



1 June 2022

INFORMATION REQUEST REFERENCE 22-009

Thank you for your information request, received on 1 April 2022. You asked the London Legacy Development Corporation (Legacy Corporation) to provide the following information under the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR):

“We are instructed to act on behalf of Greenwich Leisure Ltd (GLL) in respect of the issues arising from the incident at the London Aquatic Centre on 23 March 2022.

We write to request the following:

- *A copy of the Estates and Facilities Management Contract between the London Legacy Development Corporation and Equans.”*

I can confirm that the Legacy Corporation holds information which falls within the scope of your request:

A copy of the Estates and Facilities Management Contract between the London Legacy Development Corporation and Equans.

Due to the size of the document, the Estate and Facilities Management contract is available via this link: LLDC FOI 22-009 EFM

Please be advised that information is being withheld under the following FOIA exemptions: section 40 – personal information and section 43 – commercial information and these EIR regulations: Regulation 12(5)(e) – commercial information and Regulation 13 – personal data.

The redaction identifies which exemption is applicable.

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.

EIR Reg 13 – personal data

(1) To the extent that the information requested includes personal data of which the applicant is not the data subject, a public authority must not disclose the personal data if—

(a) the first condition is satisfied, or

(b) the second or third condition is satisfied and, in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

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.

In this instance, the relevant condition that applies is Regulation 13(1)(a), whereby the information is defined as personal data within Section 3(2) of the Data Protection Act 2018.

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 and the information is not already in the public domain.

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.

EIR Reg. 12(5)(e) - confidentiality of commercial or industrial information

12(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;

Under EIR there is a presumption towards disclosure, however consideration needs to be given to who will have access to this information and the purposes for which they could use the information.

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/EIR 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/EIR, 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 Equans were contacted for their views.

Prejudice to commercial interests

The Legacy Corporation have assessed the impact of releasing the information redacted in order to decide whether disclosure would, or would be likely to, prejudice their commercial interests or those of any third party(ies). The information withheld under this exemption/exception relates to payment thresholds, risk allocation and performance mechanics and methodology that were negotiated specifically between the parties and releasing them would prejudice the commercial interests of the Legacy Corporation and / or the third party. They have concluded that prejudice to commercial interests 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 Contract identified as commercially sensitive would be likely to prejudice commercial interests of Equans or the Legacy Corporation because it will reveal commercially sensitive operational information or financial information which would impact on the commercial interests of Equans and also impact on the Legacy Corporation's ability to get best value for the public purse.

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.

If you are unhappy with our response to your request and wish to make a request for an internal review of our response, you should write to:

Deputy Chief Executive

London Legacy Development Corporation
Level 9
5 Endeavour Square
Stratford
E20 1JN

Email: FOI@londonlegacy.co.uk

Please note: requests for internal reviews received more than forty working days 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