



Level 10
1 Stratford Place
Montfichet Road
London
E20 1EJ



4 August 2017

INFORMATION REQUEST REFERENCE 17-031

Dear 

Thank you for your information request, received on 12 May 2017, and clarified on 22 May 2017. You asked the London Legacy Development Corporation (Legacy Corporation) to provide the following information under the Freedom of Information Act 2000 (FOIA):

“Please disclose the bid documents for the stadium transformation with Balfour Beatty, McAlpine, ISG, Shephard and Buckingham Group. I am after bids of all contractor, evaluation and reasoning/rationale for winner's bid. So it is bids and its comparison.”

I can confirm that the Legacy Corporation holds information relevant to your request. Please note that bids were received from Balfour Beatty, Shepherd and Buckingham Group, the other companies you mention in your request did not submit bids for the Stadium Transformation.

The decision letters sent to the bidders contain details of the award criteria, weightings and comments. There are available as follows:

Annex A: Balfour Beatty decision letter

Annex B: Buckingham decision letter

Annex C: Shepherd decision letter

Please note it is the standard practice of the Legacy Corporation to redact personal information unless consent to release the information has been received. Any personal information within these letters has been redacted under section 40 of FOIA:

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.*

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 Section 1(1)(a) of the Data Protection Act 1998. As such, personal information has been redacted from the letters in line with section 40(2)(b) of the FOIA as detailed above. The redacted information is defined as data under the Data Protection Act 1998 section 1(1) and disclosing the information would contravene the first data protection principle, DPA 1998 Schedule 1, Part 1, 1(a) where personal data should be processed fairly and lawfully and not processed unless at least one of the conditions of schedule 2 is met. The relevant condition for this request is Schedule 2 (1) which requires the consent of the data subject. None of the bidders has given consent for their personal information to be disclosed.

Information relevant to the evaluation of bids and the reasoning and rationale for the winner's bid has been extracted from the Tender Evaluation Report and attached in **Annex D**.

The documentation for each bidder has been addressed separately:

Balfour Beatty.

As you have already been notified, an information request has previously been received for the Balfour Beatty bid documents for the Stadium transformation. The response to that request is available on our website [here](#), under reference 14-038. In that response information was redacted under FOIA section 40 – personal information, section 41 – information provided in confidence and section 43(2) – commercial interests.

The Legacy Corporation do not have any interests in this bid documentation however the Legacy Corporation need to consider the interests of the third party and take into account any representations made, therefore Balfour Beatty were contacted and, given the passage of time since this first request, asked to review the information previously withheld and advise us of any information that could now be released.

Balfour Beatty have reviewed their bid documentation and determined that the exemptions made in November 2014 are still valid and relevant. The redacted bid documents are available in **Annex E** and a schedule of those redactions is available in **Annex F**. The information redacted is being withheld under the following exemptions:

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.*

It is the standard practice of the Legacy Corporation to redact personal information unless consent to release the information has been received.

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 Section 1(1)(a) of the Data Protection Act 1998. As such, personal information has been redacted from the Balfour Beatty submission in line with section 40(2)(b) of the FOIA as detailed above. The redacted information is defined as data under the Data Protection Act 1998 section 1(1) and disclosing the information would

contravene the first data protection principle, DPA 1998 Schedule 1, Part 1, 1(a) where personal data should be processed fairly and lawfully and not processed unless at least one of the conditions of schedule 2 is met. The relevant condition for this request is Schedule 2 (1) which requires the consent of the data subject. Balfour Beatty have confirmed that the majority of the staff whose personal information is within the bid documents. Of those still with Balfour Beatty consent has explicitly been refused in relation to the release of their personal information. For those that no longer work for Balfour Beatty, consent to release the personal information has not been received. None of the individuals named within the submission have given consent for their personal information to be disclosed and given that their roles are not public facing or they may no longer be in Balfour Beatty employ, they have a reasonable expectation of privacy; therefore the use of the exemption is still considered valid and the redactions have been maintained.

Section 41 – information provided in confidence

(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

As stated in the 14-038 response, there is information on third parties provided by Balfour Beatty within the submission that was only provided on the understanding that the information was provided in confidence and the Legacy Corporation would respect the duty of confidence that Balfour Beatty has in relation to these third parties. Disclosure of this information would be likely to cause significant harm between Balfour Beatty and the third parties and would constitute an actionable breach of confidence. It also would be likely to have a significant impact on the future procurement exercises of the Legacy Corporation which is dependent of the quality of the information provided by third parties in order to achieve best value for the public purse.

After review, the information that Balfour Beatty provided at the time of the bid submission, on the understanding that it would be treated in confidence, is still considered confidential and would still constitute an actionable breach of confidence. From the Legacy Corporation's perspective, it would harm relations with all partners and future partners if those partners' could not trust that their confidential information would be handled appropriately. In addition, it would harm the reputation of the Legacy Corporation and would be likely to impact on the quality of the information being provided, which in turn, would prejudice the Corporation's ability to achieve best value.

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).

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 redactions applied under section 43(2) relate to information that would disclose Balfour Beatty's pricing strategy, and/or innovations and/or value engineering and/or methodologies. Despite the passage of time, all of this information would still be of considerable benefit to their competitors and, if disclosed, would be likely to adversely prejudice their business. Balfour Beatty still has current duties and responsibilities under this transformation contract. If the redacted material was disclosed and thereby released into the public domain, even after this time, this would greatly (and unfairly) benefit our potential competitors, adversely prejudice our commercial interests and potentially undermine the integrity of competition in tenders for stadium type projects in the future.

The Legacy Corporation have 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 regards to the agreements that are entered into by public sector bodies. However, the Legacy Corporation recognise that disclosure of the information currently identified as commercially sensitive by Balfour Beatty within their bid documents would be likely to prejudice Balfour Beatty's commercial interests as releasing this information into the public domain would impact on any future bids they may submit for projects of this nature.

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

Buckingham Group Contracting Ltd (Buckingham)

The Legacy Corporation do not have any interests in this bid documentation however the Legacy Corporation need to consider the interests of the third party and take into account any representations made, therefore Buckingham were contacted and asked to review their bid submissions in order to identify any information they would not want released into the public domain. Buckingham's bid submission, with redactions is available in **Annex G** and a schedule of the redactions applied is available in **Annex H**. Please note that based on Buckingham's review, information has been redacted under section 40 – personal information, section 43(1) – trade secrets and section 43(2) commercial interests. The detail for the exemptions applied is as follows:

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.*

It is the standard practice of the Legacy Corporation to redact personal information unless consent to release the information has been received.

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 Section 1(1)(a) of the Data Protection Act 1998. As such, personal information has been redacted from the Buckingham submission in line with section 40(2)(b) of the FOIA as detailed above. The redacted information is defined as data under the Data Protection Act 1998 section 1(1) and disclosing the information would contravene the first data protection principle, DPA 1998 Schedule 1, Part 1, 1(a) where personal data should be processed fairly and lawfully and not processed unless at least one of the

conditions of schedule 2 is met. The relevant condition for this request is Schedule 2 (1) which requires the consent of the data subject. Buckingham has confirmed that consent has explicitly been refused in relation to the release of personal information within their bid submission.

The section 43 exemptions are qualified exemptions 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, through the release of commercially sensitive information and / or through the release of information that is considered a trade secret and would prejudice commercial interests if released into the public domain. 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.

Section 43(1) – Trade Secret

- (1) Information is exempt information if it constitutes a trade secret.*
- (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) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).*

The redactions applied under section 43(1) relate to information that Buckingham considers to be a trade secret. Buckingham has a unique and identifiable way of setting up and delivering their projects that is deeply embedded within the information withheld under this exemption. From these documents a reasonably experienced competitor would be able to understand Buckingham's unique operational methodologies and would be likely to have the potential to secure an unfair advantage in competition that will lead to prejudice of their commercial interests and cause commercial harm to their company.

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).*

The redactions applied under section 43(2) relate to information that Buckingham considers to be commercially sensitive to their operations. The release of any of Buckingham's tender information supported by the rates, prices, programmes and / or methodologies used to generate their tender sum would prejudice Buckingham's commercial interests and cause commercial harm to their company. Disclosure of this information would be used by their competitors to the severe detriment of Buckingham's commercial interests.

The Legacy Corporation have assessed the impact of releasing the information redacted under these exemptions. There is, of course, a public interest in promoting transparency of the decisions and accountability in regards to the agreements that are entered into by public sector bodies. However, the Legacy Corporation recognise that disclosure of the information currently identified as commercially sensitive by Buckingham within their bid documents would be likely to prejudice Buckingham's commercial interests as releasing this information

into the public domain would impact on any future bids they may submit for projects of this nature.

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

Shepherd Construction Limited

The Legacy Corporation have redacted information within the Shepherd bid documentation under FOIA Section 31 – Law enforcement.

S.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

The section 31 exemption is a qualified and prejudice based exemption and it is therefore subject to the prejudice test and the public interest test. We have to consider if disclosure of this information would, or would be likely to, prejudice the prevention of crime. 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 information that has been redacted under this exemption relates to key structural or security information in relation to the Stadium. Even though the bidder was unsuccessful, real information was used for the bid submission and releasing this information into the public domain would be likely to prejudice the prevention of crime as disclosure of this information into the public domain would potentially be used to identify key areas of potential vulnerability within either the structure or operations.

The Legacy Corporation have assessed the impact of releasing this information 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 the Legacy Corporation that the public interest in withholding the information outweighs the public interest in disclosing it.

In addition to the above redactions, the Legacy Corporation need to consider the interests of the third party and take into account any representations made, therefore Shepherd were contacted and asked to review their bid submissions in order to identify any information they would not want released into the public domain. Shepherd's bid submission, with redactions is available in **Annex I** and a schedule of the redactions applied is available in **Annex J**. Please note that based on Shepherd's review, information has been redacted under section 40 – personal information. The detail for the exemption applied is as follows:

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.

It is the standard practice of the Legacy Corporation to redact personal information unless consent to release the information has been received.

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 Section 1(1)(a) of the Data Protection Act 1998. As such, personal information has been redacted from the Shepherd submission in line with section 40(2)(b) of the FOIA as detailed above. The redacted information is defined as data under the Data Protection Act 1998 section 1(1) and disclosing the information would contravene the first data protection principle, DPA 1998 Schedule 1, Part 1, 1(a) where personal data should be processed fairly and lawfully and not processed unless at least one of the conditions of schedule 2 is met. The relevant condition for this request is Schedule 2 (1) which requires the consent of the data subject. Shepherd has confirmed that consent has explicitly been refused in relation to the release of personal information within their bid submission.

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