

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 5 March 2019

Public Authority: Lee Valley Regional Park Authority

Address: Myddelton House, Bulls Cross,
Enfield, Middlesex EN2 9HG

Decision (including any steps ordered)

1. The complainant has requested information relating to a film commissioned by Lee Valley Regional Park Authority (LVRPA).
2. The Commissioner's decision is that LVRPA is correct when it says the requested information is not environmental information. It therefore has no obligation to provide it under the EIR.
3. The Commissioner does not require the public authority to take any steps.

Background

4. On 8 January 2018, the complainant wrote to LVRPA and requested information in the following terms:

"Please provide a copy of the film made by Pinny Grylls, which I understand was commissioned by the LVRPA.

Please also provide details of any showings of the film for the LVRPA, or known to the LVRPA, with dates and locations and types of audience.

Please also provide details/documents of the commission as set out by the LVRPA, requirements for production and any showings and details/documents of Pinny Grylls' application, costings and synopsis of her project.

Please also provide any assessment of the project carried out by the

LVRPA, the usefulness of the film to the LVRPA, its value for money and the criteria used to measure the effectiveness of the project."

5. LVRPA responded on 8 February 2018. It provided the film proposal and invoice. However, it stated that there was an intention to publish the film on its website and cited section 22 of the FOIA. It stated that there was no official documented assessment of the film and no requirements for showings.

6. The complainant wrote to LVRPA on 2 March 2018 with the following request:

"I would like to ask for a description of the film or films delivered by Ms Grylls. Ms Grylls refers to 8-15 short films.

How many films were provided, what length is each film?

What are the films about? Do they have subject heads?

Do they conform to the description provided by Ms Grylls as a series of walks with up to fifteen different people from different backgrounds, as set out in her proposal? The short pieces showing on your website and YouTube do not include any interviews or statements by walkers and nor are any walkers identified.

Were any walkers used? Who was responsible for paying the walkers, as described in the proposal? Were these participants paid?

I note there seem to be three short films, one of which video 2 is loaded up on your site and two more then appear on YouTube when that video ends. It is unclear who loaded them up there. Was this done by the LVRPA?

Is this the sum of the films delivered? If not what else was provided?"

On 7 March 2018 the complainant further wrote:

"I also note that you did not answer my request for a copy of the film or films or refer to this in your response. I would again ask for a copy of the film or films."

7. LVRPA responded on 9 March 2018 and advised that it was not subject to the FOIA but that it had voluntarily adopted the process.
8. It provided its substantive response on 3 April 2018. It stated that there was one film submitted and it is 9 minutes 42 seconds long. Furthermore, it did not think the film was in keeping with the brief

provided and therefore did not publish it in its entirety. The films were placed on YouTube by the LVRPA.

9. Following an internal review LVRPA wrote to the complainant on 6 April 2018 refusing to provide the film, citing section 40(2) of the FOIA as its basis for doing so.
10. The complainant wrote to LVRPA on 10 April 2018 raising a number of issues regarding its response and the matter of 'permissions'. LVRPA responded on 25 May 2018 reiterating its position.

Request and response

11. On 29 May 2018 the complainant wrote to LVRPA again stating that he considered his request should have been dealt with under the EIR. He also made a further request for LVRPA's:
 - policy on contracts where consents and permissions are required and the requirements on the LVRPA to ensure that the necessary conditions have been met;
 - correspondence with Ms Grylls concerning the necessary consents and permissions;
 - details of the kind of activities LVRPA did not endorse and why it found them unacceptable.
12. LVRPA responded on 15 June 2018 and stated it did not have a policy on contract and it was the responsibility of Ms Grylls to establish relevant consents. It confirmed that it had provided the requested correspondence and gave examples of the unacceptable activities. Finally LVRPA confirmed that it had previously advised the complainant that the film would not be provided.

Scope of the case

13. The complainant contacted the Commissioner on 3 July 2018 to complain about the way his request for information had been handled and stated:

"I made this request under Freedom of Information but realised later that this should probably have been an Environmental Information Request. The Authority refused to provide the film even when I pointed out that it should have been an EIR."

14. The Commissioner notes that LVRPA are not subject to the FOIA and has voluntarily opted to adopt it. The Commissioner considers the scope of this case to be to determine if the request should have been considered under the EIR and if so, if LVRPA was correct to withhold it.
15. During the course of the Commissioner's investigation, LVRPA provided a further response to the complainant and agreed that it should have considered the request for information under the EIR as a new and separate request from the original Freedom of Information request.
16. However, it refused to provide the video under the exception set out in regulation 12(4)(a) EIR and maintained that it does not contain 'environmental information' as defined in regulation 2(1) EIR.

Reasons for decision

Is the information environmental?

17. The Commissioner has first considered whether the information requested is environmental in accordance with the definition given in regulation 2(1) of the EIR.
18. Regulation 2(1) states:

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on—

 - a. *the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
 - b. *factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, 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, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;*
 - d. *reports on the implementation of environmental legislation;*
 - e. *cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*

- f. *the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*
19. The test that public authorities should apply is whether the information is on or about something falling within the definitions in regulations 2(1)(a)-(f), and not whether the information directly mentions the environment or any environmental matter.
20. The EIR do not attempt to provide a definitive list of 'environmental information' but break down its scope into categories and within each category provide examples.
21. The information requested by the complainant relates to a film commissioned by LVRPA. The Commissioner commenced her enquiries by asking LVRPA if it had considered the request under the EIR, and to provide details of its decision.
22. In its further response LVRPA explained:
- "The video contains general footage of unknown persons undertaking activities such as small social gatherings, dog walking and religious ceremonies and of homelessness within mainly unidentifiable natural landscapes much of which cannot be verified as the Authority's land.*
- The Authority does not consider the release of the film to be in the public interest for the purpose of regulation 12(1)(b) EIR as the withheld video does not disclose information relating to any decisions made by Authority relating to the environment and for which the Authority can be held accountable."*
23. When considering this case, the Commissioner is mindful of the Council Directive 2003/4/EC which is implemented into UK law through the EIR. A principal intention of the Directive is to allow the participation of the public in environmental matters.
24. The Commissioner therefore considers that the term "any information...on" in the definition of environmental information contained in regulation 2 should be interpreted widely. It will usually include information concerning, about or relating to *measures, activities* and *factors* likely to affect the state of the elements of the environment. In other words information that would inform the public about the element, measure etc under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.

25. The Commissioner has also considered her own guidance¹ which provides examples of the environmental information outlined in regulation 2(1)(a).
26. In this case, it is her view that the film does not contain anything that is about or relating to *measures, activities* and *factors* likely to affect the state of the elements of the environment. It does not contain any information that would inform the public about an element, measure etc under consideration. In addition there is nothing relevant that would affect participation by the public in LVRPA's environmental decision making.
27. After careful consideration the Commissioner therefore finds that the information requested is not environmental information as defined in the regulations. As such LVRPA is under no obligation to disclose it to the complainant.

Other matters

28. The Commissioner notes that LVRPA initially responded to the request under the FOIA, which it is not legally obliged to do as it is not a public authority for the purposes of FOI.
29. It is the Commissioner's view that this extended and complicated the matter unnecessarily. Therefore she recommends that in the future, LVRPA first consider an information request under the EIR. In the event that LVRPA finds it is not environmental information it may consider disclosing it outside of the access regime but is under no obligation to do this.

¹ https://ico.org.uk/media/1146/eir_what_is_environmental_information.pdf

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Pamela Clements
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