

[REDACTED]
[REDACTED]

17 December 2019

INTERNAL REVIEW - REFERENCE 18-059

Dear [REDACTED]

We refer to your email of 4 March 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 Legacy Corporation received your original information request on 12 September 2018. You asked the London Legacy Development Corporation (Legacy Corporation) to provide the following information under the Freedom of Information Act 2000 (FOIA):
“Under the freedom of information could you provide:
 - 1) *A copy of the catering agreement for the London Stadium between Delaware North and London Stadium 185*
 - 2) *An updated copy of the Catering Services Business Plan specifically referred to in the Stadium Plus Operator agreement dated 30th January 2015*
 - 3) *A breakdown of catering revenue from West Ham United games for the last Premier League season including the split of how the revenue is shared between Delaware North, London Stadium 185, West Ham, E20/LLDC and any other parties plus any management fee deducted by any of the parties for catering services.”*
- 1.2. On 4 March 2019, the Legacy Corporation responded informing you that the Legacy Corporation had carefully considered your request but had refused to provide information for any of the questions citing s.43(2) FOIA commercial interests. A detailed justification for the application of the exemption was included in that response.
- 1.3. On 4 March 2019, the Legacy Corporation received your request for an internal review, which stated:

"I request an internal review of your use of Section 43(2) exemptions within your 18-059 response.

Previously the ICO has rejected the view that the LLDC could demonstrate a specific way that commercial information could be exploited by a competitor.

The ICO previously stated "In the Commissioner's view, however, both the LLDC's submissions fail to demonstrate the specific way that the information could be exploited by a competitor and, or how disclosure would place either party at a commercial disadvantage"

Decision notice: https://ico.org.uk/media/action-weve-taken/decision-notice/2015/1432468/fs_50556618.pdf

I would argue that the ICO decision notice on the Concessionaire Agreement is similar to this agreement and the financial elements are in the public interest of all London taxpayers.

I look forward to the outcome of your internal revenue."

2. Review findings:

- 2.1. The internal review has now been completed and the findings and recommendations of the review are set out below.
- 2.2. The internal review panel ("the panel") noted the requester's reference to the ICO decision on the West Ham Concession Agreement and while the Legacy Corporation is mindful of the Commissioner's findings, the panel noted that under the FOI Act each FOI request has to be considered on its own merits and the factors relevant to the public interest have to be assessed as at the time the request is received and for all the parties involved with the information relevant to that specific request.
- 2.3. Part 1 of the original information request asked for "*A copy of the catering agreement for the London Stadium between Delaware North and London Stadium 185*".
- 2.4. As part of the internal review, the panel examined the contract between Delaware North and London Stadium 185 dated 30 January 2015 and considered the application of the s.43(2) commercial interest exemption to the whole contract. As a comparison, the panel also examined the exemptions applied to another LS185 contract with a similar structure which had been published with some redactions (LLDC FOI 16132 IR Appendix 1 LS185 and OCS).
- 2.5. The panel felt that the catering contract could be released with redactions made under s.43(2) commercial interest exemptions and with additional redactions under s.40 – personal information. A copy of the contract is available at **Annex A** and a schedule of redactions is in **Annex B** and the public interest test for the application of s.43(2) and s.40 redactions is below.

- 2.6. 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).
- 2.7. At the time of the original request, the Legacy Corporation assessed the impact of releasing the information redacted under the exemption s.43(2) – commercial interests based on their own assessment in addition to considering information from LS185 and Delaware North, in order to decide whether disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). They concluded that prejudice to the commercial interests of a third party (being LS185 and Delaware North) in addition to those of E20 and the Legacy Corporation would be caused by disclosure so that the exemption was engaged to the whole of the contract.
- 2.8. As noted in paragraph 2.4, the panel have reviewed the contract again and considered that elements could be released. The panel acknowledge that the disclosure of the full contract would prejudice the commercial interests of Delaware North, LS185, E20 Stadium (E20) and consequently the Legacy Corporation. The catering agreement is a revenue generating contract which, if released in full, would be likely to impact the commercial position of Delaware North in their dealings with the market and LS185 in the terms it could negotiate for events.
- 2.9. There is, of course, a public interest in promoting transparency of public authorities' decisions and accountability, and the panel reviewed the contract and agreed that elements within the contract could be released, with redactions under s.43 for the commercially sensitive sections of the contract would impact on current and future negotiations of LS185 and Delaware North if released. This commercially sensitive information in the public domain would ultimately impact on E20 and the Legacy Corporation's ability to get best value for the public purse.
- 2.10. It is the view of the panel that the public interest in withholding the information redacted under s.43 – commercial interests, outweighs the public interest in disclosing it.
- 2.11. 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.
- 2.12. It is the standard practice of the Legacy Corporation to redact personal information for non-Legacy Corporation personnel unless consent to release the information has been received.
- 2.13. 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.

- 2.14. Part 2 of the original information request asked for “*An updated copy of the Catering Services Business Plan specifically referred to in the Stadium Plus Operator agreement dated 30th January 2015*”.
- 2.15. As part of the internal review, the panel examined the catering services business plan and considered application of the s.43(2) commercial interest exemption to the whole plan. The panel felt that the catering business plan could be released with redactions made under s.43(2) commercial interest exemptions. A copy of the catering services business plan is attached in **Annex C** and a schedule of redactions is attached in **Annex D** and the public interest test for the application of s.43(2) redactions is below.
- 2.16. 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).
- 2.17. At the time of the original request, the Legacy Corporation assessed the impact of releasing the information redacted under the exemption s.43(2) – commercial interests based on their own assessment in addition to considering information from LS185 and Delaware North, in order to decide whether disclosure would, or would be likely to, prejudice their commercial interests or those of any third party(ies). They concluded that prejudice to the commercial interests of a third party would be caused by disclosure so that the exemption was engaged.
- 2.18. The panel re-assessed the impact of releasing the information withheld under this exemption. The panel felt that the catering business plan could be released with redactions. There is, of course, a public interest in promoting transparency of public authorities’ decisions and accountability, however, releasing the full catering business plan in full would be likely to prejudice commercial interests of Delaware North, LS185, E20 and consequently the Legacy Corporation. The catering business plan provides information in relation to the catering provision at the London Stadium which, if released, would be likely to impact on the commercial position of Delaware North in their dealings with the market. Revealing the redacted details of the plan would be likely impact on current and future negotiations of LS185. This would ultimately impact on E20 and the Legacy Corporation’s ability to get best value for the public purse.
- 2.19. It is the view of the panel that the public interest in withholding the information outweighs the public interest in disclosing it.
- 2.20. Part 3 of the original information request asked for “*A breakdown of catering revenue from West Ham United games for the last Premier League season including the split of how the revenue is shared between Delaware North, London Stadium 185, West Ham, E20/LLDC and any other parties plus any management fee deducted by any of the parties for catering services.*”
- 2.21. The gross catering revenue from West Ham United games for the Premier League season 2017/18 was £5.16m.

2.22. Information on the catering split is being withheld under s.43(2) – commercial interests.

2.23. 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).

2.24. As part of the internal review, the panel re-assessed the impact of releasing the information previously withheld under the exemption s.43(2) – commercial interests. Based on the panel's assessment, with consideration of additional information from LS185 and Delaware North, the panel concluded that prejudice to the commercial interests of a third party would be caused by disclosure of the catering split and therefore that the exemption should continue to be engaged.

2.25. There is, of course, a public interest in promoting transparency of public authorities' decisions and accountability, however, releasing a breakdown of the catering revenue of West Ham games and its distribution amongst various parties, would be likely to prejudice the commercial interests of Delaware North. Delaware North provides catering services to other events and locations, including other stadia, and this information, if released, would be used by competitors and event organisers to influence negotiations, which would put Delaware North at a commercial disadvantage in a very competitive market.

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

3. Panel Recommendations:

3.1. After a full consideration, the internal review panel recommended that:

3.1.1. A redacted version of the catering contract be released with s.43(2) redactions. This is attached in **Annex A**.

3.1.2. The revised schedule of redactions for the catering contract is attached in **Annex B**.

3.1.3. A redacted version of the catering business plan be released. This is attached in **Annex C**.

3.1.4. The revised schedule of redactions for the catering business plan is attached in **Annex D**.

3.1.5. The gross catering revenue for E20/LS185 is released: see paragraph 2.21.

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

Gerry Murphy

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London Legacy Development Corporation