

Level 10
1 Stratford Place
Montfichet Road
London
E20 1EJ



14 June 2018

INTERNAL REVIEW - REFERENCE 17-028

Dear 

We refer to your email of 5 July 2017 where you requested an internal review under the Freedom of Information Act 2000 (FOIA) regarding the response you received from E20 Stadium LLP (E20) 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 20 April 2017. You asked the London Legacy Development Corporation (Legacy Corporation) to provide the following information under the Freedom of Information Act 2000 (FOIA):

“1) Please provide the financial cost of the contract awarded to PHD Modular Access Services Ltd. to move the seats at the London Stadium breaking it down if possible to any upfront costs and annual costs for the life of the contract.

2) Please provide a copy of the agreement/contract between E20 Stadium LLP or London Legacy Development Corporation and PHD Modular Access Services Ltd. or subsidiary. If any elements are redacted please explain the reasons for any redactions.”

- 1.2. On 5 July 2017 the Legacy Corporation responded that, as the contract was between E20 and PHD Modular Access Services Ltd (PHD), E20 would be responding. On 5 July 2017, E20 responded that:

In relation to Part 1 of the original request, the financial cost of the contract was being withheld under section 43(2) – commercial interests as disclosure of the financial cost would be likely to prejudice commercial interests of the E20 because it will reveal detail of financial information which would be likely impact on future potential procurements, which in turn would harm E20's ability to achieve best value for the public purse.

In relation to Part 2 of the original request, a copy of the contract between E20 and PHD, dated 1st February 2017 was provided with some information redacted under the exemptions s.40 – personal information, s.31(1)(a) – prevention of crime and s.43(3) – commercial interests.

The response outlined that it is the standard practice of E20 to redact personal information unless consent to release the information has been received. In relation to the section 31(1)(a) exemption the response stated that E20 have assessed the impact of releasing this information, namely details of security procedures and processes, and consider that 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 E20 that the public interest in withholding the information outweighs the public interest in disclosing it.

In relation to the section 43(2) exemptions, the response outlined that E20 have assessed the impact of releasing the information redacted under this exemption and also given PHD the opportunity to identify any information that would impact on their commercial interests. 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 disclosure of the information within this agreement currently identified as commercially sensitive, would be likely to prejudice commercial interests of the E20 or PHD because it will reveal contractual and financial information which would be likely impact on current and future negotiations, which in turn would harm E20 ability to achieve best value for the public purse and impact on PHD's position in relation to other actual or potential commercial interests. Both organisations need 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 both parties at a competitive disadvantage within this market by allowing competitors, who are not subject to the FOIA legislation, to gain access to commercially valuable information. It is the view of E20 that, at this time, the public interest in withholding the information outweighs the public interest in disclosing it.

- 1.3. On 5 July January 2017, the Legacy Corporation received your request for an internal review, which stated:

"I request an internal review of the use of Section 43(2) exemptions.

Previously the ICO has rejected the view that LLDC could demonstrate a specific way that commercial information could be exploited by a competitor.

This is a five-year contract and the market and technology would likely change in five years time thus reducing any possible impact.

The ICO previously stated "In the Commissioner's view, however, both the LLDC's and WHUFC's submissions fail to demonstrate the specific way that the information could be exploited by a competitor and, or how disclosure would place either party at a commercial disadvantage"

Decision notice: https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432468/fs_50556618.pdf

I would argue that the ICO decision notice on the Concessionaire Agreement is similar to this agreement and the financial elements are in the public interest of all London taxpayers.

I look forward to the outcome of your internal revenue."

2. Review findings:

- 2.1. The Legacy Corporation provides the FOI service for E20 Stadium LLP. With consideration to this, and as the request was received by the Legacy Corporation but related to the response sent by E20, the Internal Review Panel (Panel) was comprised of staff from both organisations.
- 2.2. The request for an internal review related to the use of the s43 exemptions. Accordingly, the Panel has not reviewed the application of the other exemptions.
- 2.3. Part 1 of the original information request asked for a *"the financial cost of the contract awarded to PHD Modular Access Services Ltd. to move the seats at the London Stadium breaking it down if possible to any upfront costs and annual costs for the life of the contract."*
- 2.4. While the Panel recognise that the estimated financial cost of the seat moves in 2017 has been released under the Moore Stephens Olympic Stadium Review, November 2017, the Panel considered that the financial cost of the contract should be withheld under section 43(2) – commercial interests as disclosure of the financial cost would be likely to prejudice commercial interests of the E20 because it will reveal detail of financial information which would be likely impact on future potential procurements, which in turn would harm E20's ability to achieve best value for the public purse.
- 2.5. Although the contract was a five-year contract, it could be terminated by E20 under the provisions of clause 34 in the contract and therefore could be re-tendered at two weeks' notice, so the release of the information could impact on E20's ability to

achieve best value in retendering the contract and could also in some instances impact on the commercial interests of PHD.

- 2.6. The Panel noted the requester's reference to the ICO decision on the West Ham Concession Agreement, but we would note that under the FOI Act each FOI request has to be considered on its own merits and that the factors relevant to the public interest have to be assessed as at the time when the request is received.
- 2.7. Part 2 of the original information request asked for "*a copy of the agreement/contract between E20 Stadium LLP or London Legacy Development Corporation and PHD Modular Access Services Ltd.*"
- 2.8. As part of this internal review, the Panel examined the contract between E20 and PHD, dated 1 February 2017 and reviewed the redactions made under s.43(2) – commercial interests exemptions. While the Panel agreed with some of the applications of the exemption, there are some instances where the Panel felt the use this exemption was no longer applicable.
- 2.9. A revised copy of the contract is available in Annex A and a schedule of the redactions is in Annex B (this includes the former redactions under s40 and S31) and the public interest test for the application of s.43(2) redactions is below.

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).

- 2.10. The panel has assessed the impact of releasing the information that has remained redacted under this exemption. There is, 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 panel felt that the disclosure of the information that is identified as commercially sensitive by the parties to the agreement at this time would be likely to prejudice their commercial interests and impact on their future negotiations for services for the Stadium.
- 2.11. 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 operators or their current 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.
- 2.12. It is the view of the panel that, at this time, the public interest in withholding the information withheld under section 43(2) outweighs the public interest in disclosing it.

3. Panel Recommendations:

- 3.1. The Panel recommend that an updated version of the contract be released with some of previously redactions removed.
- 3.2. The revised contract is attached in Annex A.

3.3. A schedule of the redactions 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

Gerry Murphy

Deputy Chief Executive
London Legacy Development Corporation