



4 July 2016

INFORMATION REQUEST REFERENCE 16021

Dear 

Thank you for your information request, received on 21 March 2016. You asked the London Legacy Development Corporation (Legacy Corporation) to provide the following information under the Freedom of Information Act 2000 (FOIA):

- “1. The detailed information which shows that there was no state aid present in the transaction between LLDC and E20 Stadium LLP including advice provided by the Department of Business Innovation and Skills.*
- 2. The detailed information which shows that there was no state aid present in the concession agreement with West Ham United including advice provided by the Department of Business Innovation and Skills.*
- 3. Can you please confirm that arrangements with UK Athletics form part of the multifunctional and multi-user arrangements and are therefore part of the overall State aid arrangements.”*

In relation to your first two requests, we can confirm that the Legacy Corporation holds information that gives a view that there is no state aid present in the transaction between the Legacy Corporation and E20 Stadium LLP. We can also confirm that the Legacy Corporation holds information that gives a view that there is no state aid present in the concession agreement with West Ham United. We do not hold any advice from the Department of Business Innovation and Skills (BIS) on whether there is state aid in either of these transactions.

We have attached the following information that we hold that relates to your request:

Annex A – Letter from the European Commission, dated 20 August 2013;

Annex B – Letter from the European Commission, dated 20 November 2013;
Annex C – Legacy Corporation response to the European Commission, dated 7 January 2014;
Annex D – email from European Commission re. EU statement. Dated 4 May 2016.

In **Annex C**, one piece of information has been redacted under section 43(2) commercial interests. This figure relates to the value of the Stadium naming rights to E20 Stadium LLP (E20).

S.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 section 43(2) is a qualified exemption and subject to the prejudice test and the public interest test. Under the prejudice test we have to consider if disclosure of this information would, or would be likely to, prejudice our commercial interests or the commercial interests of a third party. Consideration is also given to the harm disclosing this information would be likely to cause, combined with other information already in the public domain (mosaic effect) or possibly released at a future date (precedent effect). 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 in withholding this information under this exemption.

Information disclosed under the FOIA is considered to be public information, and while there is a presumption towards disclosure, consideration needs to be given as to who will have access to this information beyond the requestor and the purposes for which they could use the information.

The Legacy Corporation have assessed the impact of releasing the information redacted under this exemption. There is, of course, a public interest in promoting transparency of the decisions and accountability in regards to the agreements that are entered into by public sector bodies. However if released the redacted information would be likely to impact on the current and future negotiating position of E20 and in turn the Legacy Corporation consider that this would be detrimental to the income E20 generates on behalf of the taxpayer and would harm the Stadium's ability to achieve best value for the public purse.

It is the view of the Legacy Corporation that, at this time, the public interest in withholding the information outweighs the public interest in disclosing it.

The personal information in the emails in **Annex D** has been redacted under Section 40(2) of the FOIA. It is the standard practice of the Legacy Corporation to redact personal information unless consent to release the information has been received.

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 (DPA), 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,

Under the DPA, the first data protection principle states that

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

The first condition of schedule 2 of DPA

1 The data subject has given his consent to the processing.

The section 40 exemption is absolute and is not subject to the public interest test. In this instance, the relevant condition that applies is section 40(2) whereby the information is defined as personal data within Section 1(1)(a) of the Data Protection Act 1998. The redacted information includes the name, and phone numbers of the email correspondents. 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) of the Data Protection Act 1998.

Information requested, that the Legacy Corporation holds, has been withheld as it contains legal advice received by Legacy Corporation legal advisers. We consider this information to be exempt under Section 42 of the FOIA (Legal Professional Privilege).

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.

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 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.

The Legacy Corporation has considered whether this information should be released under FOIA and has concluded that the stronger public interest lies in withholding the information because of the strong need to ensure that the Legacy Corporation as a public authority can obtain full and frank legal advice to inform its decision-making processes.

Information requested, that the Legacy Corporation holds, has been withheld under section 27(1) of the FOIA (International relations).

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 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 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 that relates to this exemptions 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.

In relation to your third request, the Stadium is designed as a multi-use stadium and the arrangements with UKA were in contemplation at the time when LLDC obtained advice on state aid.

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



FOI / EIR Co-ordinator
London Legacy Development Corporation