



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2013/0097

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice dated 6 April 2013
FER0474086**

Appellant: Alan Dransfield

First Respondent: Information Commissioner

Second Respondent: Olympic Delivery Authority

Heard in London on 14 January 2014

Before
John Angel
(Judge)
and
Roger Creedon and Narendra Makanji

Subject matter: regulation 12(5)(a) EIR - adverse effect on national security and public safety

DECISION

The Information Commissioner's decision notice dated 6 April 2013 is upheld but only to the extent it relates to the Olympic Stadium.

REASONS FOR DECISION

Background

1. The London Olympic Park in east London was a main venue for the London 2012 Olympic and Paralympic Games which took place between 27 July – 12 August 2012 and 29 August – 9 September 2012 respectively. Two of the main structures in the park are the London Olympic Stadium and the Aquatic Centre ('the Stadiums').
2. Mr Dransfield made a request for information on 30 July 2012 to the ODA for information about the Stadiums on seven different subject areas. One of the requests was for the Lightning Risk Assessment.
3. Mr Dransfield also made a complaint to the ODA's Planning Decisions Team. Following the response to his complaint, Mr Dransfield made a further request for information on 2 August 2012. This request sought information on three areas concerning lightning protection for the Stadiums. The three areas of requested information were on the Lightning Test Results, the Lightning Risk Assessments and the Lightning as Built Drawings for the Stadiums. The specific terms of the requests are set out in the Decision Notice dated 8 April 2013 ("DN") at §3,4.
4. Given the proximity in time and the subject matter of the requests, the Olympic Development Authority ("ODA") informed Mr Dransfield the two requests would be considered and dealt with jointly. The two requests will be referred to as "the Request".
5. On 15 October 2012, the ODA responded to the Request. Some information relating to lightning protection was disclosed. For the Olympic Stadium, the information provided was: the Method Statement Review Record and the London 2012 Main stadium Test and Inspection of the Lightning Protection System and Earthing System Test Results. For the Aquatics Centre test certificates were disclosed. The ODA confirmed that it held the *Lightning As Built Drawings* for the Stadiums. The lightning protection systems are drawn on the architect's detailed drawings which show all features of the stadium, including non-public spaces. These drawings were withheld under the exception at regulation 12(5)(a) the Environmental Information Regulations 2004 ("EIR") (adversely affect national security, public security etc.), with the ODA confirming the public interest in withholding the information outweighed the public interest in disclosure. These drawings will be referred to as the "Withheld Information".
6. Mr Dransfield requested an internal review of this decision on 15 October 2012. He stated that he was "not satisfied that National Security is a reasonable excuse for refusal of my FOI request". The ODA upheld the refusal to provide the Withheld Information under regulation 12(5)(a) by letter dated 25 October 2012.

7. Mr Dransfield made a complaint to the Commissioner on 21 November 2012 with specific reference to his objection that the disclosure of the detailed drawings could have an adverse effect on national security. The Commissioner clarified that the scope of Mr Dransfield's complaint related to the withholding of the detailed drawings showing the lightning protection system.
8. The Commissioner issued the DN on 8 April 2013. He upheld the reliance on regulation 12(5)(a) EIR (DN§13-22) and that the public interested weighed in favour of withholding the information (DN§23-28). The ODA was not required to take any steps.

Statutory framework

9. Mr Dransfield does not dispute the information at issue in this appeal is "environmental information", as defined in regulation 2(1) EIR. Regulation 2(1) provides in relevant part:

"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;

..."

10. The Commissioner and ODA consider the Withheld Information is environmental information under regulation 2(1)(c) – information on a measure. The information is on a plan of the Stadiums. Mr Dransfield does not disagree. We agree with the parties that the appeal should be considered under the EIR.

11. Regulation 12 provides in relevant part:

"(1) Subject to (2) ..., a public authority may refuse to disclose environmental information requested if—

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

....

(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—

(a) international relations, defence, national security or public safety;

The ODA are only arguing national security or public safety would be adversely affected.

12. The expression “national security” is not defined in the Regulations. In *Baker v ICO and the Cabinet Office* EA/2006/0045 the Information Tribunal was referred to the decision of the House of Lords in *Secretary of State for the Home Department v Rehman* [2001] UKHL 47 in the context of an appeal under FOIA and cited the following passages, inter alia, of the judgment:

- a. “national security” means “the security of the United Kingdom and its people.” (para 50 per Lord Hoffman);
- b. the interests of national security are not limited to action by an individual which can be said to be “targeted at” the UK, its system of government or its people (para 15 per Lord Slynn);
- c. the protection of democracy and the legal and constitutional systems of the state is a part of national security as well as military defence (para 16 per Lord Slynn).

13. The Commissioner’s guidance¹ on the exception contained in regulation 12(5)(a) makes the point that relatively mundane information about primarily civil infrastructure could be of use to terrorists and therefore could attract the exception provided by regulation 12(5)(a).

14. The Tribunal’s jurisdiction on appeal is governed by s. 58 of FOIA, which provides:

“(1) If on an appeal under section 57 the Tribunal considers—

- (a) that the notice against which the appeal is brought is not in accordance with the law, or
- (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.”

¹http://www.ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Environmental_info_reg/Detailed_specialist_guides/eir_international_relations_defence_national_security_public_safety.ashx. See also *Office of Communications and the Information Commissioner and T-Mobile (UK) Limited* (EA/2006/0078).

Preliminary matters

15. Prior to the hearing at least 8 case management notes had been issued. There had been extensive email correspondence the last of which, only a short time before the hearing, related to an application by Mr Dransfield to have a Deputy Commissioner of the First Respondent summoned to give evidence before the Tribunal. This was refused by the Registrar and considered afresh by the Chamber President who again refused the application on the basis that he could not see how the Deputy Commissioner could assist the Tribunal in its task. Mr Dransfield then sought permission to appeal this ruling to the Upper Tribunal. Permission was refused by the Chamber President on the basis the application raised no arguable points of law. Mr Dransfield then sought on 10 January 2014 a postponement of the hearing on the basis he would be appealing directly to the Upper Tribunal. This application was also refused by the Chamber President and Mr Dransfield was informed the hearing would be proceeding. Following this Mr Dransfield informed the FTT that he would not be attending the hearing. He then sent the FTT a number of emails over the weekend of 11 and 12 January 2014 raising various matters particularly relating to the skeleton arguments and references to previous decisions. The FTT responded that any applications would be considered at the hearing and not by way of email response at this late stage in the proceedings.
16. Mr Dransfield did not attend the hearing. The Tribunal considered whether it could proceed without him. Under rule 36 of 2009 Rules of Procedure *“if a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal –*
 - a. *Is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and*
 - b. *Considers that it is in the interests of justice to proceed with the hearing.”*
17. The hearing date was notified to Mr Dransfield several months before the hearing. Mr Dransfield does not challenge this. There had been extensive case management directions. The Chamber President had refused permission to appeal against his ruling to refuse to issue a witness summons. He also refused to allow a postponement. The other parties object to the hearing not proceeding on the day set down, inter alia, because of the costs incurred. We note that Mr Dransfield has sent an email to the Upper Tribunal seeking permission to appeal the Chamber President’s ruling of 10 January 2014. We also note that despite Mr Dransfield informing the FTT that he would not be attending he has continued to send a number of emails challenging the way the other parties have presented their skeleton arguments. Also he has provided his case in writing which is

part of the bundle before the Tribunal and many emails relating to the case.

18. Taking all this into account we find that it is in the interests of justice to proceed with the hearing.
19. We informed Mr Dransfield on 13 January 2014 that in relation to his recent email correspondence we would deal with any new applications at the hearing. As he has not appeared no applications have been dealt with.
20. We note that on 15 January 2014 the Upper Tribunal ruled in relation to the witness summons that it lacks jurisdiction to consider the application.

Issues for the Tribunal to decide

21. It is common ground that the Withheld Information is environmental information within the meaning of regulation 2(1) EIR. There are two issues to be determined by the Tribunal:
 - a. Whether regulation 12(5)(a) is engaged, in particular whether disclosure of the Withheld Information would adversely affect national security or public safety?
 - b. If regulation 12(5)(a) is engaged, whether in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information?
22. The Tribunal heard evidence in both closed and open session. The closed session was necessary in order to ensure that the Withheld Information was not disclosed in open session thereby undermining the legislation but with the necessary protections.

The evidence

23. Christopher Charles Pascoe gave evidence on behalf of the ODA. From 2006 until 2013 he was employed by the ODA as head of security and then Departmental Security Advisor.
24. The ODA is a Non-Departmental Public Body, sponsored by the Department for Culture, Media and Sport. The ODA was established by the London Olympic Games and Paralympic Games Act 2006 to give effect to the commitments made by the UK Government as part of London's bid to host the 2012 Olympic and Paralympic Games ("the Games"). The functions of the ODA related primarily to preparing for and delivering the preparations for the Games, including the delivery of infrastructure and the construction of venues in

connection with the Games.

25. The ODA is due formally to be wound-up during 2014. Operational responsibility for the safety and security of the venues and the wider Queen Elizabeth Olympic Park has already passed to the London Legacy Development Corporation (“LLDC”) who also holds a copy of the disputed information.
26. Prior to joining the ODA, Mr Pascoe served for 30 years in the Metropolitan Police Service (“MPS”). During his time with the MPS he was trained in all aspects of protective security including physical, personnel and information security by MPS, Home Office Scientific & Development Branch and the Centre for Protection of National Infrastructure (CPNI), which is the protective security arm of the Security Service. The last six years of his service were in a specialist role providing protective security advice for major construction projects such as Heathrow Terminal 5, the new Wembley Stadium and the Emirates Stadium. He was seconded from MPS into “The Bid Company” for London 2012 as a security advisor to the bid, and he joined the ODA when the bid was successful.
27. In his current role he continues to provide protective security advice as a consultant to the ODA, and specifically its Chief Operating Officer.
28. Security, including the security of the Games venues and infrastructure, was a crucial aspect of the planning and delivery of the Games. Games security was subject to oversight by both Cabinet Office and the Home Office. Police and security advisors from the MPS and the CPNI were seconded to ODA as part of delivering the ODA’s security strategy and objectives.
29. Security threats to the Games and the Games venues ranged from international terrorism, domestic terrorism, organised crime, domestic extremism and single action protest groups as well as more common everyday generic threats such as theft, criminal damage and unlawful protest. A comprehensive risk methodology was used to identify the risks that could derive from these threats and both MPS and the Security Service were involved in the development of both the risk registers and mitigation measures to reduce those risks.
30. The Games were a unique event and there were specific measures taken to reduce the impact of security threats and risks becoming a reality. These measures, whilst unique to the event, are still widely used in protective security mitigation elsewhere in Government and in the securing of Ministries and Embassies both in the UK and across the world. The protection of information regarding certain physical attributes and security measures relating to Games venues from disclosure to the wider world was a key measure in reducing the vulnerability of the Games venues leading up to and during the

Games and going forward. This also applies to other public buildings adopting similar security measures.

31. There was extensive security input into the design and construction of the Games venues, in particular the larger projects such as the construction of the Olympic Stadium, the Velodrome and the Aquatics Centre. Specific elements of this security advice were not included within the planning applications for the venues. Quite apart from concerns about publication of such information, the drawings which supported those applications were not sufficiently detailed as to incorporate detailed security elements or advice. After planning permission had been obtained, greater security overlay was incorporated into the design of the buildings and this level of detail is fully incorporated into the “as built” drawings which are not public documents.
32. The ODA security team was consulted about Mr Dransfield’s request for disclosure of the “as built” drawings relating to the lightning protection system used in the Olympic Stadium and the Aquatics Centre. The possibility of public disclosure of this information caused considerable concern because of the amount of detail on the “as built” drawings. The drawings reveal a number of features of the construction of the venues which could be of use to somebody who was planning to attack them or the people using them. Features such as the location and intended use of non-public areas (for example store-rooms, roof voids, air conditioning vents and escape routes) and information about the dimensions of walls in different parts of the buildings could also be of real assistance to somebody who was seeking to identify vulnerable points and areas. There was also particular concern about public disclosure of drawings which provide details of the architectural structure of the roof of the Aquatics Centre, as the roof of this structure is a key area of potential vulnerability and information regarding (for example) the weight distribution and location and size of roof supports could be of real assistance in planning an attack.
33. In relation to the Aquatics Centre, where the lightning protection drawings (attached to Test Certificates 5593(18M)/12 and B12D/4243/11 and Test Results) had subsequently been disclosed on 23 August 2013, Mr Pascoe was asked to confirm whether or not these drawings depicted any areas of sensitivity analogous to those shown on the still withheld Olympic Stadium drawings. He stated that they did not do so and that no details could be seen from the Aquatic Centre drawings. He also explained that these drawings were protectively marked during the Olympic Games but declassified after the Games had taken place in contrast with the Olympic Stadium drawings.
34. We have examined both sets of drawings (the Olympic Stadium equivalent in closed session) and it is clear that they are different in

detail. The features of concern mentioned by Mr Pascoe are not apparent on the Aquatic Centre drawings. We can understand why the ODA have now disclosed the latter. Therefore the only Withheld Information the Tribunal is concerned with relates to the Olympic Stadium and the remainder of the reasons for the decision concentrates on these drawings.

35. Mr Pascoe explained to us that the withheld drawings show varying degrees of detail of the internal layout and structure of the Olympic Stadium. Each drawing shows details which would not be apparent to a member of the public visiting the venues and these details would, in his judgment, be of potential use to a person planning to attack the venue.
36. Mr Pascoe commented that Mr Dransfield's request for information, dated 30 July 2012, was received during the Games and there was particular sensitivity at that time with regard to disclosing anything which might undermine, even in a minor way, the security of the venues. However, he would not take any different view today than the ODA took at that time. The Olympic Stadium continues to be used for important sporting and other public events, including the Rugby World Cup in 2015 and the World Athletics Championships in 2017, and as such remain high profile potential targets for attack. He urged the Tribunal to exercise extreme caution before requiring the disclosure of any information which could provide any assistance whatsoever to a person who might be considering/planning such an attack. He informed us that the methodology and techniques used to secure the Olympic Stadium were also applied more globally to UK embassies and other buildings and therefore were particularly sensitive.
37. In evidence before us Mr Pascoe explained that one of the withheld Olympic Stadium drawings had been accidentally disclosed to Mr Dransfield. In his view this was a mistake and should not have been disclosed. He also informed us that the information already disclosed to Mr Dransfield did provide a clear paper trail of the lightning risk to the Olympic Stadium including evidence that tests had been undertaken and that the disclosure of the detailed drawings would not provide further assistance in this respect.
38. In the papers before us Mr Dransfield has not provided any evidence to refute Mr Pascoe's evidence other than expressions of disbelief that disclosure of the drawings would be a risk to national security.
39. During the closed session Mr Pascoe was asked to
 - a. Explain what was shown on each drawing;
 - b. Highlight the areas of sensitivity for national security and public safety; and
 - c. To confirm whether or not those areas of sensitivity would have

been in any event apparent to a member of the public attending the stadium.

Is the exemption engaged?

40. Under the EIR there is harm test to be met before the exception is engaged. Under regulation 12(5)(a) it is necessary to show that the disclosure of the disputed information *would adversely affect ... national security or public safety*. We have set out above how the courts have defined “national security”.
41. The ODA argue it is not necessary to establish that such disclosure would in fact have caused an attack to be launched which might not otherwise be launched or that the particular information disclosed would, in and of itself, provide material assistance to an attacker – the value of the information may arise from it being taken in conjunction with other information which is already in the possession of an attacker. Therefore, the ODA argue, provided that the Tribunal is satisfied (a) that the venue is a potential target of an attack, (b) that the Withheld Information is of a type which could be of assistance to a person planning an attack on the venue, and (c) that the information is not already in the public domain, we should rule that the exception is engaged.
42. The Commissioner argues:
- a. As a matter of principle, terrorist activity is counter to national security and would harm public safety. To the extent that the disclosure of information facilitates the planning and carrying out of terrorist attacks, its disclosure will adversely affect national security and public safety;
 - b. The nature of the Withheld Information is such that disclosure would assist those who may be planning terrorist attacks against the Olympic Stadium.. The Withheld Information includes diagrams which contain detailed information about the structure and layout of the Stadium and provide significantly more knowledge about the layout of the interior of the structure than could be obtained by viewing them from the outside or from visiting the interior of the stadiums as a spectator at an event. Therefore, disclosure would place significantly more detailed information into the public domain than is currently available about this structure;
 - c. The Stadium is a high profile building. At the time of the request, namely during the hosting of the London 2012 Olympic Games, the Stadium may have been targeted by terrorists, this was a major risk and much effort was spent on attempting to mitigate this risk. Even after the completion of the Olympic and Paralympic games in London in 2012, there is a possibility that the venue would be targeted by terrorists owing to its continued high profile and role in hosting high capacity events..

43. Mr Dransfield argues that regulation 12(5)(a) is not engaged because i) he is not a terrorist, ii) the Withheld Information would not assist a terrorist and iii) the Commissioner reached a contrary view in relation to information sought by Mr Dransfield relating to lightning protection systems in the Met Office.

44. The Commissioner does not agree because:

- a. Whilst Mr Dransfield asserts he is not a terrorist, the personal characteristics and motivations of the Appellant are irrelevant to the determination of this appeal. Disclosure of the Withheld Information under the EIR amounts to disclosure to the world at large and are to be judged “applicant blind”.
- b. Whilst Mr Dransfield disagrees that the Withheld Information would assist a terrorist, the Commissioner and the ODA take a contrary view. Given that the Withheld Information consists of detailed diagrams and plans setting out the structure of the stadiums (including parts of the stadium which are not open to the public and could not be seen on visiting the stadium as a member of the public), the Withheld Information would put into the public domain detailed information which is not otherwise available that could be used by terrorists planning an attack against the venue. It does not appear to be in dispute that the Olympic stadium was at the time of the Olympics Games, and continue to be, high profile buildings which are the possible target of a terrorist attack
- c. Mr Dransfield submits that the Commissioner was not entitled to find that regulation 12(5)(a) is engaged in this case in circumstances where a different view was taken in relation to a similar request made by the Appellant which was dealt with in a decision notice of the same date (Decision Notice FER0474088). As a matter of principle, the Commissioner is required to consider the facts and circumstances of each complaint separately. The Commissioner is not bound by the conclusions reached in other decision notices, even where these arise in a similar factual context, as he is required to determine each complaint on its own merits, both by reference to the specific request and the nature of the information requested. Whilst the Commissioner recognises the importance of seeking to achieve consistency in the application of the relevant legislation, decision notices do not form a formal precedent. In any event, Decision Notice FER0474088 does not assist Mr Dransfield as the nature of the request is different from the present appeal. The Commissioner found that some of the information requested from the Met Office was exempt from disclosure under regulation 12(5)(a). In this case the ODA has explained in detailed how the disclosure of the Withheld Information would result in the harm set out in regulation 12(5)(a).

45. We have considered all these arguments. We are not bound by previous decisions of the Commissioner or other FTT decisions. It is recognised in this jurisdiction that if information is disclosed it is to the public at large. In our view the test for this exception to be engaged is that on the balance of probabilities national security or public safety would be adversely affected. It is no higher. We are entitled to rely on the evidence of a security expert like Mr Pascoe unless contrary expert security evidence is provided which is not the position in this case.
46. What do we know? The Withheld Information provides details of information not in the public domain and which potentially identifies vulnerable areas for an attack on the Olympic Stadium. Any such attack would be an attack on the UK's reputation and its people as well as visitors to the UK. An attack would clearly adversely affect public safety. We find that on a balance of probabilities the Withheld Information, if disclosed, would assist terrorists planning an attack on the Olympic Stadium even if it is only part of the information needed to plan an attack. It is part of the mosaic of information which enables terrorists to plan attacks.
47. In our view the disclosure of the Withheld Information would adversely affect national security and public safety. Therefore we find the exception engaged.

Public interest test

48. Having found the exception is engaged we now need to consider whether in all the circumstances of the case the public interest in maintaining the exception outweighs the public interest in disclosing the Withheld Information.
49. The ODA argue that the gravity of the matters protected by the regulation 12(5)(a) exception provides an extremely powerful public interest in favour of maintaining the exception. All possible measures should be taken to reduce the risk of a terrorist attack on the Olympic Stadium.
50. The principal public interest in favour of disclosure of the Withheld Information is that of ensuring that high profile public buildings are adequately protected against the risk of lightning damage and in informing the public as to whether or not that is the case. However, the ODA argue that is a lesser public interest than the interest in avoiding terrorist attacks and, crucially, it has been satisfied by the disclosure of information regarding the testing of the lightning protection systems in the Olympic Stadium and other design information which does not disclose details of building structure or internal layout.

51. Mr Dransfield himself noted in his grounds of appeal that his concern was with the absence of a paper trail to prove the existence of a lightning protection system and that a lightning risk assessment had been undertaken. The various test certificates and reports which have been disclosed to him the ODA argue are sufficient to meet that concern.
52. The Commissioner acknowledged in the DN that there are a number of arguments in favour of disclosure of the information:
- a. The Olympic stadium was built at a considerable cost to the public purse and there is a strong public interest in full disclosure of what public money has been expended on: DN § 24.
 - b. At the time of the requests there was a strong public interest in disclosure of information that would reassure visitors to the venue that there was an effective lightning protection system in place. This interest is ongoing in relation to the future use of these venues: DN § 25.
53. The Commissioner further considered a number of arguments in favour of maintaining the exception:
- a. If disclosure would adversely affect national security and public safety, there is a very significant public interest in avoiding these outcomes: DN § 26.
 - b. Whilst there may be a public interest in disclosure of details of the lightning protection system from the perspective of benefitting public safety, the public interest in avoiding an adverse effect to public safety through terrorism is the weightier factor: DN § 26.
 - c. There is no evidence that the lightning protection system is defective: DN § 26.
 - d. The public interest in avoiding disclosure that would have an adverse effect on national security is of most significant weight. In order for information to be disclosed which would adversely affect national security if disclosed there must be a clear and specific public interest in disclosure of at least equal weight to the public interest in maintaining national security. Such a public interest does not exist in this case: DN § 27 -28.
54. In considering all the arguments in favour and against the public interest the Commissioner reached the conclusion that the factors in favour of disclosure are outweighed by the public interest in avoiding an adverse effect to public safety, and particularly to national security.
55. Mr Dransfield argues in his grounds of appeal that given that the Stadium is to be used for future events and will be visited by many millions of people, it is in the public interest that the Stadium is provided with lightning protection systems and lightning risk

assessments. There is no evidence to suggest this is not the case, rather the reverse.

56. To the extent that Mr Dransfield argues that there is a public interest in the public being aware that sufficient protection systems exist it is noted that Mr Dransfield has already been provided with a number of documents which confirm that the Olympic Stadium has lightning protection systems and that testing of these systems has been undertaken. Some drawings of the lightning protection systems (although not detailed drawings of the stadium which reveal the structural designs or internal layout including non-public spaces) have also been disclosed to Mr Dransfield.

The public interest balance

57. Having set out all the factors for and against disclosure we now need to decide where the balance of the public interest lies.

58. In order to do this we need to consider when we should be applying the test. The case law suggests this is during the period between the date of the Request and the date of any internal review. In this case that is between 30 July 2012 and 25 October 2012. When the Request was made the Olympic Games was taking place followed by the Paralympic Games which finished on 9 September 2012. We can reasonably assume this was a period of heightened security alert and that this position would have continued over the following weeks which is the period in which we are required to consider the public interest test.

59. We find that at the relevant time there was a very strong public interest in preventing any adverse effect on national security and public safety, taking into account the points made by the Commissioner and ODA in the preceding paragraphs. Even if the relevant period for considering the public interest balance was later the fact the Olympic Stadium will continue to be used to stage world sporting events means that the strong public interest remains and is hardly diminished.

60. The public interest in favour of disclosure in relation to the public being assured that adequate lightning protection systems are in place is an important public interest. However in our view this interest has been largely satisfied by the disclosures already made and therefore the strength of the public interest is diminished.

61. We conclude having taken into account all the circumstances of this case and the arguments provided that the public interest in favour of maintaining the exception outweighs the public interest in disclosure.

Conclusion

62. We uphold the Commissioner's DN to the extent that it relates to the Olympic Stadium.

63. Our decision is unanimous.

Signed

John Angel
Judge

23rd January 2014