



12 December 2016

INFORMATION REQUEST REFERENCE 16113

Dear 

Thank you for your information request, received on 31 October 2016. You asked the London Legacy Development Corporation (Legacy Corporation) and E20 Stadium LLP (E20) to provide the following information under the Freedom of Information Act 2000 (FOIA):

"It has been reported in the media that West Ham have been "allowed to train" on the Olympic Stadium pitch. In this regard please inform me

- 1. If these reports are true*
- 2. If true, how many times has the club had this access so far, and what agreement has been reached for future access for this purpose?*
- 3. Is West Ham paying a fee for this access?*
- 4. If yes, please send me a copy of any document which confirms the fee and other conditions surrounding this usage."*

The Legacy Corporation and E20 can confirm that they hold information relevant to your request. The response follows your order:

1. The Legacy Corporation and E20 Stadium LLP can confirm that West Ham have been allowed to train on the Olympic Stadium Pitch.
2. West Ham has trained at the Stadium on five occasions.

The Concession Agreement between E20 Stadium LLP, WH Holding Ltd and West Ham United Football Club, dated 22 March 2013 (Concession Agreement) allows West Ham to have access to the Stadium 24 hours before and after a fixture. This access includes the pitch. The relevant sections within the [Concession Agreement](#) are:

Definition of Set-up and Break-down time (page 27):

"Set-up and Break-down Time means the access period agreed in the Agreed Event Calendar in respect of the relevant Event, being a maximum of 24 hours either side of an

Event when the Concessionaire sets up the Concession Areas in preparation for an Event and then breaks down;”

Definition of Concession Area (page 11):

“Concession Areas means the parts of the Stadium other than the Reserved Areas as at the date of this Agreement;”

Definition of Reserved Areas (page 26):

“Reserved Areas means those areas of the Stadium to which the Grantor is not required to provide access to the Concessionaire according to the terms of this Agreement, in the Stadium Plans and the Island Plan, which are set out in Sections 1-4 of Schedule 1, Part 6, Part 6 (Reserved Areas) of Schedule 1 (Stadium Plans, Island Plan, Seating Plan and Park Plan) for so long as those areas are put to the use set out in those Stadium Plans;”

Please note: the detailed plans of the Stadium referenced above have been removed under the following exemptions:

FOIA Section 31 - Law enforcement.

*(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—
(a) the prevention or detection of crime*

FOIA section 38 - Health and safety.

*(1) Information is exempt information if its disclosure under this Act would, or would be likely to—
(a) endanger the physical or mental health of any individual, or
(b) endanger the safety of any individual.*

These are both qualified exemptions and so a public interest test was undertaken to consider the harm that would be caused if the information in question was released at this time and balance that against the public interest in releasing the information now. These exemptions were only considered in relation to the detailed floor plans of the Stadium that have been included within the rental agreement document. The Legacy Corporation have assessed the impact of releasing this information and consider that while there is a public interest in information about the Stadium generally, the public interest in this particular information, namely the floor plans, is fairly limited. By contrast, the security of such a high profile venue would be jeopardised, and the prevention of crime would be likely to be prejudiced, if the information was released at this time. We also consider that given the risk that the information could be used to aid the committing of a criminal act, there is an associated risk of danger to the health and safety of the public should the information be released at this time. In conclusion, in all the circumstances we have decided that the public interest in maintaining the exemption is stronger than the public interest in disclosing the information. The specific plans withheld under these exemptions have been removed from the Concession document.

Four of these occasions, dates as below, were within the 24 hours before a match as permitted by the concession agreement. No additional agreement was required for this access.

03/08/2016 – Trained pre Europa League match
20/08/2016 – Trained pre Bournemouth match
21/10/2016 – Trained pre Sunderland
04/11/2016 – Trained pre Stoke

3. Is West Ham paying a fee for this access?

The fifth training session was on 13/09/2016. We can confirm that West Ham has been invoiced for activities held on this date as they are outside of the concession agreement.

4. If yes, please send me a copy of any document which confirms the fee and other conditions surrounding this usage.”

The information is held by the operator London Stadium 185 (LS185) and they have been consulted in this matter as the request relates to information that they hold. After consultation, this information is being withheld under s.43(2) – commercial interests. Releasing this information would be likely to prejudice the commercial interests of LS185, and thus E20, by drawing comparisons from other clients that may wish to hold events at the stadium. This would harm LS185’s ability to retain a strong negotiation position and harm E20’s ability to obtain value for money for the public purse. By releasing the amount paid we would provide a benchmark for other potential users of the Stadium as well as our competitors and create a precedent for future events. This would harm LS185’s ability to maximise income from future events and this would be detrimental to the income E20 generates on behalf of the taxpayer.

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 and E20 have assessed the impact of releasing the information redacted under this exemption. There is, of course, a public interest in promoting transparency of the costs and accountability in regards to the agreements that are entered into by public sector bodies. However, the disclosure of the information currently identified as commercially sensitive would be likely to prejudice commercial interests of the Stadium because it will reveal financial information which would be likely impact on current and future negotiations for use of the Stadium, which in turn would harm the Stadium’s ability to achieve best value for the public purse.

The Stadium needs to be able to successfully operate in a small, strong and very competitive market. The information identified as commercially sensitive, if disclosed, would be likely to put the Stadium at a competitive disadvantage within this market by allowing competitors of the Stadium, who are not subject to the same legislation, to gain access to commercially valuable information.

It is the view of the Legacy Corporation and E20 that, at this time, the public interest in withholding the information outweighs the public interest in disclosing it.

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:

Deputy Chief Executive
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