

Freedom of Information Act 2000 (Section 50)
Decision Notice
Environmental Information Regulations 2004

Date: 1 August 2011

Public Authority: Olympic Delivery Authority (an Executive Agency of the Department for Culture, Media & Sport)
Address: One Churchill Place
Canary Wharf
London
E14 5LN

Summary

The complainant made a request under the Environmental Information Regulations 2004 (EIRs) to the Olympic Delivery Authority (ODA) asking whether there was any connection between radioactive contamination at the Olympic Park and a set of plinths described in a tender request. ODA responded that there was no connection between the management of contamination of their site and the plinths. The Commissioner decided, on the balance of probabilities, that ODA did not hold any undisclosed information within the scope of the request. ODA had an obligation under Regulation 9(1) to provide advice and assistance to the complainant. The extended answers that ODA gave, both in responding to the initial request and subsequently, complied with this obligation.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

2. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

The Request

3. The Commissioner notes that under the Act the Olympic Delivery Authority (ODA) is not a public authority itself, but is actually an executive agency of the Department for Culture, Media & Sport (DCMS) which is responsible for the ODA. Therefore, the public authority in this case is DCMS rather than ODA. However, for the sake of clarity, this Decision Notice refers to ODA as if it were the public authority.
4. On 10 January 2011 the complainant made a ten part information request to ODA which included the following question:

'Is there any connection with the radioactive contamination of the Olympic Park and the plinths described in this tender request?'

The Investigation

Scope of the case

5. On 10 March 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
6. The course of the Commissioner's investigation and his conclusions are set out in a letter emailed to the complainant on 28 June 2011, a copy of which is annexed to this Notice. It told him that ODA did not hold any undisclosed information within the scope of his request, and invited him to let matters rest there.
7. On 6 July 2011 the complainant told the Commissioner that the very minimal response that ODA should have given was a 'yes' or

'no' answer to his request which it had not done. Therefore, in his view it had not complied with the EIRs, and he asked the Commissioner to conduct an internal review of the case.

8. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Analysis

Substantive Procedural Matters

9. Regulation 9(1) of the EIR provides that –

'A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.'

Based on specific and repeated assurances from ODA to both the complainant and himself, the Commissioner decided, on a balance of probabilities, that ODA did not hold any undisclosed information falling within the scope of the request. ODA was not obliged to create a yes / no answer to the question. ODA did however have an obligation under Regulation 9(1) to provide advice and assistance to the complainant to give him an opportunity to reformulate the request to one in respect of which it might hold information. The Commissioner found that the extended answers that ODA gave, both in responding to the initial request and subsequently, complied with this obligation.

The Decision

10. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

11. The Commissioner requires no steps to be taken.

Right of Appeal

12. 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,

Arnhem House,

31, Waterloo Way,

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

13. 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.
14. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 1st day of August 2011

Signed

Jon Manners

Group Manager

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Annex – Information Commissioner's Office email of 28 June 2011 to the Complainant.

(Complainant)

28 June 2011

Dear (Complainant)

Environmental Information Regulations 2004

I refer to your complaint about how the Olympic Delivery Authority (ODA) dealt with your request for information of 10 January 2011. Your ten part request for information included, as item 10, the following:

Is there any connection with the radioactive contamination of the Olympic Park and the plinths described in this tender request?

ODA responded on 8 February 2011 saying that there was no connection with the management of their site and the plinths you had mentioned. On 14 February 2011 you asked ODA to review its response to item 10. ODA did so and told you the outcome of its review in its letter of 9 March 2011. ODA said that the question did not lend itself to an answer in the negative or in the affirmative since no radioactive contamination had been found other than the low levels of which you had already been informed. ODA said that there was no connection between the management of contamination of the Olympic Park site and the plinths. (There was a further exchange of views between yourself and ODA on 28 and 30 March 2011.)

You were not satisfied with ODA's response and complained to the Commissioner on 10 March 2011 about ODA's response to item 10 of your request.

As I think you may recall from having spoken with my colleague (name redacted), there is an arguable case for concluding that a simple 'yes' or 'no' answer would have met ODA's obligation to you under the EIRs in responding to your question - but that would have clearly not have been satisfactory for you.

We have now discussed the matter further with ODA who told the Commissioner that:

... Since only low levels of radioactive waste had been found on the Olympic Park site, it would be inaccurate and misleading to confirm a question which is based on the supposition that the Park is contaminated. We can only comment on how the low levels of waste found on the Olympic Park site have been managed, hence our response confirming that there is no connection with the management of contamination of the Olympic Park site and the plinths. We also confirmed that the plinths would not be used for the burial or containment of any (non existing) radioactive material. We believe this answers [your] request.

ODA has confirmed to the Commissioner by letter and in discussion that it does not hold any undisclosed information that falls within the scope of your request.

Since no relevant information is held by ODA, any Decision Notice on this complaint would be likely to record merely that ODA had dealt with your request in accordance with the requirements of the Regulations and that no further action is required of it.

On 17 May 2011, during our investigation, you also asked the Commissioner if it would be possible to also address the ODA response to item 4 of your 10 January request and whether Regulation 12(5)(a) had been correctly applied. You acknowledged that you had omitted to include this matter when requesting the internal review by ODA.

I explained that ODA would be fully within its rights not to respond substantively on item 4 since it had not an opportunity to review its initial refusal because you had not asked it to. As you will recall I put this matter to ODA and asked if it would nevertheless be prepared to consider item 4 but I am sorry to have to tell you that ODA did not agree to make a substantive response beyond what it has already told you – something which Regulations 11 and 18 of the EIRs fully entitle ODA to do.

There are now no further steps that we would expect ODA to take in relation to your complaint. However, if you wish to challenge the Commissioner's decision that there is no further action that ODA should take, then the Commissioner would provide you with a Decision

Reference: FER0379982



Notice which would enable you to take the matter to appeal before the First-Tier Tribunal (Information Rights). If you do wish the Commissioner to issue a Decision Notice, please let me know within 20 working days, namely by 26 July, otherwise we will let matters rest there.

Yours sincerely

(name redacted)
Senior Case Officer

Legal Annex

Environmental Information Regulations 2004 (S.I. 2004 No. 3391)

Duty to make available environmental information on request

5.—(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

(3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to a standardised procedure used.

(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

Advice and assistance

9.—(1) A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

(2) Where a public authority decides that an applicant has formulated a request in too general a manner, it shall—

(a)ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and

(b)assist the applicant in providing those particulars.

(3) Where a code of practice has been made under regulation 16, and to the extent that a public authority conforms to that code in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with paragraph (1) in relation to that case.

(4) Where paragraph (2) applies, in respect of the provisions in paragraph (5), the date on which the further particulars are received by the public authority shall be treated as the date after which the period of 20 working days referred to in those provisions shall be calculated.

(5) The provisions referred to in paragraph (4) are—

(a)regulation 5(2);

(b)regulation 6(2)(a); and

(c)regulation 14(2).