



13 August 2018

INFORMATION REQUEST REFERENCE 17-068

Dear 

Thank you for your information request, received on 8 December 2017, with clarification received on 22 December 2017. You asked the London Legacy Development Corporation (Legacy Corporation) to provide the following information under the Freedom of Information Act 2000 (FOIA):

“all correspondence between London Legacy Development Committee (LLDC) and Balfour Beatty from January 2014 relating to matters of adjudication and discussions over costs.

In particular I'd like to see:

- 1) Any emails exchanged between senior management at LLDC and Balfour Beatty*
- 2) emails and minutes from March-April 2016 relating to the dispute which saw Balfour suspend work on the stadium.”*

I can confirm that the Legacy Corporation holds information relevant to your request. Our response follows your order:

All correspondence between London Legacy Development Committee (LLDC) and Balfour Beatty from January 2014 relating to matters of adjudication and discussions over costs.

In relation to your overall request, searches were run across our systems for emails sent between the Legacy Corporation and Balfour Beatty from 1 January 2014 to 8 December 2017, which included the word cost or adjudication. The results were over 6,000 items and exceeded 1260MB in size.

All of these emails would need to be retrieved and reviewed to identify information relevant to your request. With consideration to the above figures, in so far as FOIA applies, the resources that would be required to locate, retrieve and extract this information would far exceed the appropriate limit. The appropriate limit is specified in regulations and for the Legacy Corporation this is £450 (based on 18 hours work at a set £25 per hour).

The Legacy Corporation acknowledge that under section 16 of FOIA we have a duty to provide advice and assistance and to that end, you have already provided areas you are particularly interested in and we have focused the original search as below:

Please note:

- Senior management was defined as a member of the Executive Management Team (EMT);
- The date range for the search was between 1 January 2014 and 8 December 2017;
- Searches were run on the term 'cost' and the term 'adjudication'.
- Emails were either sent to the EMT member(s) by someone on the Balfour Beatty email domain, or sent by the EMT member to someone on the Balfour Beatty email domain;
- The emails relate to matters of adjudication or the discussions over costs.
- Where there was an attachment with the email, this has been included in the document bundle directly after the relevant email.
- Where multiple emails had the same attachment only the most recent version was included to avoid duplication.
- 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).

1) *Any emails exchanged between senior management at LLDC and Balfour Beatty [from January 2014 to the date of this request, relating to matters of adjudication and discussions over costs]*

Please find attached in **Annex A**, emails exchanged between senior management at the Legacy Corporation and Balfour Beatty, search refined as above.

2) *Emails and minutes from March-April 2016 [between Legacy Corporation and Balfour Beatty] relating to the dispute which saw Balfour suspend work on the stadium.*

A search was run across the email system for any emails sent between the Legacy Corporation and Balfour Beatty from 1 March 2016 to 30 April 2016, containing the word 'dispute'. The search results were then reviewed to identify those emails relevant to your request.

Please find attached in **Annex B**, all the emails found that are relevant to your request.

Please be advised that information within these annexes has been redacted under the following FOIA 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 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.

S.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, in this instance Balfour Beatty.

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 has no commercial interest redactions in the correspondence however as referenced above, Balfour Beatty were notified of this request and given the opportunity to inform the Legacy Corporation of their preference in relation to the disclosure of information within the correspondence.

They have stated that the costings information within the correspondence should be considered to be commercially sensitive as releasing this information would harm their commercial interests. Public disclosure would mean that those with whom they engage in the future will understand their negotiating position which would be likely to have a detrimental impact on Balfour Beatty's commercial and financial position. In addition, releasing the specific pricing information contained within the correspondence would be likely to allow Balfour Beatty's competitors to undercut Balfour Beatty's future work.

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 public sector bodies, however, the Legacy Corporation have assessed the public interest with consideration of Balfour Beatty's requested redactions and agree that releasing the information that they have identified as commercially sensitive would be likely to prejudice their commercial interests because it will

reveal details of financial information which would be likely impact on Balfour Beatty's current and future negotiations. In addition, disclosing this information would be likely to be used by Balfour Beatty competitors to give them an unfair commercial advantage.

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.

A schedule of the specific redactions applied in Annex A and Annex B is attached in **Annex C**.

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