

Level 10
1 Stratford Place
Montfichet Road
London
E20 1EJ



5 March 2019

INTERNAL REVIEW - REFERENCE 16-132

Dear ,

We refer to your email of 6 January 2017 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.

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

1. Background

- 1.1. The Legacy Corporation received your original information request on 5 December 2016. You asked the London Legacy Development Corporation (Legacy Corporation) to provide the following information under the Freedom of Information Act 2000 (FOIA):

“Please provide the following:

- 1. A list of companies and individuals who have been hired by LS185/LLDC to provide private security services at the London Stadium for all West Ham United football matches.*
- 2. Copies of the contracts for said companies and individuals.*
- 3. A breakdown of the total spent between 1st July 2016 and December 4th 2016 on private security by LS185 at all West Ham United football matches*

4. *The names and job titles of LS185/LLDC staff directly responsible for the hiring and supervisions of all private security staff at the London Stadium”*

1.2. On 5 January 2017 the Legacy Corporation responded:

“We can confirm that neither the Legacy Corporation nor E20 Stadium LLP hold information falling within the remit of your requests 1-3.

In relation to your request 4, no LLDC or E20 staff are directly responsible for hiring or supervising private security staff at the London Stadium. The operator London Stadium 185 (LS185) have been consulted in this matter as the request relates to information that they might hold. LS185 has a contract with OCS who hire and supervise all private security staff, and this contract is managed by the LS185 Head of Safety and Security.”

1.3. On 6 January 2017, the Legacy Corporation received your request for an internal review, which stated:

“I am writing to request an internal review of London Legacy Development Corporation's handling of my FOI request 'Private Security Staff at London Stadium for WHUFC Matches'.

Within the London Stadium Safety Advisory Group meeting minutes from 28/07/2016 (which can be found here <https://www.whatdotheyknow.com/request/361112/response/903035/attach/11/2016.07.28%20SAG%20Mins%20REDACTED.pdf>):

‘SR (Shelia Roberts¹) LS185 contracted delivery of egress out to Expedient Security’

as a minimum, LS185 have directly engaged a private security company to provide services in this case egress from the stadium/podium. Therefore I wish to challenge the response provided to myself with regards to my FOI request that LLDC/E20 do not hold the requested information.

Also OCS and their tier two suppliers (Wise, Centre Circle and Knights) for security as well as private individuals supplying a public service in a publicly owned stadium on behalf of E20 Stadium LLP (a 100% public organisation between LLDC and Newham Council) should be allowed to be held accountable through FOI requests. Taking the response provided by LLDC to my FOI request:

‘LS185 has a contract with OCS who hire and supervise all private security staff, and this contract is managed by the LS185 Head of Safety and Security’

¹ Please note that Sheila Roberts works for the London Borough of Newham, not LS185. The SR refers to Steve Riley.

the effective management of said contract is of up-most public interest and importance in light of widely reported incidents within the London Stadium as reported in the SSAG meeting minutes and local & national press. LLDC will be aware of the total spend so far through invoicing from OCS of the costs of hiring staff to provide a private security service within the London Stadium and stadium podium. LLDC will also be aware of the sub-contractors OCS utilises as part of their provisions of providing service through meetings/invoices/sub-contractor recommendation paperwork and justification from OCS to E20 Stadium LLP (unless OCS work under a fixed price contract).”

- 1.4. On 6 January 2017 the Legacy Corporation also received your further correspondence regarding the request for internal review, which stated:

“Further to my request for an internal review I would like to add the following:

‘We can confirm that neither the Legacy Corporation nor E20 Stadium LLP hold information falling within the remit of your requests 1-3’

That is not an adequate response from LLDC.

Section 3(2) of the FOI Act says:

*‘For the purposes of this Act, information is held by a public authority if—
(a) it is held by the authority, otherwise than on behalf of another person, or
*** (b) it is held by another person on behalf of the authority. ***’*

*LLDC have failed to explain how the information you requested isn’t held on behalf of E20 by LS185. The ICO provides guidance on this matter for the purposes of when public authorities outsource to private companies:
<https://ico.org.uk/media/1043530/outsour...>*

The guidance says that for starters LLDC should have examined the contract between E20 and LS185 to determine what information E20 is entitled to examine and/or what information LS185 is required to share with them. For instance if the contract says that LLDC is able to access the names of the private security subcontractors then for the purposes of the FOI Act, LLDC holds the information. Even if the contract doesn’t say what information can be accessed, then it could still be deemed to hold the information if ‘as a matter of custom and practice, the authority does access some information physically held by the contractor, or could access it in certain circumstances’. LLDC have entirely failed to explain how they investigated these possibilities.”

2. Clarifications:

- 2.1. The original information request was for private security services. The companies referred to in your two emails dated 6 January 2017, as above, requesting an

internal review provide stewarding services which are separate from private security. Private security services are defined by LS185 as “protecting and preventing the Stadium as a building from damage/harm.”

- 2.2. The request for an internal review refers to Expedient Security, a company which provides stewarding services. Stewarding services include the safety of people within the building and aiding the match day experience. Distinct terminology is used because stewarding and security require different qualifications and resourcing requirements. Therefore LLDC/E20 consider that they were correct in the original response to omit information regarding Expedient or any other provider of stewarding services.

3. Review findings:

3.1. Information ownership under FOIA.

The original response to the FOI request stated that “neither the Legacy Corporation nor E20 Stadium LLP hold information falling within the remit of your requests 1-3.” The Internal Review Panel (Panel) confirmed that neither the Legacy Corporation nor E20 Stadium LLP (E20) held this information in their digital or physical records at the time of the request.

- 3.2. However, as part of this internal review, the Panel examined the contract between E20 and LS185 to determine whether information held by LS185 relating to private security at West Ham United football matches is held on behalf of E20/LLDC for the purpose of FOIA. The review found that provision of private security in accordance with the West Ham Concession Agreement is held by LS185 on behalf of E20/LLDC under FOIA and therefore is covered by Legacy Corporation or E20 FOI requests. The internal review therefore considered whether additional information should be released in response to the original information request. The findings are summarised below.

3.3. Part 1 of the original information request

The first part of this request asked for a “*list of companies and individuals who have been hired by LS185/LLDC to provide private security services at the London Stadium for all West Ham United football matches.*” The internal review confirmed that the original response was correct and at the time of the request OCS was the only individual or organisation contracted by LS185 to provide private security services to the Stadium. The Legacy Corporation and E20 had not hired any companies or individuals to provide these services.

- 3.4. The Legacy Corporation’s original response stated, “LS185 has a contract with OCS who hire and supervise all private security staff”, therefore, the Panel believes that the original response provided a full and correct response to the first question within the FOI request.

3.5. Part 2 of the original information request

The second part of this request asked for “copies of contracts” for individuals or companies listed in Part 1 of the information request. In response to the findings of this internal review in relation to ownership of the information under FOIA

(paragraph 3.2), the OCS contract is attached in **Annex A** of this internal review response.

- 3.6. Please note that some information in relation to either security, commercial or personal information has been redacted under the following FOIA exemptions: Section 31(1)(a) – prevention or detection of crime; Section 40 – personal information, and Section 43(2) – commercial interests.
- 3.7. Section 40(2) – personal information
 - (2) Any information to which a request for information relates is also exempt information if—
 - (a) it constitutes personal data which do not fall within subsection (1), and
 - (b) either the first or the second condition below is satisfied.
- 3.8. It is the standard practice of the Legacy Corporation to redact personal information for those members of staff under Head of Service level, and for non-Legacy Corporation personnel unless consent to release the information has been received. Phone numbers have also been redacted.
- 3.9. The section 40 exemption is absolute and is not subject to the public interest test. In this instance, the relevant condition that applies is section 40(2) whereby the information is defined as personal data within s.3(2) of the Data Protection Act 2018.
- 3.10. A schedule of all of the redactions applied is attached in **Annex B** and the public interest test for the application of Section 31(1)(a) and Section 43(2) exemptions is below:
- 3.11. Section 31 and section 43 are both qualified exemptions 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 the prevention of crime or 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 the applicable exemption.
- 3.12. 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.
- 3.13. Section 31(1)(a) – the prevention or detection of crime.
 - (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

3.14. The information withheld under this exemption includes plans of the Stadium, and details in relation to the security specifications, procedures and services. The panel has assessed the impact of releasing this information and consider that, for this specific information, the public interest would not benefit from this information being released into the public domain. The security of the Stadium would be jeopardised, and the prevention of crime would be likely to be prejudiced. It is the view of the panel that the public interest in withholding the information outweighs the public interest in disclosing it.

3.15. Section 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).

3.16. The panel has assessed the impact of releasing the information redacted under this exemption. There is, of course, a public interest in promoting transparency of the decisions and accountability in regard to the agreements that are entered into by public sector bodies. However, the parties to the agreement have stated that the disclosure of the information within this agreement that is currently identified as commercially sensitive would be likely to prejudice their commercial interests and impact on their future negotiations for services.

3.17. The information identified as commercially sensitive, if disclosed, would be likely to put the Stadium operators or their previous service providers at a competitive disadvantage within this market by allowing competitors, who are not subject to the same legislation, to gain access to commercially valuable information.

3.18. It is the view of the panel that, at this time, the public interest in withholding the information outweighs the public interest in disclosing it.

3.19. Part 3 of the original information request

The third part of this request asked for “a breakdown of the total spent between 1st July 2016 and December 4th 2016 on private security by LS185 at all West Ham United football matches.” In response to the findings of this internal review (paragraph 2.4), this information was requested from LS185.

3.20. At the time of the review, OCS were contracted by LS185 to provide private security services all year round, however, LS185 has since retendered the contract and OCS is no longer the service provider.

3.21. The panel has assessed the impact of releasing the information requested and believe that it is not currently in the public interest to release it and are therefore withholding it under s.43(2) – commercial interests. LS185 have identified that information in relation to costs can be used by other parties and impact on current and future negotiations. It would not be in the public interest to release this information at this time as it will release valuable commercial information and would be likely to impact on LS185's ability to achieve best value for money which in turn would impact on the Legacy Corporation's ability, through E20 Stadium LLP, to achieve best value for the public purse.

3.22. Part 4 of the original information request

The fourth part of this request asked for “the names and job titles of LS185/LLDC staff directly responsible for the hiring and supervisions of all private security staff at the London Stadium,”. The review found that this information was provided correctly and in full.

3.23. Additional question within the Internal Review request

The request for an internal review refers to tier-two suppliers of OCS, which was not part of the original information requested; however, the internal review found that OCS had not subcontracted delivery of private security services to any other party at the London Stadium.

4. Panel Recommendations:

4.1. The recommendations arising from the internal review include:

- In responding to requests for information that is held by LLDC and/or E20, the responding officer should consider both information which is held by LLDC and/or E20 in physical or digital form and information which is held on behalf of LLDC and/or E20 by third parties due to contractual arrangements. The corresponding response to information should clarify whether information released is held by or on behalf of LLDC and/or E20.

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

Gerry Murphy

Deputy Chief Executive
London Legacy Development Corporation