

[REDACTED]

17 December 2018

INFORMATION REQUEST REFERENCE 18-076

Dear [REDACTED]

Thank you for your information request, received on 2 November 2018. You asked the London Legacy Development Corporation (Legacy Corporation) to provide the following information under the Freedom of Information Act 2000 (FOIA):

“We are aware of Madison Square Garden Company's proposals in respect of what has been termed the MSG Sphere ('the Proposals'). We are also aware from your letter dated 11 October 2018 that there has been various correspondence between LLDC and the London Communications Agency regarding the Proposals.

We request copies of the correspondence between London Communications Agency regarding the Proposals.

For the avoidance of doubt we request copies of any correspondence directly between the London Communications Agency and LLDC, and not any correspondence where London Communications are simply copied into that communication.”

I can confirm that the Legacy Corporation holds information which falls within the scope of your request. The information relevant to your request is attached in **Annex A**.

Please note that information has been redacted under the FOIA exemptions s.40 – personal information and section 43(2) – commercial interests. Details on the redactions applied are below.

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. Phone numbers have also been redacted.

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 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) redactions are applied to the minutes of the Park Panel meeting held on 9 July 2018, on the following pages of the document bundle attached in Annex A:

Page 75: Point 2.3 and point 2.4

Page 76: Point 2.16, point 2.17 and point 2.18

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

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.

While the information does not impact on the commercial interests of the Legacy Corporation, the information redacted has been identified as commercially sensitive by the third party. They have asserted that releasing this information into the public domain would prejudice their commercial interest by making public commercially sensitive information that could be used advantageously by other parties. The information currently redacted under this exemption would be likely to prejudice the commercial interests of the third party.

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 current redacted under section 43(2) within the Annex A and identified as commercially sensitive, would be likely to prejudice commercial interests of the third party because it will reveal details which would be likely to put it at a commercial disadvantage to its competitors.

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.

Please note: where there is an attachment, these have been inserted into the document bundle, however, where the same document has been attached multiple times it has only been inserted once. Any attachments with the file extension *.png have not been included at these are just QEOP logos, etc automatically linked to the email.

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