

PART 2 – CONFIDENTIAL FACTS AND ADVICE

DD2365

Title Skills for Londoners Capital Fund - South Bank Colleges, Nine Elms STEAM Centre (NESC)

Information may have to be disclosed in the event of a request under the Freedom of Information Act 2000. In the event of a request for confidential facts and advice, please consult the Information Governance team for advice.

This information is not suitable for publication until the stated date because:

It concerns advice the disclosure of which would prejudice the commercial interests of the GLA, which is not in the public interest.

Date at which Part 2 will cease to be sensitive or when this information should be reviewed with a view to publication: **30th September 2021 for review**

Legal adviser recommendation on the grounds for not publishing information at this time:

In the event of any request for access to the information contained in this document under section 1 of the Freedom of Information Act 2000 ("the Act") it is considered that access may be denied on the basis that the disclosure of such information risks prejudicing the commercial interests of the GLA as its release would involve the public statement that the GLA might be unable to rely legally upon the indication that LSBU has given that it will meet any financial obligations of South Bank Colleges (SBC) to the extent that SBC cannot. By making such a statement, LSBU should it choose, might use the same to avoid providing the financial coverage indicated leading to the GLA suffering losses for which it cannot recover.

Therefore, the exemption from release of the information set out in part 2 of this report is covered by section 43 of the Act.

Section 1 of the Act creates the general right of access, which provides that any person making a request for information to a public authority is entitled:

- to be informed in writing by the public authority whether it holds information of the description specified in the request; and
- if that is the case, to have that information communicated to him/her.

Part II of the Act contains a number of exemptions from disclosure for certain classes of information. In particular, section 43 of the Act provides that information is exempt information, if its disclosure under the Act would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it). The paragraph above states that the information is commercially sensitive, as its release could affect the commercial interests of the GLA in its management of project and financial risks and public funding. The Section 43 exemption is a qualified exemption and, accordingly, its valid use is subject to a public interest assessment.

Public Interest Assessment

On balance it is considered that the public interest is best served if the information is not disclosed at this point. As noted above, disclosure by the GLA could, as explained above:

- have a detrimental effect on the commercial interests of the GLA in managing effectively project and financial risks and public funding;
- cause unnecessary strain on public funds.

For these reasons, it is considered that the information below is exempt from publication in reliance upon the exclusions contained in section 43(2) (commercial interests) of the Act and because the public interest in withholding the information outweighs the public interest in releasing it.

Legal Adviser - I make the above recommendations that this information is not suitable for publication at this time.

Name: Stephen Fernandes-Owen, TfL Legal

Date: 29 May 2019

Once this form is fully authorised, it should be circulated with Part 1.

Decision and/or advice:

TfL Legal

Whilst LSBU has indicated by letter that it is willing to underwrite South Bank Colleges' match funding obligations and holds sufficient reserves to do so (see paragraph 4.5 of the accompanying part 1 Director's Decision Form) no legally binding obligation has been provided by LSBU to the GLA in this regard.

This means that LSBU would not be required legally to meet this commitment and therefore, the GLA cannot and should not place reliance upon this. Officers may wish to consider seeking a parent company guarantee or some other form of a security in this regard if they are concerned by this potential risk.

LEAP Delivery Team

However, this is not considered to be necessary given the financial standing of the university as part of the GLA's own credit check due diligence. In addition, the grant agreement that the new merged college entity will enter into with the GLA will require it to provide all necessary match funding.

The LEAP Delivery Team recommend that LEAP reserve the right to review the level of contingency at Stage 3A design, based on independent professional cost advice. Should the available contingency level fall below 7.5% based on the current approved applicant and GLA funding, we would refer an endorsement to LEAPIC under the LEAP's schedule of funding responsibilities for additional grant provision to increase contingency level back to 7.5% based on a 50:50 share of this with the applicant. Should a further increase in grant be recommended by LEAP to maintain the contingency level at 7.5 per cent this would be subject to a further GLA decision as necessary.