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**Freedom of Information Act 2000 (FOIA)
Request ID: REQ05187**

Dear Sir/Madam.

Thank you for your request for information relating to the Council's shares in the Ricoh Arena's management company, Arena Coventry Limited (ACL).

You have requested the following information:

I refer the council to the minutes of its full council meeting of October 7, 2014.

Under an agenda item entitled 'Asset Review' concerning a decision taken at that meeting to sell the council's shares in the Ricoh Arena's management company to London Wasps Holdings Limited, the minutes state that councillors debated and discussed the following...

- The commitment that any deal relating to the Ricoh Arena would not be approved unless the following three tests were satisfied:**
- (1) A good deal for the City**
- (2) The security and future of Coventry City Football Club**
- (3) The security and future of Coventry Rugby Club**

It has recently been alleged in the Press by leading councillors that this commitment to Coventry City Football Club in 2014 only referred to the period of the club's Ricoh Arena tenancy arrangements at that time, of up to four years. This is, despite the above contemporaneous wording regarding the commitment to CCFC's 'security and future' which guided councillors when considering their decision, and despite such comments being made in public at that council meeting and in the media by leading councillors at the time.

The council's Code of Conduct commits members to standards in public life regarding truthfulness, honesty, integrity, transparency and other tests.

My request is for the following related information, which I contend are matters in the public interest...

- 1. Any evidence to show that the commitment was indeed limited to CCFC's existing rental terms.**

It was always the wish and intention of Councillors that Coventry City Football Club was secure and remained playing in Coventry. This was stated in the debate as you have noted, but in making the decision the information that the Councillors had was in the attached Private Cabinet and Council Report (the Report), dated 7 October 2014, the information therefore at paragraph 2.3 was known.

As part of the Council's duty to advise and assist under s16 FOIA, you are advised that it was a requirement of the sale of the City Council's 50% share in Arena Coventry Ltd that the existing licence agreement between ACL and Coventry City Football Club was novated in full and without restriction and that there was no other restriction in the lease terms that would disadvantage CCFC in terms of being able to continue to play home matches at the stadium. At the time of the sale transaction as noted in the report referenced above, CCFC had made it clear that it would only consider a short term lease arrangement with a break clause as it pursued alternative stadium options.

The Council Report provided as part of the response to this Freedom of Information request makes it clear that the terms of the sale transaction ensured that there were no obstacles as part of the transaction that would impact adversely on the security and future of CCFC. Any subsequent agreement for any stadium tenant including the football club would be on the basis of a commercial agreement being reached between the relevant parties. In reality, this is no different to the position had the City Council retained an ownership stake in ACL which operated as an independent company with its own Board of Directors.

- 2. Any documentation which would provide further evidence of the commitment and tests set out in the minutes referred to above.**
- 3. Any documentation outlining how the council would, and has subsequently, satisfied the tests that the security and future of Coventry City Football Club would be protected.**

In relation to your Questions 2 and 3 please see attached the Report and response to question 1.

- 4. The share sale agreement concerning the transfer of the shares in ACL to London Wasps Holdings Limited.**

In relation to your Question 4 the information requested is exempt from disclosure under s41 FOIA as it is information that was provided to the Council in confidence.

SECTION 41 – INFORMATION PROVIDED IN CONFIDENCE

The Council is not obliged to provide information that has been provided in confidence to it. The share sale agreement is information that was provided in confidence. The

agreement is between two third parties. This document is not a Council document and has an actionable confidentiality clause attached.

The terms of this exemption in the FOIA mean that we do not have to consider whether or not it would be in the public interest for you to have the information.

The wording of s41 is as follows:

(1) Information is exempt information if—

- (a) it was obtained by the public authority from any other person (including another public authority), and*
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.*

(2) The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.

Section 41 provides an exemption to the right of access under the FOIA if release would be an actionable breach of confidence.

This exemption qualifies the right of access under the FOIA by reference to the common law action for 'breach of confidence'. According to that action, if a person who holds information is under a duty to keep that information confidential (a 'duty of confidence'), there will be a 'breach of confidence' if that person makes an unauthorised disclosure of the information.

The concept of 'breach of confidence' has its roots in the notion that a person who agrees to keep information confidential should be obliged to respect that confidence. However, the law has now extended beyond this: the courts recognise that a duty of confidence may also arise due to the confidential nature of the information itself or the circumstances in which it was obtained.

The concept of 'breach of confidence' recognises that unauthorised disclosure of confidential information may cause substantial harm. For example, the disclosure of a person's medical records could result in a serious invasion of that person's privacy, or the disclosure of commercially sensitive information could result in substantial financial loss. The law protects these interests by requiring the information to be kept confidential: if information is disclosed in breach of a duty of confidence, the courts may award damages (or another remedy) to the person or company whose interests were protected by the duty.

5. A copy of the lease extension to Arena Coventry (2006) Limited.

This a public document available at Land Registry, under title number: MM48996.

6. Any report sent to Coventry councillors setting out the details of the terms agreed in the above documents'

7. A copy of the report of the Assistant Director, Financial Management in relation to the Asset Review.

In relation to your Questions 6 and 7 please see attached the Report, which was sent to Councillors.

Some of the content has been redacted from the Report. The Council is of the view that the information that has been redacted is exempt from disclosure under s42 FOIA as it is information that is subject to legal professional privilege.

SECTION 42 – LEGAL PROFESSIONAL PRIVILEGE

Section 42(1) of the FOIA provides: “Information in respect of which a claim to legal professional privilege ... could be maintained in legal proceedings is exempt information.”

The information you have requested includes confidential communications made for the purpose of providing or obtaining legal advice about proposed or contemplated litigation including communications between lawyers and third parties made for the purposes of litigation.

The exemption under Section 42(1) FOIA is both qualified and class based. This means that there is no requirement to demonstrate any ‘prejudice’ that may occur to the professional legal advisor/client relationship of information if disclosed. The public interest test must be applied to consider whether or not the public interest in withholding the information outweighs the public interest in disclosing it.

Public interest considerations favouring disclosure:

- To help determine whether public authorities are acting appropriately. The Council is regarded as a public authority for the purposes of the FOIA and it is therefore, important that it is open and transparent in its activities and in its decision making processes.
- Ensuring that decisions of the Council have been made on the basis of good quality legal advice and demonstrate transparency in the decision making process through the provision of access to the information upon which decisions have been made.
- Providing reassurance to the public that the Council was acting appropriately, having been provided with all the relevant legal advice and that public funds were being spent appropriately.

Public interest considerations favouring non-disclosure:

- Disclosure of the information has a likely potential to prejudice the ability of the Council to defend its legal interests and is likely to expose the Council to potential legal challenge.
- It is also very likely to indirectly prejudice the Council by diminishing the reliance it can place on the information having been fully considered and presented without fear or favour. The former could potentially result in serious consequential loss, or at least in a disproportionate waste of Council resources and public funds in defending any unnecessary legal challenges. The latter may result in poorer decision-making because decisions taken by the Council may not be taken on a fully informed basis. This may result in increased expenditure being incurred and would not be an adequate use of public funds.
- Legal advice may be said to be ‘live’ in the sense that ‘it is still being implemented or replied upon as at the date of the request or In the case of *Department for the Communities and Local Government v Information Commissioner and WR4* it was held that the public interest in disclosure of privileged information is likely to be much weaker where the matter is still ‘live’. Given that the matter is ongoing, the Council would consider this to be a ‘live’ issue and as such, the public interest case for disclosure at this stage is therefore weaker.
- Furthermore, the Tribunal and the High Court have recognised that there is generally a very substantial public interest in maintaining the confidentiality of

legally privileged material, and that as such, equally weighty factors in favour of release must be present for the public interest to favour disclosure. In the case of *Bellamy v Information Commissioner (No. 1)*, the tribunal held that there is a 'strong element of public interest built into the privilege itself' and that it would require a significant public interest in the disclosure of the information in order to override that privilege. This was confirmed by the High Court in the case of *BERR v O'Brien*. As such, the Council consider that there is no 'significant' public interest in this case and as a consequence, the privilege is not overridden.

The public interest test is not an evaluation of what interests the public but rather consideration of whether the community benefit of possession of the information outweighs the potential harm. On weighing up the competing interests, the Council finds the public interest test favours withholding the information. The Council does not consider in the present case that there are weighty factors that favour disclosure and that given the nature of the information, and the likely adverse impact disclosure would have on the Council, withholding of this information at this stage is just and proportionate.

Indeed, in applying the principle in *Bellamy*, and the lack of a significant public interest, this would support the withholding of the information. The Council accepts that disclosure of information in full would contribute towards demonstrating complete transparency in the Council's decision making process, however, the Council considers that the disclosure of the information has a high potential to prejudice the ability of the Council to defend its legal interest. To this end, the Council engages section 42(1) and withholds the relevant redacted information in full.

The supply of information in response to a freedom of information request does not confer an automatic right to re-use the information. You can use any information supplied for the purposes of private study and non-commercial research without requiring further permission. Similarly, information supplied can also be re-used for the purposes of news reporting. An exception to this is photographs. Please contact us if you wish to use the information for any other purpose.

For information, we publish a variety of information such as: [FOI/EIR Disclosure Log](#), [Publication Scheme](#), [Facts about Coventry](#) and [Open Data](#) that you may find of useful if you are looking for information in the future.

If you are unhappy with the handling of your request, you can ask us to review our response. Requests for reviews should be submitted within 40 days of the date of receipt of our response to your original request – email: infogov@coventry.gov.uk

If you are unhappy with the outcome of our review, you can write to the Information Commissioner, who can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF or email casework@ico.org.uk.

Please remember to quote the reference number above in your response.

Yours sincerely

Information Governance