

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 August 2015

Public Authority: Sport England
Address: 1st Floor
21 Bloomsbury Street
London
WC1B 3HF

Decision (including any steps ordered)

1. The complainant has requested from Sport England information relating to a planning application affecting Dundonald Recreation Ground Sport Facilities.
2. Sport England provided the complainant with some information and confirmed that it does not hold any further information falling within the scope of the request.
3. The Commissioner's decision is that Sport England does not hold any further information falling within the scope of the request. Therefore the Commissioner does not require Sport England to take any steps.

Request and response

4. On 11 February 2015 the complainant wrote to Sport England and requested information in the following terms:

"Re: FREEDOM OF INFORMATION ACT 2000 – INFORMATION REQUEST – COPY of any correspondence or documents received from or sent to Merton Council and the Secretary of State for Communities and Local Government in connection with the application 12/1058 (FROM 1ST December 2013 to date)

- 1. Any information or correspondence sent to Merton Council in connection with the application 12/P1058 and related applications.***

- 2. Any information or correspondence received from Merton Council in connection with the application 12/P1058 and related applications.*
- 3. Any information or correspondence sent to the Secretary of State for Communities and Local Government Merton Council in connection with the application 12/P1058 and related applications.*
- 4. Any information or correspondence sent to the Secretary of State for Communities and Local Government in connection with the application 12/P1058 and related applications."*
5. On 12 February 2015 Sport England responded. It provided the complainant with seven emails which it stated included the entire correspondence between Sport England and London Borough of Merton regarding this matter since 1 December 2013 to date. However, it confirmed that it does not hold any correspondence with the Secretary of State from Communities and Local Government during the period in question.
6. On 18 March 2015 the complainant made a request for an internal review and asked Sport England to confirm whether or not it held any further documents relating to his request.
7. Following an internal review, Sport England wrote to the complainant on 24 March 2015 and upheld its position that all the information that it holds relating to the request had been provided.

Scope of the case

8. The complainant contacted the Commissioner on 24 March 2015 to complain about the way his request for information had been handled.
9. The Commissioner will consider the scope of the request to be whether Sport England holds further information falling within the scope of the request.

Reasons for decision

Section 1 – information not held

10. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.

11. In scenarios where there is a dispute as to whether a public authority holds any recorded information falling within the scope of a request the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any recorded information falling within the scope of a request (or was held at the time of such a request). Without evidence to suggest that Sport England holds further information, this argument cannot carry weight.
13. During the investigation the complainant submitted some correspondence between Sport England and London Borough of Merton (the Council) regarding planning applications. The complainant argued that this was information that Sport England "*chose not to disclose*" and that Sport England should have corresponded with him and not to the Council.
14. The complainant expressed his dissatisfaction with Sport England and said he was concerned that it had concealed information which in his view is pertinent to an investigation by the Parliamentary Ombudsman. He stated that he believes that Sport England had colluded with the Council to cover up serious mistakes made during a planning application process. He said that the withheld emails are additional evidence of this.
15. These emails were not included in Sport England's disclosures to the complainant. Therefore, the Commissioner asked Sport England to explain why it had withheld these emails and to state whether it held further communications between Sport England and the Council relating to the planning applications which fall within the scope of the request.

Sport England's position

16. Sport England said that it had reviewed its records relating to the request and provided the complainant with a revised response on 12 May 2015. In its response, Sport England confirmed that at the time of his request, it did not hold the email (dated 30 October 2014) between Sport England and the Council that formed part of the request.
17. However, Sport England stated that it had identified four emails containing information of minor material significance that it believed to be deleted and considered should have been disclosed to the complainant initially. It provided un-redacted copies of these emails to the complainant and Sport England apologised for its oversight.

18. The complainant remained unhappy with the response from Sport England and he believes it is possible that other emails may have been deleted because they were wrongly considered "*not material*".
19. Sport England explained to the Commissioner its general approach regarding planning matters and that it only retains correspondence that contains information of material significance.
20. It went on to explain that Sport England is a statutory consultee on planning applications affecting playing fields and that it maintains a dedicated database to store correspondence with planning authorities regarding applications. It said that much of this correspondence is made up of emails and can involve many exchanges, some of which are of a trivial nature.
21. Sport England clarified its approach which is to store in its database only emails containing significant material information relevant to the application under consideration. It stated that it routinely deletes emails containing information of a routine nature or which have little significance.
22. In response to the complainant's original FOI request, Sport England said that it had searched its database for the correspondence pertinent to his request. It described how Sport England had retrieved six emails from its database and in addition, one relevant email was identified which was still held in an email account. Sport England confirmed that it disclosed the seven emails in full to the complainant.
23. The Commissioner asked Sport England for a copy of its retention policy and to provide him with information relating to deleted/destroyed information. He also asked Sport England whether any recorded information was ever held relevant to the scope of the request but deleted/destroyed.
24. Sport England stated that all information relevant to the request consisted of emails, some with attachments. It added that earlier emails within a string of correspondence would routinely have been deleted if superseded by a later exchange. Also, Sport England reiterated that emails that had no material significance would not have been kept e.g. business courtesies such as "*thank you for response*".
25. The Commissioner asked Sport England if recorded information was held but is no longer held, when did it cease to retain this information? Sport England explained that such correspondence is weeded on an ongoing basis to maintain the quality of files by removing duplicated information and information of no value.

26. In reaching a decision as to whether the requested information is held, the Commissioner enquired about a record of the document's destruction and if Sport England had one. Also if the information had been deleted, were copies made and held at other locations. Sport England answered no to these questions.
27. The Commissioner asked Sport England to further clarify its deletion of correspondence. He is satisfied with Sport England's explanation that it does not have the capacity to hold emails of no material significance that would take up space and increase costs. The Commissioner recognises that Sport England would have to retain all the substantive correspondence in relation to planning applications and that this would be a statutory function and a regulated area of its business.
28. Sport England argued that the complainant was opposed to the development in question which Sport England had been consulted on in its capacity as the Statutory Consultee on the loss of playing fields. It said that the complainant had challenged the development at each stage and he had argued that the matter should be referred to the Department for Communities and Local Government (DCLG).
29. Sport England confirmed that the development is a routine issue for the local planning authority and that there had never been any basis for the involvement of the DCLG. Therefore, Sport England argued that for this reason no correspondence with the Secretary of State at the DCLG has ever existed.

The Commissioner's position

30. The Commissioner considered whether Sport England had any reason or motive to conceal the requested information but he has not seen any evidence of this. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept Sport England's position that it does not hold any further information relevant to this request.
31. The Commissioner notes the complainant's concern regarding Sport England's explanation for deleting some information and his view that it is inconsistent and contradicted by facts. He also notes the complainant's belief that "*Destroying evidence which is potentially relevant to an investigation by a Government Authority is a highly questionable activity.*" However, he acknowledges that there can be a difference between what a complainant believes should be held and what is actually held.
32. On the balance of probabilities the Commissioner is satisfied that Sport England does not hold any further recorded information which is

relevant to the request. His decision is based on Sport England not having had any correspondence with the Secretary of State for DCLG during the period in question.

33. Also, the Commissioner has accepted that appropriate searches for the correspondence significant to the request were performed. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.

Right of appeal

34. 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

35. 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.
36. 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
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