



28 October 2022

INFORMATION REQUEST REFERENCE 22-029 & 22-030

Thank you for your information requests, received on 16 August and 18 August 2022. You asked the London Legacy Development Corporation (Legacy Corporation) to provide the following information under the Freedom of Information Act 2000 (FOIA):

22-029

“Under freedom of information legislation can you provide the following either from LLDC, E20 or LS185

- 1) What is the London Stadium catering gross and net income for West Ham games in the last four seasons? 2018/2019 2019/2020 2020/2021 2022/2023*
- 2) What is London 185/E20 Stadium's share of football catering income for the last four seasons? 2018/2019 2019/2020 2020/2021 2022/2023*
- 3) What is West Ham's share of football catering income for the last four seasons? 2018/2019 2019/2020 2020/2021 2022/2023*
- 4) Do London 185/E20 Stadium monitor beer and food prices at London Comparable clubs of Spurs, Chelsea and Arsenal to enforce the comparable club clause of the concessionaire agreement with West Ham?*
- 5) Have West Ham contacted London Stadium 185/E20 stadium LLP to inform them that the comparable clubs' clause has been breached? If so when?*
- 6) Have West Ham threatened legal action over the comparable club's clause relating to the price and quality of food and drink at the London Stadium? If so when?”*

22-030

“Please provide the following information under the freedom of information legalisation

Within the E20 Stadium LLP WH Holding/ and West Ham United Concessionaire Agreement signed by both parties on 22nd March 2013 there is a comparable club clause 18.11 listed below

18.11 Catering and Ancillary Services). The Concessionaire may retain all amounts paid by ticket holders for any catering purchased as part of a ticket sales package for the Hospitality Area. The Grantor and/or the Grantor Pany shall: (a) ensure that the terms and conditions relating to the Catering Contracts. including without limitation as to the prices for food, refreshments and beverages and the corresponding service levels in respect thereof match (to the best of the Grantor's knowledge) the mean average of equivalent terms and conditions at the Comparable Clubs.

- 1) How does LLDC and/or its subcontractors monitor this clause 18.11 and what data does it rely on and how does it obtain the data?
- 2) Can you supply me any data you have collated on food and drink pricing at Spurs, Chelsea and Arsenal together with London Stadium comparisons over the last 5 years?
- 3) Have you calculated the mean average for the cheapest pint of beer and standard food items like burgers and pies for these comparable clubs over the past five years and if so what were they?
- 4) Have West Ham challenged these catering prices related to this clause over the last five years? If so what were the dates and text of the actual challenge whether it be email or letter?
- 5) Have there been any legal challenges over clause 18.11 by any stakeholders in the past five years and if so who and when?
- 6) Does London Stadium 185's contract with Delaware North include an obligation to uphold clause 18.11 in West Ham's concessionaire agreement?"

I can confirm that the Legacy Corporation, E20 Stadium (E20) and/or London Stadium 185 (LS185) holds information which falls within the scope of your requests. The information relevant to your request is below and our response follows your order:

22-029: London Stadium catering

Q1. What is the London Stadium catering gross and net income for West Ham games in the last four seasons? 2018/2019 2019/2020 2020/2021 2022/2023

The Legacy Corporation are withholding this information under the FOIA section 43(2) – commercial interests' exemption.

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 views of affected third parties into consideration when undertaking the public interest assessment. In line with this process E20, LS185 and Delaware North were contacted for their views.

Prejudice to commercial interests

The Legacy Corporation have 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.

Public Interest Test

The Stadium needs to be able to successfully operate in a small, strong and very competitive market and the Legacy Corporation believe that, at this time, the disclosure of the information requested would prejudice the commercial interests of LS185, and Delaware North and as a consequence also those of the Legacy Corporation, within this market, by allowing competitors, who are not subject to the same legislation, to gain access to commercially valuable information. This would impact on current and future negotiations which would put LS185 and Delaware North at a significant commercial disadvantage within this competitive market which in turn would harm the Stadium's ability to achieve best value for the public purse.

The Legacy Corporation have assessed the impact of releasing the information requested. There is, of course, a public interest in promoting transparency of the decisions and accountability in regards to the financial costs in relation to public sector bodies, however, disclosing the catering gross and net income would give commercial competitors information on the catering revenues for the Stadium, which could impact on catering costs for other types of events such as concerts, and which would give competitors a commercial advantage and in addition would severely weaken the negotiating position of LS185 when agreeing fees with promoters and artist management.

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.

Q2. What is London 185/E20 Stadium's share of football catering income for the last four seasons? 2018/2019 2019/2020 2020/2021 2022/2023

The percentage shares of the football catering income is provided in clause 18.3 of the E20 Stadium and West Ham Concession Agreement, which is publicly available on the Legacy Corporation website: [Concession Agreement](#)

The Legacy Corporation are withholding the LS185/E20 actual financial share of football catering income under the FOIA section 43(2) – commercial interests' exemption.

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 views of affected third parties into consideration when undertaking the public interest assessment. In line with this process E20, LS185 and Delaware North were contacted for their views.

Prejudice to commercial interests

The Legacy Corporation have 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.

Public Interest Test

The Stadium needs to be able to successfully operate in a small, strong and very competitive market and the Legacy Corporation believe that, at this time, the disclosure of the information requested would prejudice the commercial interests of LS185, and Delaware North and as a consequence also those of the Legacy Corporation, within this market, by allowing competitors, who are not subject to the same legislation, to gain access to commercially valuable information. This would impact on current and future negotiations

which would put LS185 and Delaware North at a significant commercial disadvantage within this competitive market which in turn would harm the Stadium's ability to achieve best value for the public purse.

The Legacy Corporation have assessed the impact of releasing the information requested. There is, of course, a public interest in promoting transparency of the decisions and accountability in regards to the financial costs in relation to public sector bodies, however, disclosing the catering information specific to LS185/E20, with the percentages available in the Concession Agreement, would give commercial competitors information on the catering revenues for the Stadium, which could impact on catering costs for other types of events such as concerts, and which would give competitors a commercial advantage and in addition would severely weaken the negotiating position of LS185 when agreeing fees with promoters and artist management.

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.

Q3. What is West Ham's share of football catering income for the last four seasons?
2018/2019 2019/2020 2020/2021 2022/2023

The percentage shares of the football catering income is provided in clause 18.3 of the E20 Stadium and West Ham Concession Agreement, which is publicly available on the Legacy Corporation website: Concession Agreement

The Legacy Corporation are withholding West Ham's actual financial share of football catering income this information under the FOIA section 43(2) – commercial interests' exemption.

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 views of affected third parties into consideration when undertaking the public interest assessment. In line with this process E20, LS185 and Delaware North were contacted for their views.

Prejudice to commercial interests

The Legacy Corporation have 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.

Public Interest Test

The Stadium needs to be able to successfully operate in a small, strong and very competitive market and the Legacy Corporation believe that, at this time, the disclosure of the information requested would prejudice the commercial interests of LS185, and Delaware North and as a consequence also those of the Legacy Corporation, within this market, by allowing competitors, who are not subject to the same legislation, to gain access to commercially valuable information. This would impact on current and future negotiations which would put LS185 and Delaware North at a significant commercial disadvantage within this competitive market which in turn would harm the Stadium's ability to achieve best value for the public purse.

The Legacy Corporation have assessed the impact of releasing the information requested. There is, of course, a public interest in promoting transparency of the decisions and accountability in regards to the financial costs in relation to public sector bodies, however, disclosing the catering information specific to WHU, with the percentages available in the Concession Agreement, would give commercial competitors information on the catering revenues for the Stadium, which could impact on catering costs for other types of events such as concerts, which would give competitors a commercial advantage and in addition would severely weaken the negotiating position of LS185 when agreeing fees with promoters and artist management.

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.

Q4. Do London Stadium 185/E20 Stadium monitor beer and food prices at London Comparable clubs of Spurs, Chelsea and Arsenal to enforce the comparable club clause of the concessionaire agreement with West Ham?

Delaware North present the proposed annual costs to LS185 for approval and then to West Ham United for review and approval.

Q5. Have West Ham contacted London Stadium 185/E20 Stadium LLP to inform them that the comparable clubs' clause has been breached? If so when?

West Ham contacted E20 Stadium LLP on 15 August 2022 alleging that the pricing charged at the London Stadium for match day refreshments constituted a breach of the Concession Agreement.

Q6. Have West Ham threatened legal action over the comparable club's clause relating to the price and quality of food and drink at the London Stadium? If so, when?"

On 15 August 2022, West Ham contacted E20 Stadium LLP threatening legal action in relation to the alleged breach of the Concession Agreement referenced in Q6.

22-030: Comparable Club Clause monitoring

Q7. How does LLDC and/or its subcontractors monitor this clause 18.11 and what data does it rely on and how does it obtain the data?

As referenced in Q4, Delaware North present the proposed annual costs to LS185 for approval and then to West Ham United for review and approval.

Q8. Can you supply me any data you have collated on food and drink pricing at Spurs, Chelsea and Arsenal together with London Stadium comparisons over the last 5 years?

Delaware North are responsible for collating and setting retail pricing for refreshments at the London Stadium. Neither E20 nor LS185 have carried out this calculation.

Q9. Have you calculated the mean average for the cheapest pint of beer and standard food items like burgers and pies for these comparable clubs over the past five years and if so what were they?

Delaware North are responsible for setting retail pricing for refreshments at the London Stadium. Neither E20 nor LS185 have carried out this calculation.

Q10. Have West Ham challenged these catering prices related to this clause over the last five years? If so what were the dates and text of the actual challenge whether it be email or letter?

There has been no challenge by West Ham on the catering prices in relation to Clause 18.11 over the past five years.

Q11. Have there been any legal challenges over clause 18.11 by any stakeholders in the past five years and if so who and when?

There have been no legal challenges specifically in relation to Clause 18.11 by any stakeholders over the past five years.

Q12. Does London Stadium 185's contract with Delaware North include an obligation to uphold clause 18.11 in West Ham's concessionaire agreement?

Neither Delaware North nor London Stadium 185 Limited are parties to the Concession Agreement and therefore are not bound by its terms. The agreement between London Stadium 185 and Delaware North contains a number of provisions relating to the availability, pricing and quality of food and beverages at the London Stadium as well as provisions relating to service levels for and ways of working.

The LS185 and Delaware North agreement is available on the website: [LS185 and DN agreement](#).

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