

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 8 April 2013

Public Authority: Olympic Delivery Authority
Address: One Churchill Place
London
E14 5LN

Decision (including any steps ordered)

1. The complainant requested information concerning the lightning protection system at the London Olympic Stadium and Aquatic Centre. The Olympic Delivery Authority (ODA) refused to disclose this information under the exception provided by regulation 12(5)(a) (adverse effect on international relations, defence, national security or public safety).
2. The Commissioner's decision is that the ODA applied regulation 12(5)(a) correctly and so it is not required to disclose this information.

Request and response

3. On 30 July 2012, the complainant wrote to the ODA and requested information in the following terms:

*"Please provide me with electronic copies of the following data for the Olympic Stadium and the Aquatic Stadium:

Lightning Risk Assessment"*
4. On 2 August 2012, the complainant made further information requests as follows:

*"1. Lightning Test Results for the [Olympic Stadium and Aquatic Stadium].

2. Lightning Risk Assessment for both stadiums.*

3. Lightning As Built Drawings for both stadiums."

5. The ODA responded initially on 15 August 2012. At this stage the complainant was advised that his requests of 30 July and 2 August 2012 would be dealt with jointly. It also extended the time for responding to 40 working days as permitted by regulation 7(1) where necessary due to the complexity and volume of the request.
6. The substantive response to the request was dated 15 October 2010; outside 40 working days from receipt of the requests. Some information was disclosed to the complainant. The remainder of the information, which the ODA described as "*Lightning as Built Drawings*", was withheld under the exception provided by regulation 12(5)(a) (adverse effect upon international relations, defence, national security or public safety).
7. The complainant responded on 15 October 2012 and requested an internal review. The ODA responded with the outcome of the internal review on 25 October 2012. The conclusion of this was that the refusal under regulation 12(5)(a) was upheld.

Scope of the case

8. The complainant contacted the Commissioner on 21 November 2012 to complain about the refusal to disclose some of the information he had requested. The complainant indicated in particular his objection to the argument of the ODA that disclosure of the requested information could have an adverse effect on national security.
9. The complainant made other information requests in his correspondence of 30 July 2012. Early in the case handling process it was clarified with the complainant that the scope of this case would cover only the requests set out above, hence none of the other requests made in the same correspondence are covered in this notice.

Reasons for decision

Regulation 2

10. The first question for the Commissioner to address here is whether the information is environmental in accordance with the definition given in regulation 2(1). Environmental information is defined within regulation 2(1) of the EIR as follows:

"any information in written, visual, aural, electronic or any other material form on –

(a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands...

(b) factors, such as substances, energy, noise, radiation or waste, emissions...affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...".

11. The information in question consists of drawings and other documents relating to the planning and construction of the Olympic Stadium and Aquatics Centre. The view of the Commissioner is that this information is 'on' a plan that falls within the scope of regulation 2(1)(c). The construction of these stadia clearly impacted on several of the elements of the environment listed in regulation 2(1)(a), including directly upon land and landscape, and also through factors listed in 2(1)(b) such as noise. As well as environmental effects that occurred during construction, the operation of these stadia is likely to have continued environmental impacts through such factors as waste and emissions.
12. The information in question is, therefore, environmental under regulation 2(1)(c) and it was correct to deal with the request under the EIR.

Regulation 12(5)(a)

13. The ODA has cited the exception provided by regulation 12(5)(a). This provides that a public authority may refuse to disclose information if its disclosure would adversely affect international relations, defence, national security or public safety. Consideration of this exception is a two-stage process; first, the exception must be engaged as disclosure would have at least one of the effects described in the exception. Secondly, this exception is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exception does not outweigh the public interest in disclosure.
14. Covering first whether this exception is engaged, the ODA has argued that disclosure would result in two of the adverse effects described in the exception; to national security and to public safety. Its argument on

these two effects is the same; that disclosure of this detailed information on these structures would assist those who may be planning terrorist strikes in these locations.

15. The Commissioner notes first that this argument is relevant to this exception. Terrorist activity is counter to national security and clearly a terrorist attack would harm public safety.
16. As to the likelihood of this outcome occurring, the Commissioner notes that the information includes diagrams that are very detailed about these structures. In particular, these provide significantly more knowledge about the layout of the interior of these structures than could be provided by viewing them from the outside, or from visiting the interior of them as a spectator at an event. For this reason, the Commissioner accepts that disclosure would place significantly more detailed information into the public domain than is currently available about these structures.
17. On the issue of whether there is a likelihood of these stadia being targeted for attack, the argument of the ODA is that these are high profile and will remain so in future. Therefore, these are possible targets for terrorist attack, even after the completion of the Olympic and Paralympic Games. The Commissioner acknowledges that these stadia are of a very high profile and that the intention is that these will continue to be regularly used venues with large crowds in attendance in future.
18. Of more importance, however, is the situation that existed at the time of the request, which is what this notice concerns. All of the requests in question in this case were made whilst the Olympic Games were ongoing. That the venues for the Games may have been targeted by terrorists was a major risk and much effort was spent on attempting to mitigate this risk.
19. Even if it were the case that these requests had been made after the completion of the Olympic and Paralympic games, it is likely that the Commissioner would have accepted that there was a possibility of these venues being targeted for attack owing to their continued high profile and the intention that these will continue to be used for events which many people will attend. As it is, that the requests were made whilst the Olympic Games were ongoing adds significantly to the weight of the ODA's argument that this exception is engaged.
20. The complainant argued essentially that the suggestion from the ODA that disclosure of this information could have a detrimental impact upon national security was simply not credible. Whilst the Commissioner can understand why a brief consideration of these requests and the

information that may fall within the scope of these would not suggest that national security concerns could be relevant, the Commissioner's published guidance on this exception¹ makes the point that '*relatively mundane information about primary civil infrastructure could also be of use to terrorists*' and that '*seemingly harmless information*' could aid terrorists if combined with other information.

21. It is not, therefore, necessarily the case that information must obviously relate to the arena of national security for this exception to be engaged. In any event, in this case the view of the Commissioner is that the national security implications quickly become evident once close attention is paid to the arguments advanced and to the content of the information.
22. On the basis of the content of the information and the circumstances surrounding these stadia, in particular at the time of the requests, the Commissioner accepts that this information could be of assistance to terrorists seeking to target these venues. Disclosure would, therefore, adversely affect national security and public safety and the exception provided by regulation 12(5)(a) is engaged.
23. Turning to the balance of the public interest, the Commissioner has taken into account here the presumption in favour of disclosure prescribed in regulation 12(2) and the general public interest in the ODA being open and transparent. He has also considered the specific factors that apply in relation to the information in question.
24. Covering first arguments favouring disclosure, these structures were built at a cost to the public purse of hundreds of millions of pounds. There is, therefore, a strong public interest in full disclosure of what this very large sum of public money was spent on.
25. As covered above, the requests were made at the time that the Olympic Games were taking place. As also covered, there is an intention that these venues will continue to be used in future and are set to be visited by many more people in the coming years. At the time of the requests there was a strong public interest in disclosure specifically related to the content of this information in order to reassure visitors to these venues for the Olympic and Paralympic Games that there was an effective

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[http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Detailed_specialist_guides/eir_international_relations_defence_national_security_public_safety.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/media/documents/library/Environmental_info_reg/Detailed_specialist_guides/eir_international_relations_defence_national_security_public_safety.ashx)

lightning protection system in place. This public interest is also ongoing in relation to the use of these venues in future.

26. Moving to those factors that favour maintenance of this exception, having found that disclosure would adversely affect national security and public safety, the Commissioner must also take into account the very significant public interest in avoiding these outcomes. In relation to public safety, it could be argued that the weight of the public interest in avoiding this outcome could be equalled or outweighed by the benefit to public safety that may result through disclosure of details of the lightning protection system. However, the Commissioner believes that the public interest in avoiding an adverse effect to public safety through terrorism is the weightier factor; he has found that this would occur through disclosure, whereas there is no evidence that the lightning protection system is defective.
27. The view of the Commissioner is that the public interest in avoiding disclosure that would have an adverse effect upon national security is of the most significant weight. Whilst this exception is qualified by the public interest and so the potential exists for information to be disclosed even where it is found to be engaged, for this to be the outcome there must be clear and specific public interest in disclosure of at least equal weight to the public interest in maintaining national security.
28. In this case the Commissioner does not believe that such a public interest exists. Whilst he has recognised valid factors in favour of disclosure, his view is that these are outweighed by the public interest in avoiding an adverse effect to public safety, and particularly to national security. The public interest in the maintenance of the exception provided by regulation 12(5)(a) outweighs the public interest in disclosure and, therefore, the ODA is not required to disclose this information.

Other matters

29. As noted above at paragraph 6, the ODA failed to respond to the requests within the time limit required by regulations 5 and 7. The Commissioner has made a record of this delay and this issue may be revisited should it arise again in any future cases.
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Right of appeal

30. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

31. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Graham Smith
Deputy Commissioner
Information Commissioner's Office
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