

[REDACTED]

18 June 2020

INFORMATION REQUEST REFERENCE 19-061

Dear [REDACTED]

Thank you for your information request, received on 22 October 2019. You asked the London Legacy Development Corporation (Legacy Corporation) to provide the following information under the Freedom of Information Act 2000 (FOIA):

“Please could you provide the following documents:

- *The “SWFT financial summary titled ‘Updated forecast with higher BBC update’” referred to on page 12 of Turner and Townsend’s stage 3 cost assurance review for Stratford Waterfront (in FOI 19-032 ANNEX A)*
- *The “RSM Programme Controls Deep Dive”, referred to in RSM’s Quarterly Assurance Review of the East Bank Programme from February 2019 (FOI 19-032 ANNEX B)”*

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

Q1. The “SWFT financial summary titled ‘Updated forecast with higher BBC update’” referred to on page 12 of Turner and Townsend’s stage 3 cost assurance review for Stratford Waterfront

Please find attached in **Annex A** the “Updated forecast with higher BBC budget”. Please be advised that information has been redacted under FOIA s.43(2) – commercial interests.

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.

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.

The Legacy Corporation is currently engaged in an extensive tendering process in relation to East Bank and releasing the financial information within this document would harm the integrity of the current procurement process and would prejudice the tender competitions.

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 the commercial interests of the Legacy Corporation because it will reveal details which would impact on the current procurement exercises and this would impact on the Legacy Corporation's ability to get best value for the public purse.

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

Q2. The "RSM Programme Controls Deep Dive", referred to in RSM's Quarterly Assurance Review of the East Bank Programme from February 2019

Please find attached in **Annex B** the "RSM East Bank Programme Controls Deep Dive Review". Please be advised that information has been redacted under FOIA s.40 – personal information and FOIA s.43(2) – commercial interests. The relevant exemption is identified within the redaction.

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.

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).

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 view of affected third parties into consideration when undertaking the public interest assessment. In line with this process UCL 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 of the Legacy Corporation and / or UCL would be caused by disclosure so that the exemption is engaged.

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 B identified as commercially sensitive would be likely to prejudice the commercial interests of the Legacy Corporation and / or UCL because it will reveal details which would impact on the current procurement exercises and on-going negotiations and this would impact on the Legacy Corporation's ability to get best value for the public purse.

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

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