



7 March 2017

INTERNAL REVIEW - REFERENCE 16110

Dear 

We refer to your email of 24 November 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.

1. Background

The original response was received on 27 October 2016 and requested:

“Could you please provide details of any meetings, meeting minutes and correspondence between LLDC/E20 and anyone in the BBC that relates in any way to the West Ham United v Chelsea game played at the London Stadium last night.”

The information was provided as requested and included in **Annex A** for reference but with the personal details (name, email address, mobile phone, etc.) redacted as is the standard practice of the Legacy Corporation where we do not have consent to release the information.

The response was sent on 23 November 2016. The internal review request was received on 24 November and requested:

“I would like to appeal the use of the section 40 exemption in your response.

I am content with the use of this exemption to withhold direct telephone numbers and email addresses but I do not accept that the names of individuals acting within the capacity of their employment constitutes personal data in this instance.

It is clear to me that disclosure of names would not contravene any of the data protection principles in schedule 1 of the DPA.

Section 2 of the DPA refers to information which is sensitive, biographical or in some way descriptive and this cannot be applied where only names are requested. There are no obvious consequences of disclosure that would justify withholding the information requested and so its hard to imagine that providing names wouldn't be considered 'fair' when in the context of their working capacity, rather than private lives.

It is implied, but not expressly stated, that consent has been refused by the individuals concerned. However I don't consider that this, alone, constitutes an application of s40 since the requirements are not met simply by the individual(s) concerned not wanting their name disclosed, if that is indeed the case.

While there is no public interest test to consider, an employee at the BBC (themselves subject to FOI) will have a reasonable expectation that their correspondence is subject to disclosure, given the obvious need for accountability and transparency. This expectation doubles when that conversation occurs between another public authority.

To reiterate, I do not want the email addresses or telephone numbers of the people concerned. I am only interested in the full disclosure of the names.

If you are claiming that disclosure would be unfair because of the adverse consequences on the employees concerned, you must be able to put forward some justification for this claim.”

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

2. Review findings:

The correspondence provided in the original response involved the personal information of 8 individuals – three Legacy Corporation employees and five BBC employees. The three members of staff internally were notified of the internal review and that the requestor was challenging the redaction of the names (but not the email addresses or telephone numbers). One member of staff consented to the disclosure of their name, this individual is Matt Jackson. Please note this consent is limited to the disclosure of his name (not email addresses or telephone numbers).

The two other members of the Legacy Corporation expressly refused consent to release their names.

The BBC staff were also notified of the internal review and that the requestor was challenging the redaction of the names (but not the email address or telephone numbers).

In the BBC response, two individuals consented to the disclosure of their names. These two individuals are Warren Moran and Richard Conway. Please note that this consent is limited to the disclosure of their names (not email addresses or telephone numbers).

The other three named individuals did not consent to the disclosure of their names.

With regards to all of the individuals who did not consent to the release of their names, please note that information is being withheld under section 40(2). The below incorporates the BBC position in relation to their employees as well as the Legacy Corporation position.

Under section 40(2) of the FOI Act personal data about identifiable living individuals is exempt if disclosure to a third party would breach one or more principles in the Data Protection Act 1998. It is the Legacy Corporation and BBC's position that the personal data of these identified individuals are exempt from disclosure under section 40(2).

The Legacy Corporation stand by their original position that disclosure of the individuals' personal data, in this instance their name, would breach the First Data Protection Principle (fair and lawful processing). The Information Commissioner's guidance recognises that a key issue in assessing fairness is to consider whether the employees have a reasonable expectation that their information will not be disclosed. This will depend on a number of factors, including whether the information relates to the employee in their professional role or to them as individuals, the individual's seniority in their professional role and the consequences of disclosure to the individuals. In applying section 40(2), the Legacy Corporation need to balance the interest in the public having the Legacy Corporation or the BBC's employees' names against the rights and freedoms of the employees to carry out their role and responsibilities.

The Legacy Corporation and the BBC both acknowledge the need for accountability and transparency from public authorities and recognise that their employees will therefore have some expectation that data relating to their professional role may, in some limited circumstances, be disclosed. However, the individuals concerned are not senior staff members. The BBC staff do not hold responsibility for major editorial, policy or expenditure decisions. The Legacy Corporation staff are not public facing and deal with Press contacts only. Disclosure of their name would be unfair for the employees, and disclosure could lead to adverse publicity, which would be unjustified given their role and the limited public interest in the public having their personal data of employees.

The position that the personal data of these individuals should be exempt from disclosure under section 40(2) is supported by a decision of the First-Tier Tribunal (Information Rights). In considering whether a directory of staff names and contact details should be disclosed, the Tribunal held that the names of junior members of staff should be redacted unless they have been disclosed elsewhere (*Rob Evans and the Ministry of Defence v the Information Commissioner (EA/2006/0027)*).

3. Recommendations:

The email correspondence from the original request has been revised to comply with the received consent. Please refer to **Annex B**.

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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London Legacy Development Corporation