

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

**Date:** 9 May 2022

**Public Authority:** Lydd Town Council  
**Address:** [townclerk@lyddtown.org](mailto:townclerk@lyddtown.org)

**Decision (including any steps ordered)**

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1. The complainant requested various information in respect of the Rype Play Park. Lydd Town Council provided its revised Covid-19 Risk Assessment and following the Commissioner's intervention, provided the inspection sheets for the relevant time period. The Commissioner's decision is that Lydd Town Council has complied with its obligations under regulation 5(1) of the EIR. However, its failure to provide the inspection sheets within the specified timescales represents a breach of regulation 5(2) of the EIR. As the information has now been provided, the Commissioner does not require the Council to take any steps.

**Request and response**

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2. On 26 January 2021, the complainant wrote to the Council and requested the following information in respect of Ripe Play Park:
  1. Please provide a copy of the **council's revised Covid-19 Risk Assessment** for the Ripe Play Park.
  - 2 A copy of the register identifying when the Play Park was cleaned, dating back to 4<sup>th</sup> July 2020."
3. The Council responded on 4 February 2020. It attached a copy of its Covid-19 Risk Assessment and in respect of item two of the request, informed the complainant that the record sheets were not currently available due to a member of staff shielding.

4. The complainant was not satisfied with this response stating that there are many communication mediums available to allow the Council to comply with that part of their request.
5. Following an internal review the Council contacted the complainant on 22 February 2021 stating that it had consulted with a named Councillor who had in turn contacted the Health and Safety Executive (HSE). The HSE had advised that they are satisfied with the actions the Council had taken and on that basis the Council closed the case on the concerns raised.
6. Following the Commissioner's intervention, the Council recently sent the complainant the inspection sheets relevant to item two of their request.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 2 April 2021 to complain about the way their request for information had been handled. The complainant was not satisfied that the Council had not provided information in respect of item two of their request and alleged that its response on this issue was mis-leading and possibly factually false.
8. The scope of the Commissioner's investigation is to consider whether the Council has complied with its obligations under regulation 5(1) of the EIR.

### **Reasons for decision**

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#### **Regulation 5**

9. Under regulation 5(1) of the EIR, in response to a request for information, a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
10. In scenarios where there is some dispute between the information located by a public authority and the information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
11. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner

expects the public authority to conduct a reasonable and proportionate search in all cases.

12. In this particular case, the complainant has stated that there is no mention in the weekly reports about Covid cleaning which was the reason for the request as they wanted to see evidence that it had taken place.
13. The complainant added that they are suspicious that the reports have been generated as a 'desk top' exercise, plus the Town Clerk had not signed off acceptance of any them.
14. The Commissioner has considered the inspection reports and has no reason to believe that they are anything other than a genuine record of the cleaning of Ripe Play Park for the relevant time period, regardless of whether or not they provide the evidence the complainant expected to see. Furthermore, if they had been created as a 'desk top' exercise, the Commissioner would anticipate that they would be more likely to contain the information the complainant was seeking.
15. The Commissioner has concluded on the balance of probabilities that the Council has now provided all information it holds in respect of the request and has therefore complied with its obligations under regulation 5(1) of the EIR.

## Right of appeal

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16. 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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

17. 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.
18. 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 .....**

**Catherine Dickenson  
Senior Case Officer  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**