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INFORMATION REQUEST REFERENCE 24-016

Thank you for your information request, received on 29 April 2024. You asked the London Legacy Development Corporation (Legacy Corporation) to provide the following information under the Freedom of Information Act 2000 (FOIA):

"I would like to request access to the following information, preferably in electronic format:

- 1. Documents that support the choice of Sports and Leisure Management Ltd over the other participants in the procurement process. That is, documents that informed the decision of LLDC to appoint Sports and Leisure Management Ltd as the new operator of the London Aquatic Centre.*
- 2. Contract with Sports and Leisure Management Ltd, including Terms and Conditions.*
- 3. Any pledge or commitment that Sports and Leisure Management Ltd might have made in relation to the services that they would provide, investments that they would do or prices that they would charge the public."*

I can confirm that the Legacy Corporation holds information which falls within the scope of your request. The information relevant to your request is below and our response follows your order:

Q1. Documents that support the choice of Sports and Leisure Management Ltd over the other participants in the procurement process. That is, documents that informed the decision of LLDC to appoint Sports and Leisure Management Ltd as the new operator of the London Aquatic Centre.

Please find attached in **Annex A** the Contract Award Recommendation for the procurement exercise for the London Aquatic Centre Operation and Maintenance Services Agreement. Please be advised that information has been redacted under the following FOIA exemptions section 40 – personal information and section 43 – commercial information:

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.

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

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 commercial interests of GLL because it will reveal details which would be likely impact on current and future tender exercises.

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. Contract with Sports and Leisure Management Ltd, including Terms and Conditions.

The contract is attached in **Annex B and Annex C**. Please be advised that information has been redacted under the following FOIA exemptions.

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

The section 31 exemption 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 the prevention of crime.

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 the prevention of crime

The Legacy Corporation has assessed the impact of releasing the information withheld under the exemption s.31(1)(a) – prevention of crime in order to decide whether disclosure would, or would be likely to, prejudice the prevention of crime. We have concluded that prejudice to the prevention of crime would be caused by disclosing this information so the exemption is engaged.

The Legacy Corporation have assessed the impact of releasing this information and consider that the public interest would not benefit from detailed information of the venue security arrangements, capabilities and plans being released into the public domain. The security of the Aquatics Centre would be jeopardised, and the prevention of crime would be likely to be prejudiced. It is the view of the Legacy Corporation that the public interest in withholding the information outweighs the public interest in disclosing it.

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 requested, currently withheld under s.31(1)(a) and identified as prejudice to the prevention of crime would be likely to prejudice the security of the venue as it would reveal sensitive details about the security arrangements and operations.

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

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 views of affected third parties into consideration when undertaking the public interest assessment. In line with this process Everyone Active were contacted for their views.

Prejudice to commercial interests

The Legacy Corporation have assessed the impact of releasing the information redacted under the exemption section 43(2) – 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 contract contains detailed information on the commercial set-up and operational practices of Everyone Active which would be used by their competitors and would be likely to put them at a competitive disadvantage.

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 Everyone Active because it would reveal details about their operations and methodologies that could be used by competitors to prejudice future business opportunities.

It is the view of the Legacy Corporation and E20 that, at this time, the public interest in withholding the information outweighs the public interest in disclosing it.

Q3. Any pledge or commitment that Sports and Leisure Management Ltd might have made in relation to the services that they would provide, investments that they would do or prices that they would charge the public.

Any pledge or commitment in relation to service provision, investment and charges is within the contract attached in **Annex B & Annex C**, however, please note that this information may have been withheld under a FOIA exemption.

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