



request-579246-d100a8c4@whatdotheyknow.com

Dear Ms Mullen

Freedom of Information Request 692998

Thank you for your request that the City Council undertake an Internal Review of the above information request. For purposes of clarity and context, your original request and our accompanying responses are summarised below as follows –

[1] Is the repayment of £709,000 by Everton Football Club set out in a formal legal document?

[2] Has the sum of £709,000 been paid back by EFC - If so, please indicate the date when EFC made the payment to LCC

[3] If the sum has not been paid yet, please indicate the date when this sum will be paid in full by EFC to LCC

Liverpool City Council Response

“Liverpool City Council confirms that it holds information relevant to the terms of your request. As stated within prior responses to Information requests and in public comment, the City Council has been in discussions with Everton Football Club with regard to a range of commercial, financial and legal considerations as regards a potential relocation of the club from its current location.

With regard to such negotiations, it is standard practice for negotiations and discussions to take place over an extended period and to address a wide range of issues especially when dealing with commercial matters of this nature which extend to include financial and legal considerations. During such discussions it is a matter of course for parties to give consideration to factors relating to expenditure, specifically how these may be accrued by respective parties during negotiations and further how these may ultimately be addressed in the form of an agreement.

The nature and content of such negotiations is, by definition, of both a commercial and legal nature on the basis that any process or action agreed requires formal agreement between such parties. As the City Council and representatives of EFC continue dialogue on a range of commercial matters it is considered that a number of exemptions to disclosure are engaged under Freedom of Information Act 2000, specifically relating to commercial and financial interests as set out in Section 43(2) of the above Act.

Section 43 (2) – Prejudice to Commercial Interests

Dealing firstly with matters of potential prejudice to commercial interests of either the City Council or the third party. Information of the type which you are requesting forms part of wider ongoing dialogue with the third party organisation and is subject to ongoing dialogue.

The disclosure of information of this type would have a significant prejudicial effect on the ability of both parties to conduct a comprehensive process of dialogue. Any disclosure

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would in addition place a significant fetter of the City Council to negotiate with third parties on separate matters were the detail of such matters are routinely discussed during an active negotiation process. With this in mind, the City Council has then assessed public interest considerations relating to this request.

Section 43 (2) – Public Interest Test

In considering the public interest test and its application in the context of the information retrieved, as is standard practice when dealing with all such issues, the City Council has carefully considered the factors both for and against disclosure of the information held.

The City Council does not consider that generic public interest arguments are relevant in the majority of cases including this one – rather, the specific circumstances and nature of the information require this to be focused and therefore more refined.

Factors in favour of disclosing the information –

- (i) transparency of the process with which the City Council negotiates with third parties on commercial matters; and*
- (ii) the level of public interest in disclosure – there is a natural interest of individuals in understanding how public bodies undertake negotiations on a range of matters.*

Factors against disclosure of the information –

- (i) the requested information relates to a commercial contractual transaction which has yet to be concluded, the potential terms of which being subject to ongoing legal and technical advice setting out a range of legal options and potential implications arising thereof and which includes discussion and information exchanges relating to business planning and financial consideration. The disclosure of information of this type relating to either party would compromise the City Council's ability to effectively conduct negotiations on this matter and could give rise to an actionable breach of confidence as well as inhibiting the effectiveness of the City Council's negotiations on future commercial projects; and*
- (ii) the public interest in public authorities being able to conduct commercial and financial business in order to maximise financial and commercial benefits for local residents within legislative frameworks. The routine disclosure of information during such negotiations would negate the ability of public authorities to enter into commercial dialogue. There would also be a substantial chilling effect on the willingness of private and third sector commercial partners to engage on the basis that such negotiations, which would of their nature include information on their organisations, being routinely disclosed in detail prior to agreement and during an iterative process of negotiation.*

A key factor in the application of the Exemption was that of the ability of an organisation such as Liverpool City Council to undertake commercial negotiations on a range of matters. Were information of this nature to be routinely disclosed during ongoing negotiations, the ability of the City Council to achieve the best possible commercial and financial outcomes for the use of public funds as well as supporting regeneration and wider activities under its general powers of competence, and to be able to continue and conclude such negotiations would be significantly prejudiced.

Having carefully considered the above factors, and in view of the ongoing nature of negotiations on this matter, the City Council considers the application of a Commercial Confidentiality Exemption under the provisions of Section 43 (2) FOIA is justified. Therefore the requested information is withheld (for the avoidance of doubt, the application of this Exemption extends to details relating to ongoing dialogue between Liverpool City Council and EFC."

Internal Review

The basis upon which you have requested an Internal Review be undertaken was as follows
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The FOI response stated, "' The disclosure of information of this type would have a significant prejudicial effect on the ability of both parties to conduct a comprehensive process of dialogue.'

This is, in fact, untrue:

[1] The fact that LCC 'has spent a significant amount of money "on all types of consultancy fees" in relation to a potential loan by LCC to EFC -IS IN THE PUBLIC DOMAIN

[2] Mayor Anderson stated in the Liverpool Echo: 'Mayor Joe Anderson has made clear that Everton will be picking up the bill for those fees - and paying the council back in full.' - SO THIS IS IN THE PUBLIC DOMAIN

[3] 'He told the ECHO: "Everton Football Club will be picking up the bill - not us.' - SO THIS IS IN THE PUBLIC DOMAIN

Therefore, it is clear that I am not asking for any commercially sensitive information. I am only asking for confirmation that the information freely given to the Liverpool Echo is true' So, once again, please respond to the following questions:

[1] Was the exact amount spent by LCC "on all types of consultancy fees" in relation to a potential loan by LCC to EFC £709,000 or was it a different amount...please state

[2] Has EFC already reimbursed LCC for all monies relating to 'all types of consultancy fees'?

[3] If not, when will EFC be reimbursing LCC this sum of money?

Review & Outcome

Firstly we would offer our apologies for the delay. We would advise that when dealing with information requests which require a review of a range of detailed information from multiple Service Areas within the City Council and which may include the consideration of the application of exemptions, whether applied or not, then on occasion public authorities require additional time to collate information prior to preparing and issuing responses. We therefore apologise for any inconvenience caused and thank you for your understanding in this regard.

With regard to points 1, 2 and 3 within your review request, it is acknowledged that Mayor Anderson OBE has commented publicly in general terms as regards ongoing commercial negotiations with Everton Football Club. However, whilst individuals may have commented in general, this does not of itself then place information of a commercial and financial nature into the public domain given that this level of detail was not referenced within public comments nor was this made public.

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As indicated in various responses on this issue, the City Council has been and remains in discussions with Everton Football Club with regard to a range of commercial, financial and legal considerations as regards a potential relocation of the club from its current location.

With regard to such negotiations, it is standard practice for negotiations and discussions to take place over an extended period and to address a wide range of issues especially when dealing with commercial matters of this nature which extend to include financial and legal considerations.

During such discussions it is a matter of course for parties to give consideration to factors relating to expenditure, specifically how these may be accrued by respective parties during negotiations and further how these may ultimately be addressed in the form of an agreement. This process remains ongoing and as such reimbursement has not yet taken place in view of ongoing discussions to confirm the extent such reimbursement will take.

Having carefully considered all points of submission, your request for a review is therefore upheld to the extent that I agree that clarification on the points raised should have been provided to you by the City Council through relevant Service Areas in a more timely manner.

This concludes our Internal Review process on this matter.

If you remain dissatisfied, you may also apply to the Information Commissioner for a decision about whether the request for information has been dealt with in accordance with the Freedom of Information Act 2000.

The Information Commissioner's website is www.ico.gov.uk and the postal address and telephone numbers are:- Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF. Telephone 0303 123 1113. Email – mail@ico.gsi.gov.uk (they advise that their email is not secure)

I trust this information satisfies your enquiry.

Yours sincerely

M Jones

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Information Team