

3 June 2019

INFORMATION REQUEST REFERENCE 19-008

Dear [REDACTED],

Thank you for your information requests, received on 4 February 2019. You asked the London Legacy Development Corporation (Legacy Corporation) to provide the following information under the Freedom of Information Act 2000 (FOIA):

“Under Freedom of information Act please detail

1) The amount of money paid or budgeted to be paid to Vinci by E20/LLDC to transfer ownership or shares in London Stadium 185 Limited

2) A copy of any agreement or legal contract regarding the transfer of London Stadium 185 to E20/LLDC”

I can confirm that the Legacy Corporation holds information which falls within the scope of your requests. Our response follows your order:

Q.1) The amount of money paid or budgeted to be paid to Vinci by E20/LLDC to transfer ownership or shares in London Stadium 185 Limited

The total amount paid is £1 million. This figure appears in the Sale and Purchase Agreement (SPA) provided in **Annex B**.

Q.2) A copy of any agreement or legal contract regarding the transfer of London Stadium 185 to E20/LLDC

The request was understood to mean the agreement in relation to the transfer (sale) of LS185 and all agreed documents referred to in the SPA and any other agreements referenced within the SPA. These have been listed in **Annex A**. Please note that where information has been withheld and exemptions have been applied, this information is also listed in **Annex A** and the explanation is provided below.

The Legacy Corporation has applied the following exemptions:

- s.31 – law enforcement
- s.40 – personal information
- s.41 – information provided in confidence
- s.43 – commercial interests

S.31 - Law enforcement.

- (1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—*
- (a) the prevention or detection of crime*

The Legacy Corporation has applied this exemption to withhold banking information in the Sales and Purchase agreement, technical information in Schedule 1 of the Disclosure letter and pages 12-14 which include technical information in the Transitional Services Agreement.

Section 31 is a qualified exemption and subject to the prejudice test and the public interest test. Under the prejudice test we must consider if disclosure of this information would, or would be likely to, prejudice the prevention of crime. 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 it.

The Legacy Corporation has assessed the impact of releasing the banking and technical information and considers that the public interest would not benefit from this information being released into the public domain. While appropriate checks are in place, releasing the information into the public domain would be likely to weaken the system around financial and IT security and therefore would be highly likely to prejudice the prevention of crime. It is the view of the Legacy Corporation that the public interest in withholding the information outweighs the public interest in disclosing it at this time

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.*

- (3A) The first condition is that disclosure of the information to a member of the public otherwise than under this Act –*
- (a) would contravene any of the data protection principles*

The Legacy Corporation has applied this exemption to withhold names of members of Legacy Corporation staff below the level of Head of Service, or equivalent; contact details for staff working for Legacy Corporation and third-party organisations including emails and phone numbers; the entire Employee Agreements Amendments.

In determining whether the exemption applied the Legacy Corporation first considered whether the information was *personal data* within the meaning of,

Article 4(1) of the General Data Protection Regulation (GDPR) which states,

‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

Based on the definition, the Legacy Corporation maintains that all the information listed in Annex A, to which this exemption has been applied, is personal data.

The Legacy Corporation then considered whether the condition at section 40(3A)(a) was engaged, i.e. whether disclosure of the personal data would breach any of the principles related to the processing of personal data (Article 5 GDPR).

The relevant principle falls at Article 5(1)(a) GDPR, which states,

Personal data shall be:

(a) processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency’);

In terms of processing, Article 4(2) GDPR defines this, *‘processing’ means any operation or set of operations which is performed on personal data or on sets of personal data*

This long definition includes “disclosure by dissemination”, which would apply to disclosure under FOIA.

The Legacy Corporation then considered the provisions of Article 4(2) in the light of Article 5(1)(a), whether disclosure would be fair. The Legacy Corporation considers that it would be unfair to release personal data relating to staff below the level of Head of Service or equivalent, as these staff are not in decision-making roles and would have no reasonable expectation that their information would be further processed. The Legacy Corporation considers that withholding this information does not have an impact on how the disclosed information is understood.

With regards to the Employee Agreements Amendments the Legacy Corporation again maintains that disclosure would be unfair, as they contain contract terms which would have been specifically negotiated with the individuals at the time that the Sales and Purchase Agreement was agreed.

As the Legacy Corporation considers that disclosure of the information would be unfair, section 40 acts as an absolute exemption in this case and there is no need to carry out a public interest test.

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.

The Legacy Corporation has applied this exemption to withhold information in the Disclosure letter, relating to specific disclosures made by one party to the other against specific warranties in the Sales and Purchase Agreement. Disclosure letters in contract negotiations contain both general and specific disclosures. The first will have information which can be found in public records, but the second are made with reference to specific warranties in a contract.

The information in the First and Second MOUs relates to contract terms which were specifically negotiated between the parties; the standard terms, which remain legally binding, have been disclosed.

In both cases the Legacy Corporation considers that the withheld information has the necessary quality of confidence for section 41 to be engaged. In addition, the information was imparted in circumstances which the parties believed imported an obligation of confidence and disclosure of the information would be detrimental to them.

Section 41 is an absolute and class-based exemption and as such is not subject to the prejudice test or the public interest test.

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 Legacy Corporation has applied this exemption to withhold information relating to finances and financial arrangements and

Section 43(2) is a qualified exemption and subject to the prejudice test and the public interest test. Under the prejudice test we must 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 it.

The Legacy Corporation has 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 with regards to the agreements that are entered into by public sector bodies. However, the disclosure of the information currently identified as commercially sensitive would be highly likely to prejudice the commercial interests of Vinci and E20.

It is the view of the Legacy Corporation that, at this time, the public interest in withholding this information, outweighs the public interest in disclosure.

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