

Level 10
1 Stratford Place
Montfichet Road
London
E20 1EJ



25 July 2018

INFORMATION REQUEST REFERENCE 17-065

Dear 

Thank you for your information request, received on 4 December 2017. You asked the E20 Stadium LLP (E20) to provide the following information under the Freedom of Information Act 2000 (FOIA):

“Please provide copies of all emails sent and received by the CEO between November 28, 2017, and today’s date (up to the time of this email) [4 December] which relate to the Independent Review of the Olympic Stadium.”

Please note: your initial request was addressed to E20, however, they do not hold this information because, as an organisation, they do not have anyone with the position of CEO.

The response has been dealt with jointly between E20 and the London Legacy Development Corporation (Legacy Corporation). The CEO correspondence in relation to your request would be in relation to the CEO of the Legacy Corporation.

Between the time period stated in your request two people have held the position –

28 to 29 November 2017 - David Goldstone
30 November to 4 December 2017 – Gerry Murphy (acting)

The emails requested are attached in **Annex A**.

Where there was an attachment with the email, this has been included in the document bundle directly after the relevant email.

Please note that any attachments showing a naming convention similar to “image001” and the file extension of either *.gif, *.png have not been included as these are images of logos, etc that have been included with the email (QEOP brand, etc).

Please be advised that information has been redacted from these emails under FOIA section 21 – information accessible to the applicant by other means, section 40 – personal information, s.42 – legal professional privilege and s.43(2) – commercial interests.

Specific information on the exemptions applicable for each redaction is attached in **Annex B**.

Details on the exemptions is provided below:

Section 21 - Information accessible to applicant by other means.

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)—

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

The information withheld under this exemption is the Moore Stephens report which is attached to one of the emails. Given the size of the report and the fact that it is publicly available, the attachment has been removed and is not included in the Annex A documents. If you wish to see the report it is published on the Greater London Authority website – a link has been provided: <https://www.london.gov.uk/sites/default/files/olympic-stadium-review.pdf>

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 and E20 to redact personal information for those members of staff under Head of Service level, and for non-Legacy Corporation or E20 personnel unless consent to release the information has been received. Phone numbers have also been redacted. The email domain of all Board Members (past and present) has been redacted as has the personal email domain of past CEOs where appropriate.

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 and E20 have 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 state aid debate.

The Legacy Corporation and E20 have 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 the Legacy Corporation and E20 as public authorities can obtain full and frank legal advice to inform its decision-making processes.

FOIA 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 Legacy Corporation and E20 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 of public sector bodies, however, the disclosure of the information within these emails that has been identified as commercially sensitive would be likely to prejudice the commercial interests of the Legacy Corporation and / or E20 because it will reveal details of strategies and other plans and issues that are subject to litigation that would be likely to prejudice the commercial interest of these parties if released at this time.

It is the view of the Legacy Corporation and E20 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 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

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