonal plan from the LLDC Planning department to identify the Stadium zones.
19. There were a number of records in the search results which had restricted access and the Panel member would need to obtain approval for higher system permissions in order to gain access to these documents and review them for relevance to the FOI request. The time required to gain the approval to amend these permissions would impact on the cost estimate as they could be considered part of the identification and retrieval times. For this exercise the additional permissions were not sought as the cost calculations were already substantially beyond the appropriate limit.
20. Discovery archive: The Discovery archive is a record of all emails sent and received by the London Legacy Development Corporation (Legacy Corporation) since the archive was established on 27 June 2012. Access is controlled by the IT Service provider, Civica.
21. During the original request searches were run on the Discovery archive for all emails containing the words "contamination" or "remediation". Given the size of the results, 99,000 items in total, this information was not exported from the archive at the time of the original request because the original responder knew that a response within a reasonable time would not be possible with that many items, allowing for time to identify the relevant emails. For the internal review the searches were rerun, extracted and downloaded from the system.
22. A member of the review panel obtained access to the Discovery archive from the Legacy Corporation's IT service provider, ran the searches again, exported the search results and then extracted the search results from the system so that they could be accessed and reviewed for relevant information.
23. Within the email archive, the system automatically prepares the items for export and given the size of the search results (Contamination – 11,912.53MB / 41,468 items; Remediation – 17,348.26MB / 60,390 items¹) the system needed to break each search result into packets of 7,130 items. Due to the size of the exports the system broke the exports into multiple sections (called packets). There were 15 packets in

¹ The searches were re-run without dates specified which means that the number of references had increased since the first searches for the original request.

total – 6 packets for contamination and 9 packets for remediation. As the system ran the 15 report packets overnight, the export time has not been considered in the calculation of the time taken to identify, locate, retrieve and extract the information.

24. Once the system had prepared the packets for exporting, the packet downloads had to be initiated manually. The total time taken for downloading this information is 45 hours, 28 minutes. This time does not include extracting the information from the download and reviewing each email in order to assess its relevance to the request as this work has not been undertaken for this review.
25. The details about the time taken to export and download the search results is in the table in Annex E, for example for the first packet of the Contamination search results (7,130 items), it took 1 hour and 49 minutes to export the information and 3 hours and fourteen minutes to download it.

Findings

26. The search results for the original request were for two separate systems, the fileserver and the email server. The fileserver search results exceeded 67,000 items and were over 105GB in total size. The email server search results exceeded 101,000 items and were over 29,260MB / 29GB in size. For the sake of this review we will consider the statistics from the original request as we are assessing whether it was reasonable to use s.12 based on the figures at that time.
27. Extrapolating roughly from the figures within this review; if the time taken to review 606 records from the fileserver search results is 6 ½ hours, then the time taken to review all of the records identified within the fileserver search would take 718 hours².
28. Even without reviewing the 99,000 emails, and also not taking into consideration the time taken to obtain authorisation for the Panel member to be given access to the restricted records, the cost in providing an answer to this request would far exceed the acceptable cost, calculated at £450, based on 18 hours at £25 per hour.
29. Using the above £25 per hour amount and the number of documents reviewed within 6 ½ hours, it would cost over £17,950 to identify relevant documents within the fileserver search results alone. This amount does not take into consideration the similar review that would be required for the records on the email archive and the actual staff resource that would be required to undertake these searches.
30. The review of the fileserver search results is estimated to take 718 hours approximately. Based on a 7 ½ hour working day, this review alone would take over 95 days. This does not include the review of the 99,000 records within the email archive search results and also only considers the identification, location, retrieval and extraction of the information relevant to the request.
31. For the email archive, downloading the email packets alone took approximately 45 hours and 28 minutes. While other work could be done while the packets were downloading, no work on this request could be completed until all downloads had finished. Using a standard working day of 7 ½ hours, 45 hours would be 6 working days.

² 67,000/606 =110.57, 6.5x110.57=718.71

32. If the same review speed established for the fileserver search results was used to calculate the time taken to review the 99,000 search results within the email archive then the review of the emails would have taken over 1,061 hours³. Using £25 per hour for 1,061 hours, it would cost over £26,525 to review and identify the relevant information.
33. Based on the above estimates it would cost a minimum of £44,475⁴ to answer this request. This cost does not take into consideration the 45 hours required to download the search results from the Discovery archive, the cost of the staff resource and the impacts of taking them away from their other responsibilities in order to undertake this work. The Legacy Corporation cannot justify the cost or the use of the resources that would be required in order answer this request.

Recommendations

34. The Internal Review panel have reviewed the original request and the resources required and while we consider public safety and transparency very important, the estimated costs and resources required in order to answer this request mean that we consider the public interest to be in support of using the section 12 exemption and the EIR 12(4)(b) in relation to this request.

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


London Legacy Development Corporation

³ $99,000/606=163.37$, $6.5 \times 163.37=1061.91$ hours

⁴ £17,950 + £26,525