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[REDACTED]

11 August 2016

INTERNAL REVIEW - REFERENCE 16041

Dear [REDACTED]

We refer to your email of 26 May 2016 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 16041.

Background:

You have submitted four requests since January 2016 relating to the statement made by Karren Brady on the Stadium seating and the wrap currently being procured for the Stadium. For reference, the details of the requests and response are attached in the following annexes:

- Annex A – 15-085 FOI response dated 4 February 2016
- Annex B – 15-085 email dated 4 February 2016.
- Annex C – 15-085 email dated 19 February 2016.
- Annex D – 15-085 Internal review response dated 6 May 2016
- Annex E – 15-085 Internal review response dated 26 May 2016
- Annex F – 16026 FOI response dated 26 April 2016
- Annex G – 16041 response dated 26 May 2016
- Annex H – 16041 email dated 27 May 2016
- Annex I – 16045 response dated 2 June 2016

The request for an internal review for the Legacy Corporation responses were received on 26 May 2016 and it also referenced areas of outstanding query from other responses and internal reviews. The Legacy Corporation agreed to address all of the queries raised, even if they referenced other previous requests.

The full internal review request is in Annex H.

Each question in the internal review request has been addressed following the internal review request order.

16041 request:

“Please provide a list of improvements to the Olympic Stadium that are planned or being undertaken as projects or other work in addition to the conversion project and are intended to enhance the stadium for football events, and in particular to the benefit of West Ham United Football club.

For each, please include

- 1. The planned start/end dates for the work*
- 2. The cost of the work (estimated if not yet completed)*
- 3. The amount of these costs being provided by E20 or other public funds.*
- 4. The amount of these costs being provided by West Ham United Football Club.*

I am not interested in work costing less than £10,000.

For sake of clarity, I offer two examples. Karren Brady of West Ham United has recently discussed with the press (i) what she terms a "digital wrap" around the stadium (ii) football mode improvements to increase the capacity to 60,000. “

16041 response:

There are no improvements to the Stadium that are being planned or being undertaken by E20 Stadium Ltd (E20) which are intended to enhance the stadium solely for football events or specifically for West Ham United. Please note that E20 is undertaking improvements to the Stadium, beyond the transformation works, that will deliver broad benefits across a range of events, not just football.

West Ham United are themselves undertaking and funding improvements specific to their requirements, including for example, the decoration of the Stadium seats and the concourses beneath the stands with West Ham branding. This work started this year and is intended to conclude before the start of the football season. E20 does not hold details of the costs requested for these projects and has provided no funding for them.

Internal review request 1.

I did not ask for a list of projects planned or being undertaken by E20 alone, nor was the request specifically constrained to either the sole benefit of West Ham United or football. That improvements may benefit the stadium in other circumstances does not disqualify them from being "intended to enhance the stadium for football events".

The original request asked the Legacy Corporation to “provide a list of improvements to the Olympic Stadium...”. The review complaint stated that in the original request Mr Pemberton

did not ask for a list of projects undertaken by E20 alone. The Panel found that the original response should have clarified that only E20, or LS185 (the Stadium operator) and WHU with E20 permission, can undertake work on the Stadium as context to the first sentence of its original response

The original request specifically requested projects that *“are intended to enhance the stadium for football events, and in particular to the benefit of West Ham Football club”* however, the review complaint stated that the request was not *“specifically constrained to either the sole benefit of West Ham United or football”*. The review panel did not uphold this aspect of the complaint as the original request did specifically constrain the response to projects intended to enhance the Stadium for football events, and in particular to the benefit of West Ham United. The review panel believe the Legacy Corporation answered the question that had been asked with the focus that had been specifically requested.

However, pursuant to the original request, the review panel did identify one E20 project that is football specific to the Stadium that could have been included in the original response. West Ham’s goal-line technology system is being moved from the Boleyn Ground to the Stadium and being installed by E20 at E20’s cost.

- Goal-line technology
 - Planned start date / end date: May – July 2016.
 - Amount of costs being provided by E20 or other public funds: £13.5k installation cost.
 - Amount of costs being provided by WHU: the system was provided by WHU at no cost.
 - This project is strictly speaking part of the Stadium conversion but is being delivered directly by E20 in a manner that represents better value for money for the taxpayer.

Following the clarification provided in the internal review request, other projects identified for improvements to the Stadium, outside of the Stadium conversion/transformation and not intended to enhance the stadium solely for football events or for the specific benefit of WHU are as follows:

- Fabric wrap – being procured by WHU with costs shared between WHU and E20.
 - Planned end date: August 2016
 - Cost (estimated if not yet complete): withheld
 - Amount of costs being provided by E20 or other public funds: withheld
 - Amount of costs being provided by WHU: withheld
 - Financial arrangements withheld under s.43(2) at this time as works are ongoing and final agreement between the parties has not concluded.
- External digital screen – being procured by E20.
 - Planned end date: October 2016
 - Cost (estimated if not yet complete): withheld
 - Amount of costs being provided by E20 or other public funds: withheld
 - Amount of costs being provided by WHU: withheld

- Financial arrangements withheld under s.43(2) at this time as works are ongoing and final agreement between the parties has not concluded.
- Mid-tier LED boards – being procured by E20.
 - Planned end date: September 2016
 - Cost (estimated if not yet complete): withheld
 - Amount of costs being provided by E20 or other public funds: withheld
 - Financial Arrangement withheld under s.43(2) at this time as works are ongoing.
- Track protection and cover – being procured by E20.
 - Planned end date: September 2016.
 - Cost (estimated if not yet complete): withheld.
 - Amount of costs being provided by E20 or other public funds: withheld
 - Financial Arrangement withheld under s.43(2) at this time as works are ongoing.

For these projects, and other projects still in procurement, delivery, or where contracts have not closed out and the Legacy Corporation consider it premature and harmful to release details and weaken the position of the contracting parties and by association the ability of E20 and the Legacy Corporation to secure value for money on behalf of the taxpayer. For this reason the financial information of the above projects is currently being withheld under section 43(2) of the FOIA.

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 financial information currently withheld 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, the disclosure of this information at this time would be likely to prejudice the commercial interests of the Stadium because it will reveal

details of financial information that is the subject of current negotiations or work contracts not closed out and would harm the ability of E20 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 internal review noted that the Legacy Corporation intends to release details of the transformation and other works costs in due course once all contracts have been completed. Therefore we are withholding the information requested under the FOIA exemptions section 22 – intended for future publication.

FOIA section 22 - Information intended for future publication.

(1) Information is exempt information if—

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),*
- (b) the information was already held with a view to such publication at the time when the request for information was made, and*
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).*

The section 22 exemption is a qualified exemption and subject to the public interest test. 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.

It is the view of the internal review panel that, at this time, the public interest in withholding the information outweighs the public interest in disclosing it. Therefore we are withholding the information requested under the FOIA exemptions section 22 – intended for future publication.

As noted in our original response reference 16041, West Ham United are themselves undertaking and funding improvements specific to their requirements, including for example, the decoration of the Stadium seats and the concourses beneath the stands with West Ham branding. This work started this year and is intended to conclude before the start of the football season. E20 does not hold details of the costs requested for these projects and has provided no funding for them.

Internal Review request 2.

In your response to 15-085 you make clear that all improvement works require the approval of E20. It is beyond imagination that the details of these works, therefore, is unknown to you.

While all Stadium works require E20 approval this does not mean that E20 hold the specific detail requested for each of the works, for example, for works where West Ham United are meeting the costs in full, it is not necessary for E20 to know the costs.

Also in line with this, it would not be necessary for E20 to know start and end dates for specific works, beyond confirmation that contractors would be working within a specified date window. Detailed scheduling arrangements for stadium works are managed by E20's project management partner, and E20's operator, LS185.

The Legacy Corporation can confirm that West Ham United has undertaken the following work at the Stadium:

- WHU fit out for exclusive areas, including directors' lounge and office: completed by beginning of August 2016.
- Remodelling of the home changing room: completed by beginning of August 2016.
- WHU concourse installations: completed by beginning of August.
- WHU fanstallation works: ongoing in phases
- WHU ticket office and shop fit-out: completed by the end of June 2016

Internal Review request 3.

I note your unequivocal statement that E20 has provided no funds towards the decoration of the seats [in West Ham United's colours] nor concourse decoration. I invite you to review the accuracy of this statement.

In the opinion of the internal review panel, the definition of concourse decoration should have been included in the original response to make sure that the response was clear on what was included. For the original response concourse decoration is considered to include:

- hanging signs on the concourse,
- decoration of steps on the concourse,
- toilet blocks on concourse, and;
- designs of the lift shafts on the concourse.

With consideration to the above clarification, the original statement provided in our response to 16041 (Annex G) has been reviewed and confirmed as accurate. The Legacy Corporation once again confirms that neither they nor E20 have provided any funds towards the decoration of the seats or towards West Ham United themed concourse decoration.

Internal Review request 4.

You have failed to explain why revealing the contribution of public funds to the stadium wrap as an example, is withheld under section 43(2). How many stadium wraps are there likely to be? There is a presumption for disclosure, so it is surely reasonable to expect you to fully justify how the commercial interests of E20 or a third party are prejudiced. Perhaps you are suggesting the contract for this work has yet to be finalised; I find this hard to believe given how soon West Ham move into the stadium, but if it is the case please advise when it will be and therefore when you will be able to provide an answer. This is not in my view reason to invoke 43(2) for an exemption. I suspect the answer lies more in fears E20 will be seen once again to be funding the majority of a project to the primary benefit of a private enterprise. I remind you, West Ham do not own the stadium and you are accountable to citizens for the use of public funds.

There is a presumption for disclosure unless commercial interests would be prejudiced by the disclosure. The Panel disagree with the requestor's statement that Legacy Corporation failed to explain why revealing the contribution of public funds to the stadium as an example, is withheld under s.43(2). In the initial response it is mentioned that the wrap was currently being procured and was under negotiation, however, the Panel think that all future exemptions should provide this information more prominently, explaining at the beginning why the exemption is being used and then follow it with the supporting information. The Freedom of Information guidance will be revised to include this instruction.

With the above in mind, the Panel should clarify that while the procurements for the fabric wrap and the external digital screen are complete, the agreement between E20 and WHU for the cost share of the wrap contracts is not finalised. Releasing the requested information at this time would be likely to prejudice the commercial interests of E20 during these negotiations and impact on their ability to achieve value for money for the public purse. Therefore it is the view of the review panel that the information should still be withheld under section 43(2) commercial interests.

Internal Review request 5.

The LLDC has once again failed to address the question of the football mode improvements from 54,000 to 60,000 seats, and I respectfully remind you that your inadequate response to 15-085 has prompted a second internal review and a complaint to the ICO. It is widely understood that the regulations of UEFA and the Premier League constrained the maximum capacity in football mode to 54,000. Karren Brady stated explicitly that WHU were looking to expand the capacity to 60,000 - not that they were just going to use the 6,000 seats that were expected to be unusable in football mode. Are you seriously suggesting that this has not required any work whatsoever?

As the Stadium already has a 66,000 seat capacity in football mode, the revision of capacity for West Ham from 54,000 to 60,000 is not dependent on the Stadium adding more seats. The increase in capacity would be dependent on appropriate licensing and safety certification being obtained from the London Borough of Newham and additional barriers, facilities, stewarding and other operational requirements that would need to be agreed with

WHU. The details for these requirements and the price to be paid by WHU are still being discussed.

The capacity of the Stadium is decided by E20 and LS185, in conjunction with the licencing authorities. It is not our understanding that regulations of UEFA and the Premier League constrain the maximum capacity of the Stadium in football mode to 54,000.

Review findings:

The internal review panel felt that in some instances the questions should have been clarified with the requestor to make the question clearer and more specific and for the Legacy Corporation to gain a clearer understanding of the information that was actually being requested. Also, the Panel felt that when additional questions were asked as a follow up to a response, each of these should have been dealt with as a new request.

Review recommendations:

The internal review panel recommend that all future exemptions should provide this information more prominently information, explaining at the beginning why the exemption is being used and then follow it with the supporting information.

The internal review panel recommend that the internal FOI guidance should be revised to include this instruction.

All follow on questions should be dealt with as a new 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



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