

GREATER LONDON AUTHORITY

Corporate Management
Our ref: MGLA291015-8014

Date: 6th January 2016

Dear [REDACTED]

Information request – Blossom Street/Norton Folgate and Bishopsgate Goodsyards

Thank you for your request for information which the GLA received on 29 October 2015. We would like to apologise for the delay in our response and we hope it has not inconvenienced you unduly. You asked us for:

“A copy of all the email and postal correspondence between the office of Mayor Boris Johnson and British Land, regarding the Blossom Street/Norton Folgate development.

A copy of all the email and postal correspondence between the office of Mayor Boris Johnson and Hammerson regarding the Bishopsgate Goodsyards development.

A copy of all the email and postal correspondence between the office of Mayor Boris Johnson and Ballymore regarding the Bishopsgate Goodsyards development

I was referring to the whole of the Mayor's office, including his deputies”

We have conducted searches with the Mayor's Office and the Planning team and can confirm that we hold information which is within scope of this request. Please see attached documents.

Your request was made under the *Freedom of Information Act 2000* (FOIA). Because the subject matter of the request is a proposed development, it appears to us that the request could appropriately have been made under the *Environmental Information Regulations 2004* (EIR), which we have therefore considered and primarily applied. There are exemptions applicable under FOIA and exceptions under the EIR.

After careful consideration, we have decided to withhold some of the information that is covered by the exceptions to our duty to disclose information, found under regulation 12(5)(e) and (f) of the EIR (there are similar exemptions under sections 41 and 43 of FOIA). These provisions exist to protect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest, and the interests of the person who provided the information (under FOIA the sections referred to protect information disclosure of which would be an actionable breach of confidence, and information disclosure of which would be likely to prejudice the commercial interests of any person).

I have included the rationale behind our decision under the EIR to withhold the specific information covered by these exceptions in the annex to this letter.

If you have any further questions relating to this matter, please contact me, quoting the reference at the top of this letter.

Yours sincerely

Meena Shah

Information Governance Officer

If you are unhappy with the way the GLA has handled your request, you may complain using the complaints procedure, available at: <http://www.london.gov.uk/mayor-assembly/gla/governing-organisation/freedom-information>.

Annex – EIR Exception provision

Exception provisions engaged
<p>EIR 12(5)(e) - disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.</p> <p>EIR 12(5)(f) - disclosure would adversely affect the interest of the supplier of the information.</p>
How the exceptions apply to this information
<p><u>Is the information commercial or industrial in nature?</u></p> <p>The letter relates to the BNPP Viability Review submitted by the developer, Development Services 2 LLP (DS2). The GLA considers that since the information contained in the letter relates to the detailed analysis of the proposed development, it is commercial in nature and this condition of the exception is therefore satisfied. <u>Is the information confidential under either the common law of confidence, contract, or a statutory bar?</u></p> <p>The information was passed to the GLA under a duty of confidence and consequently under the expectation that it would not be widely accessed, circulated or distributed.</p> <p>We would also say that some of the information is also covered by common-law of confidence – it is not trivial in nature, has the necessary qualities of confidence, and was provided as part of a process whereby it was expected by both parties that such information would be held in confidence.</p> <p>We are mindful of the views of the Information Commissioner (ICO) in regard to how this exception provision is engaged and applied, and we have also taken note of the decision by the Information Tribunal (EA/2013/0162)¹, in particular paragraph 42 which states:</p> <p><i>‘The legislature must be taken to intend that it is not always in the public interest for a public authority to choose to keep information confidential. There is no breach of trust when a public authority fulfils its statutory obligation under FoIA or EIR... They recognise in contracts that in an individual case, depending on the circumstances, the public authority may have a duty to disclose.’</i></p> <p>In this case, we have decided that limited pieces of information are protected by a legitimate obligation of confidence.</p> <p><u>Is the confidentiality protecting a legitimate economic interest?</u></p> <p>We are strongly of the view that disclosure would cause harm to the commercial interests of DS2 and those of the GLA; and that these are legitimate economic interests. In relation to legitimate economic interests, we would make reference to the Information Commissioner’s guidance, which states:</p> <p><i>‘Legitimate economic interests could relate to retaining or improving market position,</i></p>

¹<http://www.informationtribunal.gov.uk/DBFiles/Decision/i1279/London%20Borough%20of%20Southwark%20EA.2013.0162%20%2809.05.14%29.pdf>

ensuring that competitors do not gain access to commercially valuable information, protecting a commercial bargaining position in the context of existing or future negotiations, avoiding commercially significant reputational damage, or avoiding disclosures which would otherwise result in a loss of revenue or income'.²

The information covered by this exception provision falls within the following categories:

- Information relating to internal costs borne by RMG in enabling the development of the scheme
- Information relating to potential costs incurred from the construction of the scheme, including rights-of-light and financing.
- Information relating to the potential values derived from disposable elements of the complete scheme, including projected sales rates and timing
- Information relating to the adopted Site Value for the purposes of viability
- Phasing information and associated timing information
- Financial appraisals including associated risk analyses and target rates of return
- Additional costs, such as marketing, disposal and rights-of-light cost estimates

The release of information falling within these categories could

- jeopardise and prejudice tendering negotiations;
- affect DS2's commercial negotiating position opposite contractors;
- affect the ability of DS2 to secure competitive sales or leasing arrangements for the units that will be constructed; and/or
- potentially delay the implementation of the proposed development.

We therefore consider that the legitimate economic interests of DS2 in this matter mirror the description provided in the Commissioner's guidance and that they could be harmed or prejudiced by the release of specific pieces of information covered by this request.

Public interest test (where applicable)

Considerations favouring disclosure

It is important to note the general, underlying rationale for the disclosure of environmental information, as outlined in Directive (2003/4/EC)³ which gave rise to the Environmental Information Regulations,

Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision making and, eventually, to a better environment.

We acknowledge that there is a general public interest in transparency in relation to planning and development matters, particularly in the decision making behind, and progress of, developments of this size and impact. Disclosure of this information would enable the community affected by the development to understand more fully the decision making process.

We also consider that disclosure of information that would engage and improve public

² https://ico.org.uk/media/for-organisations/documents/1624/eir_confidentiality_of_commercial_or_industrial_information.pdf

³ <http://ec.europa.eu/environment/aarhus/legislation.htm>

participation in, and understanding of, the decision making processes involved, carries particular weight.

The disclosure of this information would also inform discussions regarding the number of affordable homes to be provided by this development; an important local issue.

Furthermore, the public interest is served by the GLA being transparent and open to scrutiny to increase diligence and working to protect the public purse.

Considerations favouring non-disclosure

There is of course an inbuilt public interest in maintaining commercial confidences. As discussed in the aforementioned Information Tribunal decision (EA/2013/0162), the courts have recognised the enduring strength of the public interest in maintaining the confidentiality of negotiations and bidding that take place in relation to public/private sector partnerships.

It is not in the public interest to cause economic harm to organisations operating in a competitive environment.

The best interests of the public are met by the GLA being able to foster relationships of trust with its partners, through which confidential, sensitive financial information can be shared to support the development of sites such as Bishopsgate Goodsynd.

Publishing sensitive financial information shared with the GLA under an expectation of confidentiality would deter these partners from sharing similar information with GLA in the future, particularly if they felt that the GLA would not treat information that could harm their economic interests with due care. This would ultimately hinder the ability of the GLA to deliver its stated objectives for London.

As noted in the same Information Tribunal decision:

Once you use private sector profit making organisations in order to help fund regeneration and to deliver infrastructure, social housing and other public goods, then inevitably considerations of commercial confidentiality and the need to avoid harm to commercial interests must be given full weight when assessing the public interests for and against disclosure

There is a strong public interest in protecting commercially sensitive decisions about price. There is also a specific public interest in preventing others obtaining a developer's knowledge or expertise, or expertise which a developer has paid for, for free.

It is also important to note the importance, and the reliance of local communities, on public/private sector partnerships to deliver affordable housing. There is a strong public interest in these developments succeeding and not being undermined.

Disclosure of some of the information covered by these provisions would serve to prejudice relations between the GLA with the DS2 in a situation where that relationship exists to serve the best interest of the public.

Conclusion

After weighing up the factors favouring disclosure and the factors favouring non-disclosure, the GLA's conclusion is that in all the circumstances of the case, the public interest in maintaining the exceptions outweighs the public interest in disclosing the information (EIR 12(1) (b))