

[REDACTED]

9 August 2016

INTERNAL REVIEW - REFERENCE 16-045

Dear [REDACTED]

We refer to your email of 12 July 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 as above.

Background:

Your original request (reference 16045) was received on 5 May 2016, as follows:

"In your response to my request reference 16026 you advised that the stadium 'wrap' was being funded as a joint project between E20 and West Ham United, separate from the conversion costs.

With reference to this joint project, would you please provide the following:

- 1. The total cost of the project and the amount being funded by E20 (i.e. public money)*
- 2. The business case, whether as a document or in another format, showing the assessment of affordability and the demonstration of an acceptable return on investment for the taxpayer."*

The Legacy Corporation response was issued on 2 June 2016 and is attached in Annex A for reference.

Your internal review request was received 12 July 2016:

"Me again! I understand that the stadium wrap procurement has now completed. Would you please provide the information requested.

Would you please provide a full explanation as to why exemption 43 applies to my request for the business case (q2). Unless the LLDC is intending to run new procurement processes for additional stadium wraps for West Ham United, I am not sure how explaining the business justification for providing funds towards West Ham's stadium livery compromises your commercial interests.

Given that the business justification is the taxpayer's only means of understanding how the LLDC is ensuring their interests are protected - that is, that their money isn't

being used to the benefit of a private enterprise with turnover in the hundreds of millions - and that the procurement will not be re-run in the foreseeable future, I cannot see that the public interest argument can possibly be outweighed by commercial risk. In fact, I would go as far to say that the contention is nonsensical.

If you are unwilling to provide an explanation, please ensure that an internal review is scheduled to respond to me within 20 days. I continue to correspond with the ICO on your behaviour with regard to the FOIA.”

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

1. Report findings:

The internal review found that the Legacy Corporations was correct to withhold the requested information under section 43(2) Commercial Interests. The original request asked for

“The business case, whether as a document or in another format, showing the assessment of affordability and the demonstration of an acceptable return on investment for the taxpayer.

The internal review found that disclosure of information “showing the assessment of affordability and the demonstration of an acceptable return on investment,” would include the anticipated value of various aspects of the wrap. This information, if released into the public domain at the time of this request, would have prejudiced commercial interests of E20 because it would have revealed information which would impact the then current procurement of the wrap. Therefore, the Legacy Corporation was correct to withhold the requested information under section 43(2) Commercial Interests and that the public interest in withholding the information outweighed the public interest in disclosing it.

The internal review panel noted that the procurement work for the Stadium wrap is complete however, negotiations with third parties in relation to their contribution to the Stadium wrap have not concluded and releasing the requested information at this time would be likely to prejudice the commercial interests of E20 during these negotiations. Therefore, it is the view of the review panel that this information should still be withheld under section 43(2) Commercial Interests.

The section 43(2) 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 still outweighs the public interest in disclosing it. Therefore we recommend that at this time the requested information should still be withheld under the FOIA exemptions section 43(2) – commercial interests.

2. Recommendation:

2.1. The internal review panel found that the Legacy Corporation was correct to withhold the requested information under FOIA exemptions section 43(2).

2.2. The panel recommends that the requestor is informed that:

- Negotiations with third parties in relation to their contribution to the Stadium wrap have not concluded and release of the requested information would be likely to prejudice the commercial interests of E20 if released into the public domain at this time.

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

[Title]

London Legacy Development Corporation