

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice**

Date: 16 January 2012

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 the ongoing negotiations between Lee Valley Regional Park Authority (LVRPA) and the Olympic Park Legacy Company (OPLC formerly known as the London Development Agency) over the sale or exchange of a piece of land owned by LVRPA known as the Eastern Land.
2. The Commissioner has considered LVRPA's application of regulation 12(5)(e) of the EIR to the remaining withheld information and he has decided that it does apply in this case. He also considers the public interest in favour of disclosure is outweighed by the public interest in maintaining this exception.
3. The Commissioner requires no further action to be taken.

Request and response

4. On 8 February 2011, the complainant wrote to LVRPA and requested information in the following terms:

"I am writing to request information concerning the LDA [London Development Agency] Olympic Agreement, Supplemental Agreement of 05/05/2006 and Second Supplemental Agreement of 12/05/2010.

[1] Please provide copies of any Deeds of Covenant and any other documents delivered to the LVRPA in respect of any novation of the LDA's rights and obligations (clause 27 of Olympic Agreement).

[2] If known, please give details of any rights and obligations under the agreements that have been retained by the LDA and not novated to the OPLC.

[3] Please confirm whether details of the Indicative Additional Land have been provided to the LVRPA pursuant to section 36A of the Second Supplemental Agreement, and if so provide copies of relevant correspondence and plans.

[4] Please confirm whether agreement has been reached and documented as to the revised extent of the Eastern Land, as in clause 33.3 and if so provide copies of the documentation."

5. The LVRPA responded on 2 March 2011. It released some information but refused to disclose the remaining requested information under regulation 12(4)(d) of the EIR.
6. Following an internal review the LVRPA wrote to the complainant on 2 June 2011. It stated that it remained of the opinion that the withheld information is exempt from disclosure under regulation 12(4)(d) of the EIR. It also informed the complainant that it considered this information was exempt from disclosure under regulations 12(4)(e) and 12(5)(e) of the EIR.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He confirmed that he remained dissatisfied with the LVRPA's handling of elements 3 and 4 of his request and disagreed that the remaining information was exempt from disclosure under the exceptions it cited.
8. During the Commissioner's investigation further information was released to the complainant. The remaining withheld information will be addressed in this notice and consists of the following:
 - The notes and advice added to 'document 2' by LVRPA's Chartered Surveyors [Chartered Surveyors name redacted]. (It is only the notes and advice that have been withheld, all other sections of this document were subsequently released to the complainant).

- The financial figure redacted from 'document 12', which represents the valuation of the land known as Eastern Land calculated by [Chartered Surveyors name redacted]. (Again all other sections of this document have been released to the complainant. It is only the financial valuation of the land that remains withheld at this stage).
9. The Commissioner will first consider LVRPA's application of 12(5)(e) of the EIR to the information described above. He will only go on to consider the other exceptions cited by LVRPA if he decides that regulation 12(5)(e) does not apply.

Reasons for decision

Regulation 12(5)(e)

10. Regulation 12(5)(e) of the EIR states that 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.
11. For the Commissioner to agree that regulation 12(5)(e) is engaged LVRPA must demonstrate that:
- the information is commercial or industrial in nature;
 - the information is subject to confidentiality provided by law;
 - the confidentiality is required to protect a legitimate economic interest; and
 - that the confidentiality required to protect a legitimate economic interest would be adversely affected by disclosure.
12. Regulation 12(5)(e) is also subject to the public interest. So, in addition to demonstrating that each of the four bullet points above applies, LVRPA must apply the public interest test and demonstrate that the public interest in favour of disclosure is outweighed by the public interest in maintaining this exception.
13. Concerning bullet points one and two of paragraph 11 above, the Commissioner is satisfied that these elements of the exception apply in this case. He will now explain why.

Is the information commercial or industrial in nature?

14. The remaining withheld information relates to ongoing commercial negotiations between LVRPA and OPLC regarding the disposal of a piece

of land owned by LVPRA known as Eastern Land in exchange for land adjacent to the Lee Valley Park. The Commissioner considers the potential sale or exchange of a piece of land is a commercial transaction and therefore the remaining withheld information is therefore commercial in nature.

Is the information subject to confidentiality provided by law?

15. The Commissioner considers “provided by law” will include confidentiality imposed on any person under the common law of confidence, contractual obligation and statute.
16. With regards to the financial figure that was redacted from ‘document 12’, the Commissioner notes from LVRPA’s submissions that this figure was [Chartered Surveyors name redacted]’ valuation on Eastern Land in August 2006. LVRPA provided the Commissioner with a copy of the terms and conditions of the contract between LVRPA and [Chartered Surveyors name redacted] and specifically referred him to clause 6.3, which reads:

“neither the whole nor any part of our report and valuation, nor any reference thereto may be included in any published document, circular or statement, or published in anyway without our written approval which may the form and context in which it may appear”.
17. LVRPA confirmed that this clause places it under a contractual obligation of confidence, which prevents it disclosing this information to the world at large without [Chartered Surveyors name redacted]’ permission. It advised that it had contacted [Chartered Surveyors name redacted]’ about the possibility of disclosing this information to the complainant but [Chartered Surveyors name redacted] had objected to such public disclosure.
18. For this information, the Commissioner is satisfied that LVRPA has provided sufficient evidence to demonstrate that it is under a contractual obligation to keep this information confidential and therefore that this element of the remaining withheld information meets bullet point 2 of paragraph 11 above.
19. However, the Commissioner does not consider this same clause applies to the notes attached to ‘document 2’. Clause 6.3 of the terms and conditions between LVRPA and [Chartered Surveyors name redacted] clearly states that this clause is applicable to valuation advice i.e. reports and valuations produced by [Chartered Surveyors name redacted] in respect of the valuation of LVRPA’s asset. The notes added to ‘document 2’ are not notes or advice about the valuation of the land but rather advice and notes relating to a draft of the Head of Terms LVRPA was negotiating with OPLC at the time of the request.

20. Although he is not convinced there is a contractual obligation preventing the disclosure of the notes and advice attached to 'document 2', the Commissioner is none the less satisfied that this information is protected by the common law duty of confidence.
21. LVRPA explained its relationship with [Chartered Surveyors name redacted] and that both understood the notes and advice were imparted in circumstances giving rise to a duty of confidence. It confirmed that there was an implied duty of confidence between the two parties to keep this information confidential due to the ongoing negotiations that were taking place between LVRPA and OPLC unless both parties agreed to its wider disclosure. As stated in paragraph 17 above, LVRPA recently asked [Chartered Surveyors name redacted] whether it had any objection to its disclosure and [Chartered Surveyors name redacted] confirmed that it did thereby reinforcing the implied duty of confidence that is owed to either party. LVRPA argued that the notes and advice have the necessary quality of confidence because their contents are not trivial or publicly available. They represent [Chartered Surveyors name redacted]' advice on a document which was in the course of completion at that time and relate to commercial negotiations that were still ongoing.
22. The Commissioner does not accept that there is an implied duty of confidence owed to both parties. He does not accept that LVRPA owes [Chartered Surveyors name redacted] a duty of confidence in respect of this information. This is because LVRPA employed [Chartered Surveyors name redacted] to provide advice on the land in question and the negotiations that were ongoing with OPLC. Any advice LVRPA received was advice it had paid for relating to its own asset. The Commissioner considers it is up to LVRPA to decide how this information is used or disseminated and therefore it does not owe [Chartered Surveyors name redacted] any duty of confidence in respect of this information.
23. However, the Commissioner does accept that [Chartered Surveyors name redacted] owes LVRPA's a duty of confidence because it was employed by LVRPA to provide advice on the draft document in question. The draft document and any other information would have been supplied to [Chartered Surveyors name redacted] on a confidential basis in order for it to provide the necessary expert advice LVRPA required in respect of its negotiations with OPLC. [Chartered Surveyors name redacted] would be fully aware that it should treat this information as confidential and not disclose this information or any of the advice it provided with regards to the ongoing negotiations without the consent of LVRPA. The Commissioner is satisfied that the duty of confidence owed by [Chartered Surveyors name redacted] to LVRPA is sufficient to meet the second bullet point of paragraph 11 above.

24. The Commissioner now needs to consider whether this information meets elements 3 and 4 of paragraph 11 above. These two elements will be addressed together.

Is this confidentiality required to protect a legitimate economic interest and would that confidentiality be adversely affected by disclosure?

25. In respect of 'document 2' LVRPA confirmed that the notes and advice added to the draft Heads of Terms initially provided by OPLC to LVRPA were added by [Chartered Surveyors name redacted] on 6 January 2011. At the time of the complainant's request LVRPA and OPLC were still negotiating over these Heads of Terms submitting changes and comments in relation to this document for each to consider. LVRPA argued that disclosure of this information at the time of the complainant's request would have adversely affected the legitimate economic interests of both LVRPA and [Chartered Surveyors name redacted].
26. Addressing [Chartered Surveyors name redacted] first, LVRPA stated that disclosure would reveal the advice and comments [Chartered Surveyors name redacted] provided in relation to the ongoing negotiations between LVRPA and OPLC relating to the Heads of Terms. LVRPA confirmed that disclosure would adversely affect [Chartered Surveyors name redacted]' ability to fulfil its duty and undermine its ability to provide a satisfactory service to LVRPA which would in turn affect its reputation as an expert property adviser and its overall economic interests.
27. The Commissioner has reviewed the requested information and he does not accept these arguments. The relevant consideration here is whether disclosure 'would' adversely affect the legitimate economic interests of [Chartered Surveyors name redacted] not 'might' affect or that there is a small possibility it would. He notes that [Chartered Surveyors name redacted] was employed by LVRPA to provide this advice and that [Chartered Surveyors name redacted] was commenting and advising on the interests of LVRPA. Its own economic interests do not therefore appear relevant to the circumstances of this case considering the contents of the remaining withheld information. As stated previously, whether the information is disclosed or disseminated in anyway is for LVRPA to decide having paid for [Chartered Surveyors name redacted]' services in this way. He cannot see how disclosure would adversely affect any further services [Chartered Surveyors name redacted] may provide, hinder its ability to fulfil any duty it is contracted to carry out or indeed damage its reputation.
28. As LVRPA has failed to demonstrate exactly how disclosure would have these effects, the Commissioner cannot accept these arguments.

29. Turning now to the legitimate economic interests of LVRPA, LVRPA argued that disclosure would adversely affect its ability to negotiate effectively with OPLC over the Heads of Terms. It confirmed that at the time of the request it was in the midst of negotiations with OPLC over these terms and disclosure at this stage would have revealed its position in advance creating an unlevel playing field. If its advice was revealed to the other side to the negotiations this would have placed LVRPA at a severe disadvantage.
30. The Commissioner is satisfied that these notes and advice contain recommendations for altering or suggesting revised terms to OPLC and in some cases point out the implications of accepting or not accepting such advice. The Commissioner accepts that disclosure of this information at the time of the complainant's request would have revealed to OPLC LVRPA's reasoning for wishing to alter certain terms and the implications it envisages should such revisions not be agreed. He agrees that the disclosure of this information at the time of the complainant's request would have placed LVRPA at an unfair disadvantage in these negotiations and revealed to OPLC any areas of strength and weakness LVRPA envisaged with a particular strategy. If LVRPA's ability to negotiate was hindered this would prevent it from securing the best terms it can which would in turn adversely affect the proposals being discussed and its economic interests.
31. For these reasons, the Commissioner is satisfied that regulation 12(5)(e) of the EIR is engaged for this information.
32. Turning now to 'document 12', LVRPA explained that this document is an internal briefing note dated 28 February 2011 for a meeting that was due to take place the following day to discuss the Option Land. The briefing note contains a valuation of the land which was provided to LVRPA by its external adviser [Chartered Surveyors name redacted]. Although the figure contained in this document was the valuation [Chartered Surveyors name redacted] placed on the land in 2006, [Chartered Surveyors name redacted] informed LVRPA that the value had remained relatively static since then and was therefore still current at the time the briefing note was drafted and the complainant's request.
33. LVRPA stated that the complainant's request was received at a crucial time. At the time of the request LVRPA was in the first stage of the land sale negotiation with OPLC. During this stage OPLC and LVRPA were discussing some principles and assumptions that needed to be agreed prior to any negotiations over the sale of the land commencing. Therefore, at the time of the request, no figures had been discussed or revealed by either party. The valuation was therefore both current and commercially sensitive.

34. LVRPA stated that its disclosure at the time of the complainant's request would have adversely affected its economic interests. The disclosure of the land valuation prior to any negotiations commencing over the sale of the land or its exchange would have revealed to the public and OPLC the valuation LVRPA had placed on the land and the amount it was wishing to achieve as a result of the negotiations. Disclosure at this stage would have revealed LVRPA's hand prior to any negotiations taking place or agreements being reached. This would have placed LVRPA at a disadvantage during the land sale negotiations that were forthcoming and severely hindered its ability to negotiate effectively and secure the best deal it could.
35. LVRPA stated that if its ability to negotiate was hindered it would then be unable to secure the best price or deal it can. OPLC would be aware of the valuation LVRPA had placed on the land in question which would give them a good idea of the deal they are hoping for. Disclosure could lead to LVRPA having to accept a reduced price or less advantageous deal at a cost to the public purse and the overall community.
36. LVRPA also argued that it felt disclosure of this valuation would adversely affect [Chartered Surveyors name redacted]' economic interests. It stated that disclosure would reveal the valuation it calculated to OPLC prior to the land sale negotiations taking place. If negotiations became protracted as a result of this disclosure or LVRPA was unable to secure the best price or deal that it could this would damage [Chartered Surveyors name redacted]' reputation in the market place which would in turn damage its economic interests.
37. Dealing with LVRPA's arguments that disclosure would adversely affect [Chartered Surveyors name redacted]' economic interests first, the Commissioner does not accept LVRPA's view.
38. As stated previously, LVRPA commissioned [Chartered Surveyors name redacted]' to provide professional advice in relation to the negotiations that are ongoing with OPLC. Part of the work that was required was for [Chartered Surveyors name redacted] to calculate a valuation for the land in question. It is the Commissioner's view that LVRPA paid for these services and received this information on receipt of a fee. It is therefore LVRPA's decision and indeed choice how this information is used or disseminated. The Commissioner cannot see how [Chartered Surveyors name redacted]' economic interests could be affected in anyway by disclosure.
39. Turning now the LVRPA's arguments that disclosure would adversely affects its own economic interests, the Commissioner accepts that the request was made at a crucial stage in the plans to sell or exchange the land in question. He notes at the time of the request LVRPA and OPLC had commenced early stage discussions over this proposal but no formal

negotiations had commenced over the actual sale or exchange of the land and no actual figures had been discussed or revealed by either party. The Commissioner accepts that disclosure of this information at this stage would have placed LVRPA at a commercial disadvantage when these negotiations did commence. It would have revealed to OPLC prior to any figures being discussed the value LVRPA places on the land in question and therefore its financial position prior to any discussions commencing. He accepts that disclosure would hinder LVRPA's ability to negotiate, create an unlevel playing field and possibly result in LVRPA having to accept a reduced price or a less favourable deal. The Commissioner accepts that such consequences would be at a cost to the public purse and the local community.

40. For the above reasons, the Commissioner is satisfied that regulation 12(5)(e) of the EIR is engaged for this information.
41. As the Commissioner has agreed that regulation 12(5)(e) does apply, he now needs to go on to consider the public interest.

Public interest test

42. The LVRPA stated that it accepted that disclosure would assist in the promotion of better government through increased transparency, accountability and understanding of its decision making process. It also confirmed that it understood disclosure would assist the public in understanding more clearly exactly what issues or matters were being discussed with OPLC over the sale or exchange of the land concerned. In addition, disclosure of the land valuation would enable the public to assess whether value for money has been achieved once the negotiations have finished, a price has been agreed and all other agreements have been reached.
43. No other arguments were submitted by LVRPA, as it considers the public interest in the disclosure of this information is low and is outweighed by the public interest in maintaining this exception.
44. It stated that disclosure of the remaining information would not be in the public interest, as its disclosure would adversely affect its legitimate economic interests. For both documents, it stated that there is a public interest in ensuring a fair and competitive environment for commercial negotiations. 'Document 2' detailed the professional advice it had received from [Chartered Surveyors name redacted] regarding the proposed Heads of Terms being negotiated with OPLC at the time of the request. The advice detailed recommendations for revised terms and highlighted possible strengths and weaknesses with a particular position. If this had been revealed at the time of the request and at a time when LVRPA and OPLC were still negotiating these terms it would have placed

LVRPA at an unfair disadvantage and hindered its ability to secure the best terms that it could with OPLC.

45. In respect of 'document 12' and the valuation of the land in question, again LVRPA stated that disclosure would not be in the public interest. It stated that disclosure would have revealed to OPLC the valuation it had placed on the land and the amount it wished to achieve prior to any negotiations commencing over the sale or exchange of this land. If OPLC had prior knowledge of the value LVRPA wished to obtain for the land this would create an unlevel playing field when the commercial negotiations do commence and hinder LVRPA's ability to negotiate effectively to secure the best deal. It may lead to LVRPA securing a reduced price or a less favourable deal which is not in the public interest in terms of expense or the local community as a whole.
46. The Commissioner has considered the arguments for and against disclosure. He accepts that disclosure would aid transparency and accountability and enable members of the public to understand more clearly the exact details of the discussions taking place between LVRPA and OPLC over the land in question. Disclosure would enable the public to scrutinise the actions of LVRPA and enable them to debate particular issues from a more informed position.
47. The Commissioner also accepts that the proposals involve the sale or exchange of a publicly owned asset and that members of the public will be particularly interested in ensuring value for money and the best deal is obtained by LVRPA in the commercial negotiations taking place. Access to the withheld information, particularly the valuation placed on the land, would enable the public to assess more clearly whether value for money has been achieved once a price or deal has been agreed.
48. However in this case it is the Commissioner's view that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining this exception. He will now explain why.
49. It is apparent from the submissions the Commissioner received from LVRPA that the complainant's request was made at a critical stage in the negotiations between LVRPA and OPLC over both the potential acquisition of Eastern Land and the Head of Terms. The request was made at a time when LVRPA was still in the midst of negotiations over the Heads of Terms and had only entered into very early stage discussions with OPLC over the sale or exchange of the land in question.
50. Disclosure at this time would have revealed valuable information to OPLC which could then have been used to the disadvantage of LVRPA. The advice and notes attached to 'document 2' suggested revised terms for LVRPA to consider and put to OPLC and highlighted the strengths and weaknesses of certain options either being considered by both sides at

the time or suggested by [Chartered Surveyors name redacted]. The Commissioner considers that if this information had been disclosed at the time of the request it could have been used by OPLC to better its position. Disclosure would have created biased and unlevel negotiations and could have prevented LVRPA from securing the terms it required. Such consequences would not be in the public interest. Disclosure would also have hindered LVRPA's ability to negotiate effectively in the remaining discussions with OPLC, which again would not be in the public interest.

51. In respect of the land valuation contained in 'document 12', disclosure at the time of the complainant's request would have meant that LVRPA's valuation of the land it wished to sell or exchange would have been in the public domain and available to OPLC prior to negotiations actually commencing over this element of the deal. OPLC would therefore have known what LVRPA was wishing to achieve from the negotiations prior to these commencing. This would have placed LVRPA at a severe disadvantage and hindered its ability to negotiate effectively and to secure the best price or deal that it can. The Commissioner considers disclosure in this case at the time of the complainant's request could have resulted in LVRPA having to accept a reduced price or a less favourable deal being agreed. These consequences again would not be in the interests of the public or the local community.
52. For the above reasons, the Commissioner has decided that the public interest in favour of disclosure is outweighed by the public interest in maintaining this exception in this case.

Right of appeal

53. 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

54. 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.
55. 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

**Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**