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31 May 2023

INTERNAL REVIEW - REFERENCE 23-013

We refer to your email of 6 April 2023 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 23-013) was received on 16 March 2023 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:

“Under freedom of information legislation can you supply me information of the security searches on bridges to the London Stadium island on West Ham match days:

- *On average how many security stewards are deployed on security search duty on West Ham match days?*
- *What is the cost of providing this security service per West Ham match day?*
- *How often do the security checks on West Ham match days find prohibited items and is this recorded or reported?*
- *If recorded how many items have been found by security checks on West Ham match days broken by categories of firearms or weapons, fireworks or explosives, drugs and any other prohibited items?*
- *How many discoveries of prohibited items have led to arrests on West Ham match days?”*

- 1.2. A response was sent on 6 April 2023 refusing to provide the information requested under FOIA exemption 31(1) prevention or detection of crime. The response is attached for reference in **Annex A**.

- 1.3. Your subsequent email request for an internal review was received on 6 April 2023 setting out the grounds for appeal as follows:

"I request an internal review of 23-013.

I dispute that the information requested fails under Section 31(1) exemption.

Please explain the basis of your decision for your exemption and how it practically would prevent or detect crime.

The information requested was of a generic nature and is in the public interest considering the large number of staff deployed for these duties."

- 1.4. In line with the internal review request, the original request and response was examined and assessed as to whether the section 31(1) exemption was effectively applied.

- 1.5. The original response considered the FOIA exemption 31 and subsection section 31(1)(a).

Section 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

- 1.6. Information Commissioner's Office (ICO):

- 1.6.1. The key points of the guidance of the ICO in regard to the application of this exemption is summarised as follows:

- 1.6.2. "Section 31(1)(a) – prevention or detection of crime, can protect information on a public authority's systems which would make it more vulnerable to crime. It can also be used by a public authority that has no law enforcement function to protect the work of one that does".

- 1.6.3. Section 31 is subject to a test of prejudice. This means that information can only be withheld if its disclosure would, or would be likely to, prejudice one of the activities listed in either subsection 31(1) or (2).

- 1.6.4. The prejudice test involves a number of steps:

- One of the law enforcement interests protected by section 31 must be harmed by the disclosure.
- The prejudice claimed must be real, actual or of substance. Therefore, if the harm was only trivial, the exemption would not be engaged.
- The public authority must be able to demonstrate a causal link between the disclosure and the harm claimed.
- The public authority must then decide what the likelihood of the harm actually occurring is, i.e. would it occur, or is it only likely to occur?

- 1.6.5. Deciding whether the prejudice would occur or is only likely to occur is important. The more certain the prejudice, the greater weight it will carry when considering the public interest. In this context the term "would prejudice" means

that it has to be more probable than not that the prejudice would occur. "Would be likely to prejudice" is a lower test; there must be a real and significant risk, even if risk of prejudice occurring is less than 50 per cent. 17. If a public authority's handling of a request results in a complaint to the Information Commissioner, the onus will be on the public authority to demonstrate that the specified prejudice test is met.

- 1.6.6. Section 31(1)(a) will cover all aspects of the prevention and detection of crime. It could apply to information on general policies and methods adopted by law enforcement agencies. For example, the police's procedures for collecting forensic evidence, Her Majesty's Revenue and Customs procedures for investigating tax evasion.
- 1.6.7. The exemption also covers information held by public authorities without any specific law enforcement responsibilities. It could be used by a public authority to withhold copies of information it had provided to a law enforcement agency as part of an investigation. It could also be used to withhold information that would make anyone, including the public authority itself, more vulnerable to crime for example, by disclosing its own security procedures, such as alarm codes. Whilst in some instances information held for the purposes of preventing or detecting crime will be exempt, it does not have to be held for such purposes for its disclosure to be prejudicial.
- 1.6.8. The prejudice test is not limited to the harm that could be caused by the requested information on its own. Account can be taken of any harm likely to arise if the requested information were put together with other information. This is commonly known as the 'mosaic effect'. As explained in the Information Commissioner's guidance information in the public domain, the mosaic effect usually considers the prejudice that would be caused if the requested information was combined with information already in the public domain.
- 1.6.9. However, some requests can set a precedent, i.e., complying with one request would make it more difficult to refuse requests for similar information in the future. It is therefore appropriate to consider any harm that would be caused by combining the requested information with the information a public authority could be forced to subsequently provide if the current requested was complied with. This is known as the precedent effect.
- 1.7. The original response strongly considered the security guidance issued by the National Protective Security Authority in regard to Hostile Reconnaissance:
 - 1.7.1. Hostile is defined as the individual or group conducting the reconnaissance. Hostile reconnaissance is defined as "Purposeful observation with the intention of collecting information to inform the planning of a hostile act against a specific target."
 - 1.7.2. The information gathered is typically used by hostiles to assess the state of security and likelihood of detection; to assess vulnerabilities in security and to assess likelihood of success.
 - 1.7.3. Protective security can therefore be focussed in the following manner: to deny the hostile the opportunity to gain information, to detect them when they are conducting their reconnaissance and to deter them by promoting failure through messaging and physical demonstration of the effective security. This approach will play on their concerns of failure and detection.

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. The Legacy Corporation and LS185 take the security of the London Stadium extremely seriously. While the requestor may consider the information requested to be generic, this information, if made public, would be likely to prejudice the security of the Stadium and any events held at that venue either on its own or in combination with other information.
- 2.3. Any information in relation to the security operations of the London Stadium, including stewarding numbers, coverage and costs (which could be used to assess the stewarding numbers), could be used to potentially identify weaknesses within the security arrangements.
- 2.4. The Panel agree with the original response that any information in relation to security of the London Stadium is extremely sensitive and releasing this information would be likely to prejudice the prevention of crime and jeopardise the security of this venue. Revealing any of the information requested would contradict hostile reconnaissance guidance issued by the government agency the National Protective Security Authority (formerly CPNI).

3. Panel Recommendations:

- 3.1. The Panel recommend have reviewed the original response and consider the application of the FOI exemption 31(1)(a) to be valid and justifiable.
- 3.2. The harm to the security of the venue and events held at the venue is too high. Releasing the information would be likely to prejudice the venue security and breach general good stadium security practice. It would also impact on the requirements of our counter terrorism operation as advised by the Protect UK, Metropolitan Police and the National Protective Security Agency.

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

ⁱ ICO Guidance on Section 31 law Enforcement