

[REDACTED]

19 February 2019

INFORMATION REQUEST REFERENCE 17-064

Dear [REDACTED]

Thank you for your information request, received on 1 December 2017. You asked the London Legacy Development Corporation (Legacy Corporation) to provide the following information under the Freedom of Information Act 2000 (FOIA):

“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)?”

I can confirm that the Legacy Corporation holds information which falls within the scope of your request. The E20 Board meeting minutes are attached as follows:

Annex A: 2015 E20 Board minutes

Annex B: 2016 E20 Board minutes

Annex C: January 2017 to May 2017 E20 Board minutes

Annex D: June 2017 to December 2017 E20 Board minutes

Please note that information has been redacted within these minutes under the following FOIA exemptions: section 31 – law enforcement, section 40(2) – personal information, section 42 – legal professional privilege and section 43(2) – commercial interests.

A schedule of the redactions applied is attached in **Annex E**, and details of the exemptions is provided below.

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 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 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 Legacy Corporation have assessed the impact of releasing the information currently withheld under this exemption and consider that the public interest would not benefit from this information being released into the public domain. This information in the public domain would be likely to harm the security of the Stadium.

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

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 does not fall within subsection (1), and
(b) the first, second or third condition below is satisfied.*

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.

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.

Section 42 - Legal Professional Privilege

(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

This is a qualified exemption and the public interest was taken into consideration. The Legacy Corporation recognises the public interest in promoting the transparency of their decisions and accountability, however there is also a strong requirement to safeguard openness in communications between client and lawyer which is essential to effective governance.

The general public interest inherent in section 42 will always be strong due to the importance of the principle behind legal professional privilege: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice, which in turn is fundamental to the administration of justice. Strong countervailing considerations are needed to justify disclosure of legal advice. The Legacy Corporation has considered the public interest factors in favour of disclosure of the requested information, including the general public interest in transparency and accountability of public bodies and informing the public debate.

The Legacy Corporation has considered whether this information should be released under FOIA and has concluded that the stronger public interest lies in withholding the information because of the strong need to ensure that E20 Stadium and the Legacy Corporation as public bodies can obtain full and frank legal advice to inform its decision-making processes.

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

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).

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.

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

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 so that the exemption is engaged.

Between 2015 and 2017 the E20 Board minutes were written for the use of the E20 Board only and were expected to be kept confidential. As a result of this, they contain information that is highly commercially sensitive on a number of sensitive subjects. There are current negotiations and planned future negotiations that would be harmed by releasing this information at this time.

Public Interest Test

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 has been identified as commercially sensitive would be likely to prejudice commercial interests of the Legacy Corporation because it will reveal details which would be likely impact on current and future highly sensitive negotiations in multiple areas and this would impact on the Legacy Corporation's ability to get best value for the public purse.

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.

If you are unhappy with our response to your request and wish to make a complaint or request an internal 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

Email: FOI@londonlegacy.co.uk

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