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[REDACTED]

23 July 2020

INTERNAL REVIEW – REFERENCE 19-070

Dear [REDACTED]

We refer to your email of 21 May 2020 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 original request (Ref 19-070) was received on 8 November 2019 and requested that the Legacy Corporation provide information under the Freedom of Information Act 2000 in response to a series of questions as set out below:

"As noted within the E20 Board meeting minutes for the meeting held on 25th April 2017:

"6b) Stadium Handover and Asset Survey/Other LS185 Contractual Issues

- In particular, it was noted that LS185 have submitted in total 33 reports and that the process of resolving the dispute (if possible) should be simplified"

Please can you provide me with:

- The title of each of the identified 33 reports. The name of the company responsible for producing the 33 reports (if they are LS185 produced reports or the name of the company or business who has produced the report on behalf of LS185)

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As noted within the E20 Board meeting minutes for the meeting held on 25th April 2017:

"Action 6b.2 - E20 to compose contingency plans with a realistic time frame and financial impact. One for stepping in for "work around solutions" and one in the event LS185 'down tools' "

Please can you provide me with copies of the aforementioned contingency plans."

- 1.2. A response was sent on 15 May 2020. This has been attached in **Annex A** for reference.
- 1.3. Your subsequent email request for an internal review was received on 21 May 2020 setting out the grounds for appeal as follows:

"I am writing to request an internal review of London Legacy Development Corporation's handling of my FOI request 'E20 - LS185 Reports and Contingency Plans'.

Please can LLDC review their usage of s43(2) with regards to this FOI request."

2. Review findings:

- 2.1. The internal review has now been concluded and the findings and recommendations of the review are set out below.
- 2.2. As requested, the internal review panel ("the Panel") reviewed the information redacted from the Legacy Corporation's original response in relation to section 43(2) – commercial interests.

Annex A	No redactions
Annex B	s.43 redactions
Annex C	s.43 redaction
Annex D	No redactions
Annex E	s.40 redactions

- 2.3. The Panel only reviewed the Annexes B and C of the original response as these were the only annexes that contained redactions under section 43(2) – commercial interests. The Panel undertook a full review of the redactions applied under section 43(2) - commercial interests, taking an independent view on whether the redacted information met the prejudice test set out in the Freedom of Information Act. The section 40 – personal information redactions were not reviewed.
- 2.4. As part of the review, the Panel challenged some of the redactions that were applied by consulting with colleagues within the Legacy Corporation and also by contacting the relevant third parties where necessary.
- 2.5. In addition to the above general challenge, the information redacted under the commercially sensitive exemption at the time of the original request was reviewed to assess if the passage of time had lessened the commercial sensitivity to the point where the public interest to disclose the information outweighs the public interest in withholding it.

- 2.6. As a result of this exercise the Panel recommended that additional information within the original response should be released as follows:

Annex A	No redactions	Unchanged
Annex B	The section 43 redactions have been reviewed	More released
Annex C	The one section 43 redaction has been reviewed	All released
Annex D	No redactions	Unchanged
Annex E	Only section 40 redactions. Not reviewed	Unchanged

- 2.7. The revised documents are attached in **Annex B & Annex C**. A record of the information that is now being released is attached in **Annex D**.
- 2.8. Where information that was previously redacted under section 43 has now been released but reveals personal information, this has now been redacted under section 40 – personal information. One redaction was reviewed and determined to be legal advice so this has been redacted under section 42 – legal professional privilege.

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 42 - legal professional privilege

- (1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.*

This is a qualified exemption and the public interest was taken into consideration. The Legacy Corporation recognises the public interest in promoting the transparency of their decisions and accountability, however there is also a strong requirement to safeguard openness in communications between client and lawyer which is essential to effective governance.

The general public interest inherent in section 42 will always be strong due to the importance of the principle behind legal professional privilege: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice, which in turn is fundamental to the administration of justice. Strong countervailing considerations are needed to justify disclosure of legal advice.

The Legacy Corporation has considered the public interest factors in favour of disclosure of the requested information, including the general public interest in transparency and accountability of public bodies and informing the public debate. The Legacy Corporation has considered whether this information should be released under FOIA and has concluded that the stronger public interest lies in

withholding the information because of the strong need to ensure that the Legacy Corporation as a public body can obtain full and frank legal advice to inform its decision-making processes.

2.9. The Internal Review team was satisfied that the remainder of the redactions met the prejudice test and should remain withheld under section 43(2) - commercial interests because it would be likely to prejudice the commercial interests of the Legacy Corporation and of third parties involved because it would be likely to impact on current and future business strategies and future procurement activity, which in turn would harm the Legacy Corporation's and third parties' ability to achieve best value for the public purse.

3. Panel Recommendations:

3.1. The Panel recommend that the 19-070 Annex B and Annex C be released with the removal of some redactions. These are attached at **Annex B** and **C**.

3.2. A redaction schedule showing the release or partial release of information is attached in **Annex D**.

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

Deputy Chief Executive
London Legacy Development Corporation