

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 August 2023

Public Authority: Sport England
Address: SportPark
3 Oakwood Drive
Loughborough
Leicestershire
LE11 3QF

Decision (including any steps ordered)

1. The complainant requested information from Sport England ("SE") regarding Clubmark accreditation and application for Coronavirus Emergency Funding (CEF). SE refused the request under section 14(1) of FOIA (vexatious request).
2. The Commissioner's decision is that the request was vexatious and therefore SE was entitled to rely upon section 14(1) of FOIA.
3. The Commissioner does not require any steps to be taken as a result of this decision.

Request and response

4. On 2 December 2022, the complainant made a follow up request for information this is contained in the annex at the end of this decision.
5. SE responded on 7 December 2022 and explained the process to follow if the complainant remained dissatisfied with its internal review outcome of the previous request. It also went into further detail explaining its previous responses and outlining the outcomes before citing section 14(1) of FOIA to refuse the current request, which they reiterated again on 23 March 2023 after further correspondence from the complainant.
6. The complainant contacted the Commissioner on 2 April 2023 stating the request was not vexatious as the documents are all in the possession of SE and are fundamental for the complainant's complaint on national safeguarding.

Scope of the Commissioners investigation

7. The focus of the Commissioner's investigation is to consider whether SE were entitled to rely on section 14(1) of FOIA regarding its response to this request.

Reasons for decision

Section 14(1) – vexatious requests

8. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious
9. The themes the Commissioner considers when deciding whether a request can be categorised as vexatious are: the burden (on the public authority and its staff); the motive (of the requester); the value or serious purpose (of the request); and any harassment or distress (of and to staff). But those broad themes are not a checklist and are not exhaustive; the Commissioner takes into account all the circumstances in order to reach his decision.
10. In its submissions to the Commissioner, SE has provided some background to the complaint. It advised the complainant's issues arose from a decision in November 2019 not to award Bannister Athletic Club (BAC) with a Clubmark accreditation and BAC's unsuccessful application for Community Emergency Funding (CEF) in April, May and September

2020. These decisions resulted in the complainant making several FOIA requests to SE to obtain information around these decisions.

11. SE has provided the Commissioner with a chronology of the contact it has had with the complainant since August 2021. The Commissioner notes from this that the complainant had also complained to the Parliamentary and Health Services Ombudsman (PHSO) about SE's decisions who had advised that SE's complaints process should be exhausted. Following this the complainant submitted a 68 page formal complaint to SE which included several information requests.
12. Whilst SE responded to the information requests they also responded to the complainant's formal complaint, resulting in a 91 page complaint appeal, a request for internal review and new information requests. SE states they provided all information held in response to these information requests with the exception of any information withheld under section 40(2) as personal data. Subsequent requests for similar information were refused by SE as vexatious.
13. When deciding to refuse this request as vexatious SE considered the information that had previously been requested and disclosed and the amount of time spent facilitating the complainant's requests along with the resources available to SE.
14. SE has highlighted one information request that asked for a transcript of SE's "notepad" database, this request was numbered 26 in a list of requests. SE refused this on the basis of section 14(1) stating:

"I have carefully considered 14(1) of the FOIA in proportion with the nature of your request in (26) in the Document and I am of the view that the request for all information including attachments is disproportionate and not viable due to the high volume of documentation requested. There is a high burden on a number of Sport England departments (particularly the IT and Investment Management departments) to locate and release these documents and our investigations have identified that there is no simple mechanism to extract the requested information. It is also important to note that a significant amount of the documents requested at (26) have been previously provided. If the purpose of your requests is to obtain information to support ongoing complaints and other FOIA requests with Sport England, then we are satisfied that all documents that are relevant to your concerns have been released."

15. SE argues that it has released information in the vast majority of requests and has only refused requests where they have been duplicated, information is exempt under section 40(2), requests would involve significant time and resources, or information is not held by SE.
16. To demonstrate the burden of the requests on SE's resources and time it conducted a page by page review of the documents listed on the notepad transcript and summarised. This amounted to 509 pages. SE reviewed all of these pages and determined that almost all of the information was already in the possession of the complainant as it was either documentation generated by the complainant or had already been disclosed to the complainant in response to a previous complaint or request.
17. SE explained its Information Governance Team is made up of a single Information Governance Manager, supported most of the time by a paralegal. The SE Legal Team (who consider all internal reviews as well as doing all other SE legal work) is made up of five lawyers. SE has estimated that, in total, the complainant's requests have taken approximately three weeks of time within the Legal Team alone. The requests have involved the time of at least 10 officers in three teams within SE and, as such, have had an adverse impact on their ability to focus on other core work.
18. SE considers the complainant's requests are taking up a disproportionate amount of time and if all of the FOIA requests SE handles took the same amount of time the current annual workload of the Information Governance Team would take six years to complete.
19. SE acknowledges that the complainant has a vested and strong interest in obtaining information relating to the decisions about Clubmark accreditation and CEF but SE considers it has disclosed all of the information that it can under FOIA. SE does not consider that responding to further repetitive requests would be proportionate given the adverse and unjustified impact it is having on its public resources.
20. The complainant provided the Commissioner with a list of his areas of concern with the decision by SE to refuse the request as vexatious:

“(1) I believe that my request for clarity was not vexatious, particularly as the documents requested are in the possession of SE. The documents requested are fundamental to a complaint related to a national safeguarding scandal (2) I believe SE has a history of failing to index disclosures, applying inappropriate exemptions, late responses,

using available extensions to the maximum (3) I believe SE used irrelevant information (an outstanding complaint) to conclude the matter was vexatious (4) I believe SE tied to the FOI process to the complaint process to justify delay to a safeguarding complaint; stated for your information as its relevant to the PHSO.”

21. The Commissioner has taken all of these arguments into account and has decided that SE is entitled to apply section 14(1) of FOIA to the complainant's request.
22. The Commissioner accepts the complainant has a clear and vested interest in the information and is seeking to prove wrongdoing by SE. SE argues it has provided all information it can in response to the requests, only redacting information where necessary and has responded to the complainant's formal complaint. The Commissioner notes that he has found in an earlier decision notice [IC-219577-R2V9](#) that SE had correctly redacted information under section 40(2) when responding to earlier requests and had, on balance, provided all the information it held. It seems that requests on this same subject are unlikely to elicit new information being disclosed and are seeking to continue communications with SE on a subject which has exhausted SE internal complaints processes. The complainant does still have avenues to challenge SE's decisions and handling of his complaints via the PHSO.
23. The requests clearly have purpose and value to the complainant but it is not clear that there is any wider purpose or value beyond this. The questions asked and information requested in this case are very specific to BAC and therefore likely only to be of interest to a limited audience. Whilst the Commissioner appreciates the complainant is of the view that there are national safeguarding issues at the heart of this, the Commissioner cannot see how the information in question would reveal any serious issues on a wider, national, level.
24. Whilst some parts of the most recent information request may not be overly burdensome to respond to it is the context of the request, along with the purpose and impact on the public authority that makes this request vexatious.
25. The volume of requests has not been substantial but it has not been insignificant given the requests have been in several numbered parts and have required SE to conduct extensive exercises to locate and extract information and consider redactions under section 40(2). The Commissioner notes that SE has, in the main, provided information where it has been located. The Commissioner is satisfied that the

burden to SE of complying with the request in this case is disproportionate to the value the request has at this point.

26. The Commissioner also notes that his view is that continuing to respond to requests under FOIA is not likely to satisfy the complainant but may in fact generate more requests and continue the desire to uncover the perceived wrongdoing by SE.
27. In the circumstances of this case, and on the basis of the evidence presented to him, the Commissioner is satisfied that SE was entitled to rely on Section 14(1) of the FOIA to refuse the request as vexatious.

Right of appeal

28. 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

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

29. 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.
30. 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

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annexe

"Thank you for your letter and disclosure in relation to 220127 and 210240 respectively. I am considering the information you have sent. I would be grateful if you would respond to the points of clarity arising from your internal reviews that are listed below.

FOIR 220127 Missing Disclosure (name redacted)

1. Re: FOIR 9. Please provide "Fwd Children Safeguarding ClubMark.msg" attached to the email disclosed, dated 12 Nov 2019 14:56 from CL to [names redacted]
2. Re: FOIR 9. In relation to an email disclosure dated 29 Nov 2019 at 11:51 please:
 - a. provide the referenced attachment "We found suspicious links.msg" and;
 - b. confirm no undisclosed records of that email being forwarded internally or externally to any other party and;
 - c. confirm that the email first came to the attention of your team on 22 Nov 2022 after it was surrendered presumably by the original recipient
3. Re: FOIR 9. Please provide the screenshot images embedded within the email dated 29 Nov 2019 at 12:08.

FOIR 210240 Missing Disclosure (redacted)

1. Re FOIR 1.18. Please provide the email with which [name redacted] forwarded the second site visit report to [name redacted] and any correspondence / discussion arising, including via Teams. The report was alleged to have been forwarded on 9 Mar 2020 but could have been between 28 Feb 2020 and 6 May 2020.
2. Re FOIR 1.18. The Teams correspondence dated 18 Jun 2020 appears to have omitted relevant prior sentences that could have set the context for introducing the club's CEF application into the topic context, please explain the omission.

3. Re FOIR 1.20. The Teams correspondence between [name redacted] / [name redacted] provided in response to 220127 demonstrated that [name redacted] corresponded with the CEF team at all stages (Apr, May, Jun, and Jul 2020). Please confirm that SE holds no undisclosed record of interactions between ([names redacted]) and any person internal or external in relation to BAC or its Chair by any means at any time?

4. Re FOIR 1.26. Please confirm if an email believed to be from [name redacted] dated 20 Apr 2020 at 13:44 was addressed to England Athletics (EA) and if so, please account for the response SE received from EA.

5. Re FOIR 1.26. Please explain why the email [name redacted] sent by blind copy to [name redacted] at EA dated 29 Oct 2020 was not included in your disclosure. Please provide and confirm the number of blind copied recipients and provide the FOIR information as requested.

6. Re FOIR 1.26. Please confirm that SE holds no record of a response from EA after [name redacted] sent the flawed ClubMark outcome to EA on 29 Oct 2020 by BCC.

Club Insurance 210240 (redacted)

The internal review disclosed for the first time an email dated 16 May 2019 at 16:41 sent by a CL ClubMark assessor to the SS National Assessor Lead. The CL assessor alleged that the club was uninsured which was totally untrue. I would be grateful if you would please address the following serious matters arising:

1. On what grounds did [name redacted] conclude that the club was acting in any way without the appropriate insurance
2. Explain what action [name redacted] took and whether any other organization was notified
3. Confirm whether the matter was raised at the monthly Club Matters Project Board meeting
4. Explain why the issue was not raised with BAC at any stage, given that the assessor had

escalated an allegation that the club was working with vulnerable people whilst uninsured

Chain of Custody 210240 (redacted) & 220127 (redacted)

Please explain the process of how you confirmed the existence of, evaluated and redacted information associated with:

1. 220127 (redacted) FOIR 5 and;
2. 210240 (redacted) the email trail dated 16 May 2019 at 16:41

Please confirm whether the procedure of securing information was any different at internal review.”