

GREATER LONDON AUTHORITY

Housing & Land

Our ref: MGLA281014-0543

Date: 02 April 2015

Request for information pursuant to the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 – Former Southall Gas Works and Adjoining Land

I write to provide you with our response to request for information that the GLA received on the 27th October 2014.

May I take this opportunity to apologise for the time it has taken to provide you our final response to this request. The primary reason for this delay has been the amount of information that was covered by your request and the extent of our discussions with the relevant interested parties involved in the disclosure of this information.

I would like to thank you for your patience in this matter and I hope this delay has not inconvenienced you unduly.

Your request asked for the release of the following information:

1. A copy of the financial viability assessment submitted by the applicant prior to the grant of planning applications P/2008/3981-S and 54814/APP/2009/430 which were approved by the Mayor of London on 29 September 2010, together with any notes or other communication (including emails) which consider the viability assessment;
2. A copy of the report prepared by the District Valuation Office or an associated arm of the agency which review the submitted financial viability assessment referred to in (1) above;
3. Any other viability assessments or document concerned with the viability of the scheme received since the grant of planning applications P/2008/3981-S and 54814/APP/2009/430;
4. A copy of the un-redacted version of the Promotion Agreement relating to a proposed Compulsory Purchase Order for housing and regeneration at the former Southall Gasworks between the Greater London Authority (1) and St James West London Limited (2) and St James Group Limited (3) date 8 April 2014;

5. *All agreements, correspondence and documents relating to the acquisition of rights and land at Yeading and Hayes Football Club (whether temporary or permanent) and whether in draft or final form;*
6. *All agreements, correspondence and documents between Network Rail Ltd and the Greater London Authority or St James West London Ltd or any other company associated with Network Rail Ltd which relate to the acquisition of rights for the purpose of facilitating the development of the Scheme;*
7. *All agreements, correspondence and documents concerning land adjoining the A312 The Parkway and the Yeading Brook Relief Channel within Minet Country Park, Hayes. Title of which is currently vested in the London Borough of Hillingdon but is subject to a dispute with Transport for London under the GLA Roads and Side Roads (Transfer of Property etc) Order 2000. For the avoidance of doubt correspondence with the London Borough of Hillingdon itself is not required;*
8. *All information including reports and draft reports taken into account by the Mayor of London (including information supplied from other sources including consultants) in connection with the Compulsory Purchase Order at Southall Gasworks;*
9. *A copy of any agreement (other than the one referred to in paragraph 4), correspondence, minutes, and notes of meetings, and note of telephone calls between St James West London Ltd and Greater London Authority regarding or referring to the Compulsory Purchase Order or a proposed Compulsory Purchase Order; and*
10. *To the extent not covered by points 1-9 above, all information taken into account by any person within the Greater London Authority involved with advising (whether directly or indirectly) the Mayor of London in relation to the proposed Compulsory Purchase Order by the Greater London Authority, all documents setting out the reasons for recommending the Compulsory Purchase Order.*

Your request has been handled under both the Freedom of Information Act (FoIA) and the Environmental Information Regulations (EIR) and we can today provide you with our formal response to your request.

Parts 1 – 6 and 8 of your request have been handled under the EIR; parts 9 and 10 under both FoIA and EIR. We consider that the last two parts of your request cover information that is not “environmental information” as defined under regulation 2 of the EIR.

Further to our letter of the 9th January 2015 where we provided a partial response covering parts of your request, I can confirm that the GLA holds some of the information covered by your request and that we are able to provide you with this information.

For the sake of clarity, I have set out exactly what information is held by the GLA in relation to each part of your request, listing the titles of the documents disclosed with this letter, in **Annex A** to this letter.

After careful consideration, we have decided to withhold limited pieces of information that are covered by the exception to our duty to disclose information, found under regulation 12(5)(e) of the EIR. This provision exists to protect the confidentiality of commercial or industrial information where that confidentiality exists to protect a legitimate economic interest.

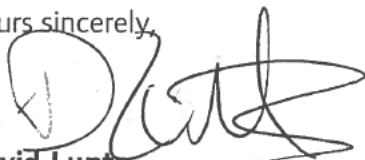
I have included the rationale behind our decision to withhold the specific information covered by this exception in **Annex B** to this letter.

Annex A also details where provisions of both the EIR and FoIA have been applied.

In accordance with our commitment to openness and transparency, and to meet the legitimate public interest in this matter, we have engaged this exception provision to withhold the bare minimum of information; the information that would be most prejudicial if released.

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Lunts', written over a circular stamp or seal.

David Lunts

Executive Director – Housing and Land

If you are unhappy with the way the GLA has handled your request, you may complain using the GLA's FOI complaints and internal review procedure, available at:

<http://www.london.gov.uk/mayor-assembly/gla/governing-organisation/freedom-information>.

Annex A – Information in-scope of the request

1. *'A copy of the financial viability assessment submitted by the applicant prior to...'*

The GLA holds the following information that is in-scope of this part of your request:

'West Southall Scheme Toolkit (Redacted).pdf'

2. *'A copy of the report prepared by the District Valuation Office or an associated arm...'*

The GLA holds the following information that is in-scope of this part of your request:

'DVS report (Redacted).pdf'

3. *'Any other viability assessments or document concerned with the viability of...'*

I can confirm that, as required under EIR regulation 12(4)(b), the GLA does not hold any information in-scope of this part of the request.

4. *'A copy of the un-redacted version of the Promotion Agreement relating to...'*

A redacted copy of the Promotion Agreement was released to you accompanying our letter of the 9th January 2015. For completeness, this document also accompanies this response letter.

'Promotion Agreement (redacted).pdf'

5. *'All agreements, correspondence and documents relating to the acquisition of rights...'*

I can again confirm (further to our letter of the 9th January 2015) that, as required under EIR regulation 12(4)(b), the GLA does not hold any information in-scope of this part of the request.

6. *'All agreements, correspondence and documents between Network Rail Ltd...'*

The GLA holds one document (entitled *'Heads of Terms for the acquisition of land from Network Rail in Southall'*) which is being withheld in full under regulation 12(5)(e).

7. *'All agreements, correspondence and documents concerning land adjoining the A312...'*

The GLA identified a significant volume of correspondence that was in-scope of this part of your request. This correspondence has been compiled into a single file for convenience. Minor redactions were made to remove names, direct contact details, email addresses and other personal data under section 40(2) of the Fol Act.

'All Correspondence.pdf'

8. *'All information including reports and draft reports taken into account by the Mayor...'*

Further to our letter of the 9th January 2015, we can confirm that the two Mayoral Decisions taken into account by the Mayor in connection with the CPO are published on the GLA website

- <http://www.london.gov.uk/mayor-assembly/mayor/mayoral-decisions/MD1404>
- <http://www.london.gov.uk/mayor-assembly/mayor/mayoral-decisions/MD1360>

9. 'A copy of any agreement (other than the one referred to in part 4)...'

10. 'To the extent not covered in point 1-8 above, all information taken into account...'

As explained in the main body of the letter, parts 9 and 10 of the request have been considered under both the Environmental Information Regulations and the Freedom of Information Act as they also relate, in areas, to non-environmental information.

Unfortunately, we are not able to provide you with any information requested in parts 8 and 9 of your request as we consider that these parts of your request are particularly broad in nature, particularly when considered in conjunction with the other eight parts of your request.

We are therefore refusing these parts of your request under section 12 of FoIA (where a request exceeds the appropriate limit) and consequentially under regulation 12(4)(b) of the EIR (where a request is "manifestly unreasonable").

In reaching this decision, we first considered the request under the provisions the Freedom of Information Act because any request for the release of information is technically a valid FoI request, and would include environmental information that would subsequently become exempt under section 39 of that Act.

These sections of the Act provide that the GLA is not obliged to comply with its duties under section 1(1) of the Act – i.e. our duty to confirm or deny what information is or is not held, and to supply any information held in response to a request – if to do so would exceed the 'appropriate limit'.

The 'appropriate limit' was defined by the Secretary of State of the then Department of Constitutional Affairs, in the Freedom of Information (Appropriate Limit and Fees) Regulations 2004. Section 3 and 4 of these Regulations provide that an authority can take in to account the costs it reasonably expects to incur in relation to an FoI request in regards to the following four activities associated with handling that request:

- (a) determining whether or not it holds the information,
- (b) locating that information, or document(s) which might contain the information,
- (c) retrieving the information, and
- (d) extracting the information from a document containing it.

The regulations then confirm that the appropriate limit (in the case of the GLA) is £450 and that any work estimated or carried out in respect of the above four activities is to be estimated at a rate of £25 per hour. Therefore, the GLA can refuse to handle an FoIA request for information under section 12 of the Act if it reasonably estimates that it would take more than 18 hours of work to carry out the above four activities in relation to that request.

In this case, and particularly in relation to part 9 of your request, the searches required to identify and locate any information that would be in-scope of this request would require wide-ranging searches to be conducted that would alone exceed this cost limit.

For example, to identify any information that might be relevant to these parts of your request, staff across both the *Planning and Housing and Land* directorates of the GLA would need to carry out searches. There are roughly 130 people working in these teams.

As a very conservative estimate, each member of staff, on average, might need a minimum of 15 minutes to conduct searches of all electronic and paper records that might be relevant to this request. This would total 32½ hours. We would further estimate that another 15 – 20 minutes

might be required to take to read and evaluate any potentially relevant documents or correspondence that might be found to ascertain if they contained the precise information you are interested in; another 32½ to 43 hours.

In total, we estimate that this would require between 65 and 75½ hours - £1,625 and £1,887.50

Therefore, in regards to the non-environmental information covered by parts 8 and 9 of your request, we are unable to confirm whether or not the GLA holds the requested information as it would exceed the 'appropriate limit' to conduct searches to locate that information.

Moving on to any environmental information that might be held in relation to parts 9 and 10 of your request, the provision of section 12 of FoIA would not apply because there is a separate right of access to environmental information under the EIR.

The Freedom of Information (Appropriate Limit and Fees) Regulations 2004 does not apply to the Environmental Information Regulations and there is not "cost limit" provisions provided under this legislation.

However, we feel that there is a direct correlation between the estimate above, the searches required to locate the broad categories of environmental information that you have requested, and our decision to refuse these parts of your request under regulation 12(4)(b) of the EIR.

We have considered that it is not possible to devise a search strategy that would allow us to only search for environmental information; we would have no way of knowing in advance which documents or correspondence would contain environmental information and which would not. The first-step of any searches would involve collating all the requested information (including information that would not be environmental information) before we could get to the stage of identifying and isolating the environmental information.

In other words, we would have to collate *all* of the requested information (both environmental and non-environmental) to be able to identify and isolate the environmental information. We therefore believe that the time and cost of locating and collating all of the information covered by both regimes has a strong bearing on our decision to decide that this part of your request is "manifestly unreasonable".

Given the extent of the searches required to locate information under FoIA, the additional work required to then identify and extract just the environmental information to be considered under the EIR, would represent a significant, and unreasonable, undertaking, particularly when considered in conjunction with, and in addition to, the large amount of work carried out to locate and address the other areas of your request.

I would stress that we do not doubt the serious intent behind your request and would be happy to work with you to refine this area of your request so that it is "more manageable" and allows us to more-readily identify and locate the specific information you are requested.

Annex B – Exemption provisions

EIR exception provisions

EIR 12(5)(e) – A public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

How the exemption applies to this information

Is the information commercial or industrial in nature?

The exempt information relates to an agreement between the Greater London Authority (GLA) and St James regarding use of the GLA's Compulsory Purchase Powers to support the redevelopment of Southall Gasworks site in the London Borough of Ealing. The information covered by this EIR exception is commercial in nature as it relates to the provision of services by the development partner, and other information of a commercial nature relating the Southall Gasworks development. This condition of the exception is therefore satisfied.

Is the information confidential under either the common law of confidence, contract, or a statutory bar?

The information was passed to the GLA under a duty of confidence and consequently under the expectation that they would not be widely accessed, circulated or distributed.

We would also argue 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 process whereby it was expected by both parties that certain information would be held in confidence.

We are however mindful of the views of the Information Commissioner (ICO) in regards to how this exception provision is engaged and applied, and we have also taken note of the recent decision by the Information Tribunal (EA/2013/0162)¹, in particular paragraph 42 which states:

'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 disclose.'

In this case, we have decided that specific pieces of information are protected by a legitimate obligation of confidence.

Is the confidentiality protecting a legitimate economic interest?

The information covered by this exception provision contains sensitive details about how the commercial deal is structured and would prejudice commercial negotiations with external partners and other potential developers if they were aware of how this deal was structured in comparison to potential future deals or later phases of development. Disclosure would cause harm to the commercial interests of St James; and that these can be considered to be legitimate economic interests.

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

In relation to the legitimate economic interests, we would make reference to the Information Commissioner's guidance, which states:

'Legitimate economic interests could relate to retaining or improving market position, 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

We believe that a number of legitimate economic interests of St James could be harmed or prejudiced by the release of these details. These include ensuring that their competitors do not gain access to commercially valuable information; protecting their commercial bargaining position in the context of any existing or future negotiations that they might be involved with; avoiding commercially significant reputational damage that might result from disclosure; and avoiding any disclosure which would otherwise result in a loss of revenue or income.

Furthermore, St James and the GLA individually have a number of regeneration schemes at various different stages of completion. Disclosure of some of this information would affect future agreements as those details would disclose information that would prejudice the Greater London Authority's ability to obtain best value from this and future development agreements and to attract future potential development partners.

The release of information falling within these categories could therefore:

- jeopardise and prejudice tendering negotiations;
- affect either GLA's or St James' commercial negotiating position opposite contractors;
- affect the ability of St James to secure competitive sales or leasing arrangements for the units that will be constructed;
- affect the ability of the GLA to achieve value-for-money on behalf of the public; and/or
- potentially delay the implementation of the proposed development.

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

The confidentiality will be adversely affected by disclosure

The disclosure of truly confidential information into the public domain would inevitably harm the confidential nature of that information by making it publically available. In turn, this will also harm the legitimate economic interests which are set out above, which the confidentiality is there to protect.

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

Public interest test (where applicable)

Considerations favouring disclosure

It is prudent 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 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 maintain 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 organisation 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 the sharing of confidential, sensitive financial information can be shared to support the development of sites such as the Southall Gasworks site.

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

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

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 and its partners in a situation where that relationship exists to serve the best interest of the public.