



13 May 2016

INFORMATION REQUEST REFERENCE 16017

Dear [REDACTED],

Thank you for your information request, received on 11 March 2016. You asked the London Legacy Development Corporation (Legacy Corporation) to provide the following information under the Freedom of Information Act 2000 (FOIA):

“Can you please confirm that there is no State aid in the share/loan agreement(s) between LLDC, E20 Stadium LLP, Newham Legacy Investments Limited and the London Borough of Newham?”

The Legacy Corporation requested clarification on what sort of document or information was meant relation to “share/loan agreement(s)”.

The following clarification was received.

“Simply confirmation that there is no State aid arising out of that share/loan arrangement - both E20 and NLI are private undertakings from a State aid perspective and both LLDC and LBN have obligations in respect of State aid law.

You've already told me that there is no State aid in the overall transaction so it ought to follow that there is no State aid in these transactions on the other hand if there is a risk of State aid in these transactions there is a risk of State aid overall.

The appeal tribunal, hearing the LLDC appeal against the Information Commissioner's ruling that the West Ham concession should be made public, has heard that LLDC is concerned that revealing contractual details will set a 'benchmark' which will prejudice future negotiations with other potential licensees.

However a 'benchmark' at, or above, a market price could not logically do this so it follows that the contract has been set at below market prices and that implies State aid because the intervention in the project is entirely through State resources.

For E20 to be able to enter into a contract at below market prices it must itself be enjoying beneficial terms and those benefits can only flow from the lease from LLDC, the State grants from various sources and/or beneficial terms in the LLDC/LBN/NLI/E20 agreements.”

The London Legacy Development Corporation (Legacy Corporation) confirms that they hold information falling within the scope of your request that advises that there is no state aid in the E20 LLP Members' Agreement between LLDC and Newham Legacy Investments Limited.

The requested information is withheld under 2 exemptions: section 42 (legal professional privilege) and section 27 (prejudice to international relations).

Section 42 (Legal Professional Privilege)

(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

LLDC relies on this exemption to withhold information within the scope of your request which is legally privileged. This is a qualified exemption and the public interest was taken into consideration. The Legacy Corporation recognises the public interest in promoting the transparency of their decisions and accountability, however there is also a strong requirement to safeguard openness in communications between client and lawyer in order to ensure access to full and frank legal advice, which is essential to effective governance. The general public interest inherent in section 42 will always be strong due to the importance of the principle behind legal professional privilege: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice, which in turn is fundamental to the administration of justice. Strong countervailing considerations are needed to justify disclosure of legal advice. The Legacy Corporation has considered the public interest factors in favour of disclosure of the requested information, including the general public interest in transparency and accountability of public bodies and informing the public state aid debate.

Additionally, some of the requested information has been withheld under section 27(1) of the FOIA.

Section 27(1) – International relations

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—(a) relations between the United Kingdom and any other State, (b) relations between the United Kingdom and any international organisation or international court, (c) the interests of the United Kingdom abroad, or (d) the promotion or protection by the United Kingdom of its interests abroad.

The section 27(1) exemption is a qualified exemption and subject to the the public interest test.

To apply this exemption we first have to consider whether disclosure of this information would, or would be likely to, prejudice the interests or relations referred to in the exemption.

We then apply the public interest test. The public interest test considers and balances the public interest in disclosing this information against the public interest in not disclosing this information and uses this assessment to decide whether there is sufficient justification to withhold this information under this exemption.

We consider that the section 27(1) exemption is engaged in this case in relation to some of the requested information because the disclosure of that information would, or would be likely to, prejudice relations between the United Kingdom and the European Commission, as disclosure of the information would compromise the effective conduct of the United

Kingdom's international relations. In considering the application of the exemption, LLDC has consulted with BIS.

We have given careful consideration to the public interest factors for and against disclosure of the information contained in your request and we consider that the balance of the public interest in non-disclosure outweighs the public interest in disclosing it.

We recognise and have taken account of the public interest in promoting transparency of decisions and accountability by public sector bodies involving the expenditure of public money. However, it is the view of the Legacy Corporation that the public interest in withholding this information outweighs the public interest in disclosing it because of the need to maintain relations that are based on mutual trust and cooperation between the United Kingdom and the European Commission.

The Legacy Corporation does not hold information in relation to any share/loan agreements between Newham Legacy Investments Limited and the London Borough of Newham.

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 response 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

██████████ on behalf of ██████████
FOI / EIR Co-ordinator
London Legacy Development Corporation