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E20 1EJ

[REDACTED]

7 November 2019

INTERNAL REVIEW - REFERENCE 17-064

Dear [REDACTED]

We refer to your email of 3 April 2019 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 original request received 1 December 2017:

"Please can you provide me with copies of all E20 board meeting minutes for meetings that have taken place within the calendar years of 2015, 2016 and 2017, up to the date of this FOI request (01/12/2017)?"

- 1.2. The original response was sent 19 February 2019 and the request for Internal Review was received 3 April 2019:

"I am writing to request an internal review of London Legacy Development Corporation's handling of my FOI request 'E20 Board Meeting Minutes - 2015, 2016 & 2017'.

The time that has elapsed from my initial raising of this FOI request (1st December 2017) to when I received a formal response (19th February 2019) means I wish to challenge the entire use of s43(2) as a reason for redacting information. Given the reply to my FOI request came 14 months after I requested the information and some of the information is now four years old, the passing of time can make some information that may be considered commercially sensitive to no longer be considered commercially sensitive months and years later."

2. Review findings:

- 2.1. The Panel investigated the original response and spoke to the individuals involved with that original response in order to identify the reasons why the response took such a long period of time. The Panel also reviewed all of the information in the release that was redacted under section 43(2) commercial interests. The information redacted under section 31 – law enforcement, section 40 – personal data or section 42 – legal professional privilege was not reassessed.
- 2.2. The requestor mentioned in their request for an internal review that *“the passing of time can make some information that may be considered commercially sensitive to no longer be considered commercially sensitive months and years later.”* The Panel identified that this was the main cause for the delayed response to the original request.
- 2.3. During the drafting and review process for the original response, a large number of matters were identified as commercially sensitive due to ongoing negotiations, procurements, and legal proceedings.
- 2.4. As some of these issues concluded during the preparation of the original response this meant that all of the redactions were reviewed again and the public interest re-assessed in order to identify what could be released. This, combined with the impact of the passage of time, lead to a repeating cycle of reviews of the response with continual re-assessments and more information being identified that could then be disclosed which resulted in the delay to the initial release.
- 2.5. The Panel found that their review of the section 43(2) redactions became subject to the same problem.
- 2.6. Through the internal review process, the minutes have been reviewed to challenge the original redactions and also to consider what further information could be released as no longer sensitive and the Schedule of Redactions provided in the original response as **Annex E** has been revised accordingly.
- 2.7. In addition, some information previously identified as exempt under section 43(2) has, upon review, been identified as more appropriately exempt under section 42 – legal professional privilege, as it relates to advice provided by the E20 legal representatives. This exemption is still subject to the public interest test and, where it is considered that the exemption applies, the schedule of redactions has been revised to reflect this change.
- 2.8. Despite the passage of time and the resolution of a number of matters which has resulted in information being released, certain information is still considered commercially sensitive as the issues involved are still live and commercially active. This information has remained redacted and includes stadium naming rights, remaining active legal proceedings and specific commercial issues and current ongoing negotiations that, if released, would harm the commercial interests of the Legacy Corporation, E20 Stadium, LS185 or a third party.
- 2.9. 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. 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.
- 2.11. 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.
- 2.12. 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.
- 2.13. In accordance with the statutory Code of Practice issued by the Information Commissioner's Office, as part of the public interest assessment, the Legacy Corporation contacts third parties referenced in the information, to give them the opportunity to provide examples of any harm from their perspective that there may be from releasing the information. Under FOIA, the Legacy Corporation cannot assume what information might be exempt, and therefore any third party that may be affected by disclosure is asked to provide details of the harm that releasing the information would have on its commercial interests. The Legacy Corporation takes the views of affected third parties into consideration when undertaking the public interest assessment.

Prejudice to commercial interests

- 2.14. The Legacy Corporation has assessed the impact of releasing the information redacted under the exemption s.43 – commercial interests in order to decide whether disclosure would, or would be likely to, prejudice their commercial interests or those of any third party(ies). They have concluded that prejudice to commercial interests would be caused by disclosure of the information that has remained redacted so that the exemption is engaged.

Public Interest Test

- 2.15. There is, of course, a public interest in promoting transparency of public authorities' decisions and accountability, however, the disclosure of the information within these minutes that is redacted been identified as still commercially sensitive and releasing this information would be likely to prejudice

commercial interests of the Legacy Corporation, E20, LS185 or a third party because it will reveal details which would be likely impact on current and future highly sensitive negotiations and this would impact on the Legacy Corporation's ability to get best value for the public purse.

- 2.16. 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.

3. Panel Recommendations:

- 3.1. The revised Minutes are attached as below:
- 3.1.1. **Annex A** – E20 Board Minutes 2015
 - 3.1.2. **Annex B** – E20 Board Minutes 2016
 - 3.1.3. **Annex C** – E20 Board Minutes 2017 (January to May)
 - 3.1.4. **Annex D** – E20 Board Minutes 2017 (June to December)
- 3.2. The revised schedule for the redactions is attached in **Annex E**. This details what was originally redacted and what the current status is.
- 3.3. The Panel recommend that, in order to ensure a more timely release of a response, the date that the request is received should be taken as the date that all exemptions are considered against. For instance, in this example, consideration should have been given on whether the exemption could have been applied as at 1 December 2017.
- 3.4. Going forward this should speed up the response time and minimise the impact of the passage of time and the resolution of issues during the response period.

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

Deputy Chief Executive
London Legacy Development Corporation

