

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 February 2014

Public Authority: Sport Wales
Address: Sophia Gardens
Cardiff
CF11 9SW

Decision (including any steps ordered)

1. The complainant requested various information about National Governing Bodies of Sport (NGBs). Sport Wales initially refused the request under section 14 as it considered the request was vexatious. During the course of the Commissioner's investigation, Sport Wales withdrew reliance on section 14 and responded to the request. However, the complainant was dissatisfied with Sport Wales' response to one part of the request. The Commissioner has investigated and is satisfied that, on the balance of probabilities Sport Wales does not hold any further recorded information relevant to the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 18 February 2013, the complainant wrote to Sport Wales and referred to information contained in a letter from Sport Wales to his Assembly Member. He requested information in the following terms:

"Please may I enquire:

- What steps do Sport Wales take to reassure themselves that a National Governing Body (NGB) is accountable to a higher authority when it is initially recognised and also what ongoing steps do Sport Wales take to ensure that a NGB always maintains accountability to a higher authority?

- What appropriate action do Sport Wales take against a NGB when examples of poor governance and poor practice are identified and subsequently reported to Sport Wales?
 - What is the process and procedure when failures in the criteria for the continued recognition of a NGB are identified and reported to Sport Wales?".
3. Sport Wales responded on 19 February 2013 stating that "in line with a recent communication from my colleague [name redacted], Sport Wales has taken the decision not to respond to any further questions. Nevertheless, we will continue to provide you with any public documents you may require".
 4. On 17 June 2013, the complainant wrote to Sport Wales stating that he had never received an official communication confirming that "a ban exists backed up with a credible reason". He referred to other dealings between himself and Sport Wales and asked that Sport Wales provide a response to his request of 18 February 2013.
 5. On 28 June 2013 the complainant wrote again to Sport Wales expressing concern that he had not received a reply or acknowledgement to his email of 17 June 2013. He again referred to the fact that he had no record of having been officially informed that any of his requests had been deemed vexatious by Sport Wales. He asked Sport Wales to carry out an internal review of its decision.

Scope of the case

6. The complainant initially contacted the Commissioner on 1 July 2013 to complain about the way his request for information had been handled.
7. The Commissioner's initial investigation into this complaint was to determine whether Sport Wales had correctly applied section 14 to the request of 18 February 2013. This was handled under case reference number FS50503298. During the Commissioner's investigation, Sport Wales withdrew reliance on section 14 and on 7 October 2013 it responded to the three parts of the request.
8. Following Sport Wales' response the complainant contacted the Commissioner on 23 October 2013 stating that "there is an error with one of the answers".
9. Following correspondence between the complainant and the Commissioner, it was agreed that the Commissioner would investigate whether Sport Wales held any further recorded information relevant to part one of the request of 18 February 2013. A new case under

reference number FS50519216 was set up to deal with this new complaint. Part one of the request was for:

"What steps do Sport Wales take to reassure themselves that a National Governing Body (NGB) is accountable to a higher authority when it is initially recognised and also what ongoing steps do Sport Wales take to ensure that a NGB always maintains accountability to a higher authority?"

10. During the course of the Commissioner's investigation, Sport Wales provided some information relevant to the request, and stated it did not hold any recorded information in relation to the latter part of the request about ongoing steps taken to ensure that a NGB always maintains accountability to a higher authority.
11. The Commissioner wrote to the complainant on 16 January 2014 to advise that, based on the evidence available, on the balance of probabilities Sport Wales did not hold any further recorded information relevant to the request. The Commissioner pointed out that the FOIA only applied to recorded information held by a public authority and a public authority was not required to generate new information or answer questions, provide explanations or give opinions unless this is recorded information that they already hold.
12. Following further correspondence between the complainant and Sport Wales, the complainant advised the Commissioner that he wished to proceed to a decision notice.
13. In light of the above, the scope of the Commissioner's investigation into this complaint is to consider whether Sport Wales holds any further recorded information relevant to part one of the request of 18 February 2013.

Reasons for decision

Section 1 –General right of access

14. Section 1 of the FOIA provides that any person making a request for information to a public authority is entitled (a) to be informed in writing by the public authority whether it holds information of the description specified in the request and (b) if that is the case to have that information communicated to him.
15. In cases where a dispute arises over the extent of the recorded information that is held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and

arguments. He will also consider the actions taken by the authority to ascertain information falling within the scope of the request and he will consider if the authority is able to explain why further information was not held. For clarity, the Commissioner is not expected to prove categorically whether additional information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities"¹. Therefore, the Commissioner will consider both:

- the scope, quality, thoroughness and results of the searches and
- other explanations offered as to why further information is not held.

16. In relation to the first part of the request concerning the steps which Sport Wales take to reassure themselves that a NGB is accountable to a higher authority when it is initially recognised, during the course of the Commissioner's investigation, Sport Wales provided the complainant with a link to its recognition policy. Appendix 1 of the policy refers to the pre-application process and states that:

"Each organisation which expresses an intention to apply for recognition will be required to go through a pre-application process. The purpose of the pre-application process is to evaluate whether the organisation has a genuine case for full consideration for recognition, and to filter out those applications which will not meet the most basic requirements".

The pre-application process goes on to state that:

"The following criteria will apply to pre-application, all of which must be satisfied.....

- **Affiliation:** The governing body can demonstrate that it is affiliated to the UK (or Irish) governing body for its sport, and the sport's international governing body for the sport (where these exist)".

17. In terms of the searches carried out in order to locate any information relevant to the request, Sport Wales advised that it conducted a full search of its electronic document repository using the search terms "ongoing", "recognition". During the course of the Commissioner's investigation it also conducted a further search of its repository using the search terms "accountability" and "accountable" within 5 words of

¹ This approach is supported by the Information Tribunal's findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072

"governing bodies". These searches did not identify any information relevant to the request. In addition, Sport Wales consulted with the Manager and Senior Officer in its National Team who are responsible for dealing with NGBs. They confirmed that, under the arrangements currently operating, there was no recorded information held relating to any ongoing steps which Sport Wales might take to ensure that a national body always maintains accountability to a higher authority.

18. Sport Wales confirmed to the Commissioner that it currently has no procedures in place to ensure that, once recognised, an NGB always maintains accountability to a higher authority. By way of background information, Sport Wales explained that appendix 6 of the Recognition Policy document (which was provided in relation to the first part of the request) refers to a recognition review process being carried out every 4 years, which could lead to de-recognition of the NGB. Under the policy, each Sports Council across the UK is responsible for its own strategic decision on how it implements the detail of the recognition review process. Sport Wales advised that, along with two other Sports Councils, it does not currently carry out these reviews.

19. As further background information to support its position that no additional information is held relevant to the request, Sport Wales advised the Commissioner that:

"...in order to become a recognised governing body the body has to be affiliated to the relevant UK governing body and international governing body (where these exist). Affiliation to one or both of these national/international governing bodies means that they are accountable to that body in terms of following its rules. A number of governing bodies have been barred from practising their sport or prevented from competing at international competitions because they have transgressed the rules of the governing body to which they are affiliated. By implication this means that they are accountable to that body".

20. As part of the recognition process Sport Wales confirmed that it checks that all sports governing bodies which it funds are affiliated to the relevant UK governing body and international governing body (where these exist). Sport Wales considers affiliation as a formal measure of accountability and does not require any further evidence of a governing body's accountability to a higher authority.

21. Based on the representations provided by Sport Wales the Commissioner is satisfied that it has carried out adequate searches of all places and records where the information would be held. There is no evidence of any inadequate search or grounds for believing there is a motive to withhold information. Based on the searches undertaken and the other explanations provided by Sport Wales in relation to its

recognition policy associated with NGBs, the Commissioner is satisfied that, on the balance of probabilities, Sport Wales holds no further recorded information relevant to the scope of the complainant's request other than that which has already been disclosed to him.

Right of appeal

22. 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: GRC@hmcts.gsi.gov.uk

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

23. 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.
24. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF