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1 Stratford Place  
Montfichet Road  
London  
E20 1EJ



12 September 2018

**INFORMATION REQUEST REFERENCE 18-011**

Dear 

Thank you for your information request, received on 21 February 2018. You asked the London Legacy Development Corporation (Legacy Corporation) and E20 Stadium LLP (E20) to provide the following information under the Freedom of Information Act 2000 (FOIA):

*“FOI Request*

*This article <https://www.standard.co.uk/sport/football/london-stadium-owners-block-west-ham-s-plan-to-change-colour-around-the-pitch-to-help-players-see-a3664061.html>*

*refers to discussions between E20 and West Ham United regarding changing the colour of the surround, including a quoted cost of £200k.*

*Could you please provide the following:*

- 1) All correspondence between E20/LLDC and WHUFC that relates to the attempt to install different coloured carpeting*
- 2) Copies of any documentation that outlines how a proposed cost of £200k was reached (e.g. meeting minutes, quotes from suppliers, comparable examples used)*

*Should question 1 be too wide ranging I am happy to limit my request to correspondence between 20/10/16 to 31/12/17.”*

I can confirm that the Legacy Corporation and E20 hold information which falls within the scope of your request. Please note that the main search term used was “Pitch surround” rather than “carpeting” as notified to you on 21 March 2018, so the searches were run using that terminology, on both the E20 and LLDC email domains and using the date range provided so that the search results were not too broad.

The correspondence relevant to your request is attached in **Annex A**. Please note that information has been redacted under section 40 – personal information and section 43(2) – commercial interests. The schedule of redactions is attached in **Annex B**. Further explanation of the redactions is provided below.

Please be advised that the correspondence between the Legacy Corporation, E20 and West Ham covered many different subjects and parts of the correspondence dealing with those subjects that are not relevant to your request have been extracted. Where the extractions have been made there is a placemark [Extracted – not relevant] within the correspondence in **Annex A**.

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.*

The section 40 exemption is absolute and is not subject to the public interest test. In this instance, the relevant condition that applies is the first (see section 40 (3A) (a)), namely that disclosure would breach one of the data protection principles. The relevant data protection principle in this case is that personal data must be processed fairly and we have concluded that it would not be fair to the relevant individuals for their personal data to be disclosed.

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. Phone numbers and personal email accounts have also been redacted.

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 and E20 take the views of affected third parties into consideration when undertaking the public interest assessment. In line with this process West Ham were contacted for their views.

### **Prejudice to commercial interests**

The Legacy Corporation and E20 have 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.

At the time the request was received, the Legacy Corporation, E20 and West Ham were involved in legal proceedings, known as Expert Determination, which included consideration of the pitch surround issue. Expert Determination is a dispute resolution process under the West Ham Concession Agreement in which an independent expert in the subject matter of the dispute is appointed by the parties to resolve the matter. Like all dispute resolution processes, it is entirely confidential. At the time the request was received, therefore, the information requested was particularly sensitive.

While the Expert Determination has concluded, the pitch surround is still subject to commercial negotiations between E20 and West Ham and there remains the possibility of further legal action by West Ham, therefore, the Legacy Corporation and E20 consider that releasing the information redacted under section 43(2) would prejudice the parties' commercial interests as it would reveal their negotiating positions in relation to a number of highly sensitive commercial issues which may be the subject of further legal proceedings.

### **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 **Annex A** identified as commercially sensitive would be likely to prejudice commercial interests of E20, the Legacy Corporation and West Ham because it will reveal details which would be likely

impact on current and future highly sensitive negotiations and this would impact on E20's ability to get best value for the public purse.

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.

Please be advised that there is one additional email dated 14 September 2017 that has been withheld under section 41 – provided in confidence.

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.*

This is an absolute and class-based exemption.

This email was sent to Ben Fletcher, Director of Communications, Marketing & Strategy at that time, by the Executive Director, Marketing and Communications of West Ham. While this email contains some information falling within the scope of your request, it was sent and received on the clear understanding and in the reasonable expectation shared by both parties that it was being sent in confidence and was not to be shared or disseminated further. We have considered whether disclosure of the information would give rise to an actionable breach of confidence and have concluded that it would.

In the regular course of business between E20 and West Ham United, information is exchanged between the senior Communication directors to ensure that they are mutually informed of difficult issues. To facilitate this, it is sometimes necessary to make the other party aware of confidential or sensitive matters. This is one such instance. It is important that where such exchanges are necessary there is a clear understanding of the confidential nature of the information being exchanged. Disclosure of this information would be likely to cause significant detriment to the Legacy Corporation, E20 and West Ham. It also would prejudice the parties' ability to work together if the confidentiality of future information exchanges could not be assured.

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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](mailto: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](http://www.ico.gov.uk)

Yours sincerely

FOI / EIR Co-ordinator  
London Legacy Development Corporation