

L. Lluva

London Development Agency
Palestra
197 Blackfriars Road
London SE1 8AA
T 020 7593 8000
F 0207593 8002
www.lda.gov.uk
info@lda.gov.uk
Textphone 020 7593 8001

request-231xxxxxxxxxx@xxxxxxxxxxxxxxxx.xxx

24 May 2010

FOI 440 Internal Review

Dear L. Lluva,

I am writing further to our letter of 12 May 2010 regarding the Internal Review of our response to FOI 440 and to update you on what progress has been achieved to date.

Please note that in addition to having located, printed, indexed and collated the information we hold relevant to your request we have now reviewed the information held, that is, minutes, papers and summary reports relating to the Olympic Delivery Committee (ODC) meetings which were produced in 2007. In reviewing this information we have considered whether any of the information is exempt from disclosure, including applying the public interest test and consulting third parties in instances where commercially sensitive information is included in the material, often provided under confidentiality clauses.

Due to the volume of information held, to date we have been able to complete this exercise for the documents relating to 2007 only. We will continue to review and consider the information held pertaining to other years, which will follow in due course.

We have provided below 2 tables listing the following information:

1. Information held and provided:

A list of documents provided, including date of meeting, document reference number and description, the nature of any information that has been redacted from each document and the exemption which applies to these redactions. Further information regarding the application of exemptions is provided subsequent to the tables.

2. Information withheld

A list of documents that are being withheld in full and the exemption which has been applied.

1. Information Held and Provided:

Date	New Document	Document Description	Redactions (N/A = no	Section
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	Reference		redactions)	
07/03/07	3694961	Agenda of meeting 07/03/07	Names	S40
	3695242	Minutes of meeting 11/12/06	Names	S40
	3695267	Action Sheet of 11/12/06	Names	S40
	3702074	Item 6.1 Health and Safety Report	Names	S40
	3702112	Item 6.2 Olympic Land Team – Progress Update Report	Names	
	3702370	Item 6.2 Appendix 1	Names Figures Legal Advice	
	3702447	Item 6.2 Appendix 2	N/A	
	3702450	Item 6.2 Appendix 3	Names	S40
	3702465	Item 6.2 Appendix 4	N/A	
	3702512	Item 6.2 Appendix 5	Names	S40
	3702682	Item 6.2 Appendix 6	Names	S40
	3702693	Item 6.2 Appendix 7	N/A	
	3702708	Item 6.2 Appendix 8	Names	S40
	3702745	Item 6.2 Appendix 9	Names	S40
	3702806	Item 6.2 Appendix 10	Names	S40
	3703947	Item 7.1 Acquisition of the Freehold of 30 Marshgate Lane and Relocation of PA Finlay & Co.	N/A	
	3703978	Item 7.1 Appendix 1	N/A	
	3703987	Item 7.1 Appendix 2	N/A	
	3704132	Item 7.1 Appendix 3	Names	S40
	3704233	Item 7.1 Appendix 4	Names of companies, status of acquisition and figures	S43
	3704760	Item 7.2 Authorisation of Statutory Compensation Payments Following Confirmation of CPO by Secretary of State	Names	S40
	3704773	Item 7.2 Appendix 1	N/A	
	3704776	Item 7.2 Appendices 2,3,4	Names of companies, status of acquisition and figures	S43
	3704852	Item 8.1 Update on Novation of Olympic Contracts	Names Figures	S40 S43
	3704853	Item 8.1 Appendix 1	Names of companies, status of acquisition and figures	S43
	3704859	Item 8.2 Olympic Legacy – Commitment to Sustainable Regeneration (CSR)	Names	S40
	3704864	Item 8.2 Appendix 1	N/A	
09/07/07	3706510	Agenda of meeting 09/07/07	Names	S40
	3705415	Minutes of meeting 07/03/07	Names	S40
	3705428	Action Sheet of meeting 09/05/07	Names	S40
	3705433	Item 6.1 Health and Safety Report	Names	S40
	6705624	Item 6.1 Appendix 1	Names	S40
	3705630	Item 6.1 Appendix 2	N/A	
	3705693	Item 6.3 Olympic Opportunities – Update Report	Names	S40

	3705701	Item 6.3 Appendix 1	N/A	
	3705721	Item 6.4 Revised Terms of Reference of the Olympic Delivery	Names	S40
	3705744	Item 6.4 Appendix 1	N/A	
	3705776	Item 7.1 Report Back on Olympic Land Transactions	N/A	
10/10/07	3706733	Agenda of meeting 10/10/07	Names	S40
	3706947	Item 4.1 Powerlines Undergrounding Compulsory Purchase Order (No.2)	Legal Advice	S42
	3706950	Item 4.1 Appendix 1	N/A	
	3706972	Item 4.1 Appendix 2	Names	S40
	3706982	Item 4.1 Appendix 3	Names	S40
	3706986	Item 4.1 Appendix 4		
	3706809	Item 4.2 Olympic Park Energy Centre and Community Energy Networks (EC&CEN) CHP System	Names	S40
	3707048	Item 4.2 Appendix 3	Names	S40
	3707234	Item 5.1 Olympic Land Team Progress Report	Names Figures	S40 S43
22/11/07	3707688	Agenda of meeting 22/11/07	Names	S40
	3707722	Minutes of meeting 09/07/07	Names Legal advice	S40 S42
	3707737	Minutes of meeting 10/10/07	Names	S40
	3707773	Action sheet of meeting 22/11/07	Names	S40
	3707821	Item 06 Olympic Legacy Directorate Progress Report	Names	S40
	3707893	Item 06 Appendix 1	Names	S40
	3707903	Item 06 Appendix 2	Figures	S43
	3708181	Item 7 IBC/MPC	Names	S40
	3708316	Item 7 Appendix 1	N/A	
	3710876	Item 8 Legacy Masterplanning Framework: Appointment of masterplanning team	Names Figures	S40 S43
	3710981	Item 8 Appendix 1	N/A	
	3711017	Item 8 Appendix 2 (part 2)	Names	S40
	3711942	Item 8 Appendix 2 (part 2)	N/A	
Board Report 19/07/07	3681818	Item 4.1 Summary Report of the ODC meeting 09/07/07	Names	S40
	3682509	Item 4.1 Appendix 1	Names	S40
	3682633	Item 4.1 Appendix 2	N/A	

2. Information Withheld

Meeting Date	Document Description	Section
10/10/07	Item 4.2 Appendix 1 Ernst & Young Multi-Utility Concession Contract Procurement (commercial and financial review of Utilities Concession)	S43
	Item 4.2 Appendix 2 Arup Economic Regulation of the Community Energy Scheme	S43
	Item 4.2 Appendix 4 Legal Advice	S42

Application of Exemptions

Under Section 2 of the Freedom of Information Act, the duty of a public authority to give access to information does not apply in respect of information which is exempt under the Act, applying the public interest balance, where necessary, to the application of the exemption.

You will note that we have applied the following exemptions to the information requested:

Section 40

Section 40 of the Act exempts personal data about a third party from disclosure if the disclosure would:

- breach any of the Data Protection Principles under the Data Protection Act; or
- cause (or would be likely to cause) substantial distress to the individual concerned.

The First Data Principle requires that disclosure of personal data under the Freedom of Information Act must be fair. We consider the names of staff below the level of Director and those of third parties to be exempt from disclosure on the basis that:

- the information is personal data;
- disclosure of the information would be unfair to the person concerned and therefore in breach of the Data Protection Principles.

We therefore consider that this constitutes personal data exempt from disclosure under the Freedom of Information Act. We have therefore redacted from the documents the names of staff below the level of Director or equivalent and those of any third parties.

Section 42

Section 42 of the Act exempts information that is protected by legal professional privilege, that is, information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Legal professional privilege covers communications between lawyers and their clients (in this case the London Development Agency) for the dominant purposes of seeking or gaining legal advice and of obtaining legal advice on litigation or for lawyers to use in preparing a case. We have identified information which falls within this exemption, but Section 42 is a qualified exemption and as such is subject to the public interest test. We believe that the public interest in withholding this information outweighs the public interest in disclosing this information as the LDA commonly encounters complex issues upon which it may need to seek specialist legal advice. It is important that the LDA has access to full and frank legal advice and that any such advice obtained will be protected by legal privilege. The LDA must have the freedom to ask for advice in this manner and lawyers must be able to openly provide such advice with the knowledge that it is safeguarded. This right to take and consider legal advice is important to ensure the LDA can meet its legal obligations and duties and balance their complex demands, which must be in the greater public interest.

We have therefore redacted information and in some cases withheld documents in their entirety which are protected by legal professional privilege and are therefore exempt under S42 of the Act.

Section 43(2)

Section 43(2) of the Act exempts information from disclosure if disclosure under the Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

We consider that this exemption is relevant to some information incorporated within the documents requested, as shown above. This information relates to:

- contracts extant and still subject to negotiation;
- details of payments in relation to settlements still subject to negotiation
- financial accounts;
- details of estimated figures relating to the value of land and property.
- Breakdown of project costs

In general terms, if the redacted information were released to the public it would in our view be likely to either:

- Weaken the commercial position of the LDA in situations involving negotiation of contracts and the sale of property in a competitive market, by revealing details of the negotiating and financial positions of the LDA, which could be of advantage to a third party when negotiating both ongoing and future contracts or sales.
- Detrimentally impact on the commercial position of businesses covered by the information because competitors would become privy to information, such as the finances and working practices of the businesses, to which they otherwise would not have access.
- Damage the Agency's business reputation and the confidence that customers, suppliers and contracting parties may have in submitting tender proposals to the Agency.

The exemption of prejudice to commercial interest is a qualified exemption. This means that we are required to consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. We consider that the public interest in maintaining the exemption in respect of each piece of redacted information outweighs the public interest in disclosing the information because:

- there is a strong likelihood that commercial prejudice will be suffered by the LDA or third parties, as summarised above.
- disclosure of the information may prevent third parties from providing the LDA with information relating to procurement opportunities in the future, thus undermining the ability of the LDA to perform its functions

We are therefore unable to communicate the exempt information to you and as such it has been redacted from the attached documents.

Please accept our apologies that we have been unable to provide the information in full to date, but please be assured that we are doing everything possible to provide the requested information as soon as is reasonably possible.

If you have any queries in the meantime please do not hesitate to contact us.

Yours sincerely,



Public Liaison Unit
London Development Agency

MAYOR OF LONDON