

Level 10
1 Stratford Place
Montfichet Road
London
E20 1EJ



2 June 2017

INTERNAL REVIEW - REFERENCE 16-114

Dear 

We refer to your email of 21 December 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) and E20 Stadium LLP (E20) in relation to your information request reference as above.

1. Background

The original request was received on 2 November 2016:

“From 1st August to November 1st 2016 (inclusive), please can you provide the following:

- 1. A list of companies and organisations who have hired the London Stadium or utilised space owned on the stadium podium by E20/LLDC for commercial purposes (for WHUFC this includes match days)*
- 2. The dates and periods of time the stadium/podium was utilised for the purposes of point 1.*
- 3. If WHUFC have utilised the stadium/podium as per point 1, please can you confirm if the terms for those events are covered within the 99 year rental agreement between WHUFC and E20/LLDC? If not, please provide details of the additional cost to WHUFC or E20/LLDC beyond those identified within the rental agreement.”*

The deadline of 30 November 2016 was extended for consideration of the use of s.43(2) exemption – commercial interests, in relation to the response to question 1 and by association question 2 and also in relation to releasing the charges relating to WHU use of the Stadium outside of the Concession Agreement.

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 response was sent on 21 December 2016. The full response has been attached in **Annex A** for reference and summarised below.

The information requested in questions 1 and 2 relating to the client list was withheld under section 43(2) as any events that LS185 enters into with third parties in respect of events held at the Stadium, which are defined as operator agreements within the West Ham concession agreement, are considered to be LS185 information held on their own behalf. While E20 and the Legacy Corporation hold some information on the events at the Stadium, it was withheld under section 43(2) of FOIA as releasing a list of the clients of LS185 into the public domain could enable rival venues to pursue them and would be likely to prejudice the commercial interests of LS185, and thus E20. This would harm LS185's ability to remain competitive and harm E20's ability to obtain value for money for the public purse.

The information requested in question 3, in relation to the WHUFC use of the Stadium was provided as requested, however the costs associated with WHUFC use of the Stadium outside of the access allowed within the terms of the Concession Agreement with West Ham were withheld under section 43(2) as releasing the costs would reveal financial information which would be likely to 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 internal review request was received on 21 December 2016.

"I am writing to request an internal review of London Legacy Development Corporation's handling of my FOI request 'Commercial Usage of London Stadium by WHUFC and 3rd Parties'.

I am satisfied with the exemption being applied to financial information but I wish to appeal the exemption being applied to the company/organisation names. The request is for events that have occurred in the past and is very different to asking for a list of organisations LS185 have identified as potential clients.

The website for the QEP itself lists events occurring at the park (<http://www.queenelizabetholympicpark.co.uk/whats-on/events>) where the event organisers are known within the industry of commercial space hiring and the park is a public venue with events using publicity etc to gather interest and commercial viability.

I wish to also challenge the following statement provided within the response to my FOI request:

"The London Stadium and podium is operated as a commercial enterprise by London Stadium 185 (LS185). Any events that LS185 enters into with third parties in respect of events held at the Stadium that are considered to be an operator agreement within the term of the West Ham concession agreement are considered to be LS185 information held on their own behalf"

LS185 operate the stadium and podium as a commercial enterprise on behalf of E20. Where E20 do not hold details of every event, it has to be considered that LS185 hold information on events on behalf of E20 as stadium owner. This principle is exactly the same as the copper box where I have previously been provided contract

info on a venue operated by Greenwich Leisure Ltd on behalf of LLDC (https://www.whatdotheyknow.com/request/copper_box_rental_contracts#incoming-892838).”

2. Review findings.

The original request was a 3-part question. The requestor was satisfied that the financial information was exempt. The Internal Review Panel (Panel) therefore believed that the third part of the question has been satisfactorily answered and it was not included as part of the internal review. The Panel reviewed the Legacy Corporation and E20 response to the first two parts of the original request.

The review request also challenged the definition of ownership of the information as mentioned within the response and stated that it should be the same as is contractually in place with Greenwich Leisure Ltd (GLL) who operates the London Aquatics Centre and the Copper Box for the Legacy Corporation.

In relation to this point, the Legacy Corporation have had the Stadium Operator agreement between LS185, E20 and the Legacy Corporation legally reviewed to assess the ownership and responsibilities under the FOIA legislation. The LS185 agreement was also compared to the GLL agreements.

The legal opinion was that the LS185 position for agreements with third parties relating to events organised by LS185 as opposed to E20 or Legacy Corporation required events, is different to the GLL position. Under the GLL contract all events organised by GLL are considered to be on behalf of the Legacy Corporation and therefore are considered to be information held by the Legacy Corporation under FOIA legislation.

The GLL agreement requires all events to be consistent with the Legacy Corporation's policies and gives the Legacy Corporation the right to veto, whereas the Stadium Operator agreement allows LS185 to operate with more autonomy to exploit commercial opportunities and generate revenue by organising events at the Stadium, as long as the events don't damage the reputation of E20 or the Legacy Corporation, in addition, the rights of Legacy Corporation or E20 to access information are narrower, therefore, the Panel did not agree with the requestor's proposition regarding ownership of information.

In relation to the first 2 parts of the original request, while the Panel accept that a request for future or current events could have commercial implications, they do not believe that past events have a blanket justification for commercial sensitivity, especially with consideration to the fact that the Stadium is a high profile venue and some of these events are publicised. The Panel believe that, in this instance, some of the s.43(2) exemptions were incorrectly applied as the events were publicised or otherwise found in the public domain. The Panel do not believe that there is sufficient evidence to support that releasing all the details for companies / organisations that have hired the Stadium between the dates requested for public events would harm the commercial interests of LS185 or E20, they do however recognise that a few events may be either confidential or commercially sensitive in the short term.

As a result of a request by the Panel, LS185 has provided a list of the events held at the Stadium or the Podium between the dates requested. This list has been provided in **Annex B**. In some instances the company names have not been provided by LS185 as a confidentiality agreement is in place between LS185 and the Event organiser and this information is not in the public domain. The information that is redacted is being withheld under s.43(2) – commercial interests.

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).

Details of these specific clients is not currently in the public domain, and releasing these details into the public domain would enable rival venues to pursue the clients and would be likely to prejudice the commercial interests of LS185, and thus E20. This would harm LS185's ability to remain competitive and harm E20's ability to obtain value for money for the public purse.

The Legacy Corporation and E20 have assessed the impact of releasing the information currently redacted under this exemption. There is, of course, a public interest in promoting transparency in regards to the agreements that are entered into, 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 recent LS185 clients for private events, 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 Panel recognise that over time the commercial sensitivity of this information will decline, however the client information is less than one year old and therefore can still be considered current. Where events are annual there is the possibility of rebooking, which strengthens the possible commercial impact if the information is released where the client expected confidentiality. Other redacted events were for events where the information was released only to those attending and therefore the ability of LS185 to maintain the confidentiality of this information in the short term at the very least, will also impact on their commercial interests as, if the information is released, the venue may not be re-approached by that client in relation to future bookings.

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.

For all the remaining events, if the information was found in the public domain, then the information has been included in Annex B.

3. Review recommendations.

The Panel recommends that a list of companies / organisations who have hired London Stadium between 1 August 2016 and 1 November 2016 should be provided to the requestor, including all the dates of the hire and the duration, with the third party hirer only redacted where a confidentiality agreement is in place between the LS185 and the event organiser and details of the event have not been found in the public domain. This list is attached in **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

Director
E20 Stadium LLP