

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2021

Public Authority: National Lottery Community Fund

Address: Apex House
3 Embassy Drive
Birmingham
B15 1TR

Decision (including any steps ordered)

1. Through a four part request, the complainant has requested monitoring information about the Archibald Corbett Community Library, Arts and Heritage Centre. The National Lottery Community Fund (NLCF) addressed one part of the request, advised it does not hold information relevant to two parts and relied on section 21 of the FOIA (information accessible to applicant by other means) to withhold information relevant to the remaining part.
2. The Commissioner's decision is as follows:
 - NLCF has addressed questions 1, 2 and 4 satisfactorily and has complied with section 1(1) of the FOIA with regard to those questions.
 - The information requested in question 3 is exempt information under section 21(1) of the FOIA as it is already reasonably accessible to the complainant by other means.
3. The Commissioner does not require NLCF to take any remedial steps.

Background and context

4. In its submission to the Commissioner, NLCF has provided the following background and context.
5. The National Lottery Community Fund is one of twelve distributors of National Lottery Good Cause Funding. It provides funding for community projects. This in essence means it funds eligible organisations to provide community led projects or projects beneficial to their communities.
6. NLCF's funding is project focused and its monitoring will be focused on the project that it has funded; its monitoring does not extend into matters that are outside of the fund's remit.
7. Similarly, while it considers concerns raised by members of the public, such as the complainant, regarding its funding it is not NLCF's role to become involved in personal disputes, or employment matters, between grant holder and service user, or employees.
8. NLCF has provided the Archibald Corbett Community Library, Arts and Heritage Centre with £210,000 for its project to develop the Corbett Community Library ('the Community Library'). This funding was provided in February 2019 with a project start date of 27 May 2019 and an end date of 27 May 2022.
9. The complainant has been corresponding with NLCF about the Community Library since November 2019. In that time, the complainant has submitted a number of FOIA requests for information associated with the Community Library (rather than for information about NLCF), to which NLCF has responded as appropriate.
10. At the time of the current request, information NLCF had already released to the complainant included:
 - A copy of its grant offer letter to the Archibald Corbett Community Library
 - 20181217-0020366949_Application form
 - Stage 2 Funding proposal
 - ACCLAHC Development Plan Budget
 - Action Engagement Plan
 - Corbett Community Centre Partnerships
 - Reaching Communities soft impacts and case studies
 - Terms & Conditions of Grant
11. This material had redactions made to it under section 43(2) of the FOIA (commercial interests).

12. NLCF works with eligible organisations of all sizes. Some that are established and others that are just embarking on their journey providing community projects. NLCF is also the biggest community funder in the UK. Disclosure of monitoring information produced to satisfy NLCF's legal obligation and policies to protect public funds, if highlighting gaps or process improvements, could be misinterpreted by other funders as an indication that an organisation should not receive funding. This may in turn inhibit an organisation's ability to access funding from alternative sources.
13. As NLCF engages primarily with charities and Community Interest Companies, grants and donations are a primary source of their funding. As such disclosure of said information could inhibit the commercial interest of the organisation and remove community services.
14. NLCF says that on 17 December 2020 the complainant wrote to NLCF attempting to re-open an FOIA request that had been concluded in November 2020.
15. NLCF has provided further detail on what it understands the complainant's relationship with the Community Library to be, but he does not intend to reproduce that detail in this notice.

Request and response

16. On 9 February 2021 the complainant wrote to NLCF and requested information in the following terms:

"As you previously stated, I do recognise that the Fund now considers that my initial freedom of information case [redacted] has been closed.

Therefore, please kindly accept this email as an entirely new freedom of information request:

1. Please will you tell me on which scheduled date(s) the year one monitoring report was due to be completed and returned by The Archibald Corbett Community Library?

2. Please kindly tell me, what date the decision was made by the Fund to wave the Archibald Corbett Community Library's year one annual monitoring report?

3. I also kindly request to have a blank 'template' copy of an annual monitoring report form that was required to be completed by the

Archibald Corbett Library. This will help to clarify what annual monitoring information the Fund normally would attempt to collect.

4. Finally, under this new request for information, I ask that you now send me the relevant document submitted to the Fund which will specifically mention the breakfast and afterschool club "Saplings", who are publicly advertised (ground floor tenants paying rent), based at the Archibald Corbett Community Library building in Catford, SE6, London (since 2016 / 2017)."

17. NLCF responded on 17 February 2021. In that response, NLCF addressed Q1, advised the information requested in Q2 is not held and advised that Q3 was a new request for information and applied section 21 to that request. With regard to Q4, NLCF advised that this part was similar to an earlier request the complainant had submitted and confirmed that it does not hold the requested information.
18. NLCF's response concluded by discussing section 14(1). It indicated that it considered aspects of the request to be vexatious and concluded by advising: "...if we receive requests for the same information from you regarding Archibald Corbett Community Library they will be rejected on the basis of it being vexatious as defined by Section 14 of the Act."
19. The complainant requested an internal review on 13 April 2021 and, following intervention by the Commissioner, NLCF provided one on 21 June 2021. It upheld its response and advised that it would categorise any further correspondence about the Community Library as vexatious.

Scope of the case

20. The complainant first contacted the Commissioner on 15 May 2021 to complain about the way their request for information had been handled.
21. The Commissioner's investigation has focussed on whether NLCF holds recorded information within scope of questions 1, 2 and 4 of the request and whether the information requested in question 3 is exempt from disclosure under section 21(1) of the FOIA.

Reasons for decision

Section 1 – general right of access to information held by public authorities

22. Under subsection 1(1) of the FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the

authority holds the information and, under subsection (b) to have the information communicated to them if it is held and is not exempt information.

23. NLCF's submission has addressed its response to each of the complainant's four questions.
24. Question 1 was for the scheduled date(s) the Community Library was due to complete and return its year monitoring report. NLCF has confirmed that its response to this question was 'May' and clarified that May 2020 was the scheduled date. Given the complainant's ongoing correspondence with NLCF, the information NLCF had previously released to them, and their own knowledge of the Community Library the Commissioner considers that it is reasonable to assume the complainant understood the scheduled date to be May 2020. To the degree that this question is a valid request for recorded information, rather than a more general question, the Commissioner considers that NLCF addressed this question satisfactorily.
25. Question 2 was for the date when NLCF made the decision to waive the Community Library's one year monitoring report. In its response to this question NLCF explained to the complainant that they had misinterpreted its response to a previous request. NLCF advised it had not 'waived' the Community Library's year one annual monitoring report. In its previous response NLCF had advised that due to the ongoing COVID pandemic the Community Library's report had been delayed at NLCF's request because NLCF needed to reallocate its resources and prioritise funding.
26. In its submission NLCF has confirmed that it does not, and cannot hold, information pertaining to a decision that it did not make. NLCF says it did not, as the complainant alleges, 'waive' the Community Library's year one annual monitoring report. As such, it cannot hold information on the date when it made such a decision.
27. NLCF has gone on to say that it considers this aspect of the request to be vexatious as, in NLCF's view, the complainant has wilfully misinterpreted its response to the complainant's previous request and used this as a basis to file further requests.
28. It is not quite clear what NLCF's position is here – whether its position is that it does not hold the requested information or that it considers this part of the request to be vexatious. Since NLCF has advised the complainant and the Commissioner that it does not hold the requested information, the Commissioner has considered it as a held/not held matter. He agrees with NLCF that, since it did not decide to 'waive' the Community Library's year one annual monitoring report, it cannot hold

recorded information on the date when such a decision was taken. As such, the Commissioner finds that NLCF has addressed this question satisfactorily.

29. In its submission NLCF went on to say that if the complainant was asking when a decision was taken to *delay* [Commissioner's emphasis] the Community Library's year one annual monitoring report, this decision was taken in response to the COVID pandemic and in response to Government guidelines.
30. As discussed, the Community Library's one year monitoring report was due in May 2020. However, the Government announced the first COVID-19 lockdown on 23 March 2020, and this was extended for 'at least' three weeks on 16 April 2020. The Commissioner considers it is reasonable to assume that NLCF took a decision to *delay* the Community Library's monitoring report within that short window between 23 March 2020 and 1 May 2020.
31. In Q4, and in relation to the Community Library, the complainant has requested the relevant document submitted to it that specifically mentions the 'Saplings' breakfast and afterschool club.
32. In its submission, NLCF confirmed to the Commissioner that in its response to the complainant it had advised them that they appeared to have repeated an aspect of their previous request and reproduced the wording of that previous request. NLCF had gone on to advise that its position was that it did not hold this information. It had explained that FOIA requests would only cover information held by NLCF at the time the request was received and that the Act would not compel NLCF to seek information from third parties in order to respond to requests for information.
33. NLCF confirmed that it has no interest in 'Saplings' nor the other Community Library 'tenants'. Its funding has been provided to the Community Library for the purpose outlined above, in compliance with the terms and conditions of its funding. NLCF says it is not involved in the day to day management of the Archibald Corbett Community Library, Arts and Heritage Centre's project. It will not seek to collect information from that organisation about 'Saplings' or other 'tenants' as such tenants have no connection to its funding.
34. NLCF again indicated in its submission that it considers this aspect of the request to be vexatious as the complainant has wilfully misinterpreted its response to their previous request and used this as a basis to file further requests.

35. Again, the Commissioner was not clear whether NLCF now considered these parts of the request to vexatious, or whether it was maintaining its position that it does not hold the requested information. He asked NLCF to confirm what its position is and on 14 December 2021 NLCF confirmed that it does not hold information within scope of Q4 of the request.
36. Having considered NLCF's explanation above, the Commissioner is satisfied that NLCF does not hold the information requested in Q4.

The Commissioner's conclusion

37. To summarise, the Commissioner is satisfied, on the balance of probabilities, that NLCF does not hold information within scope of Q1 and Q4 of the request and does not hold the specific information requested in Q2. NLCF's response to these questions therefore complies with section 1(1) of the FOIA.

Section 21 – information reasonably accessible to the applicant by other means

38. Section 21(1) of the FOIA says that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
39. Section 21 provides an absolute exemption. This means that if the requested information is held by the public authority, and it is reasonably accessible to the applicant by other means, it is not subject to the public interest test.
40. Question 3 of the request is for a blank 'template' copy of an annual monitoring report form that the Community Library would be required to complete and submit to NLCF.
41. In its submission to the Commissioner NLCF has confirmed that in its response to this part it had provided the complainant with a link to the relevant area of its website¹. This area provides a detailed overview of the monitoring information NLCF collects, broken down under a number of headings.

¹ <https://www.tnlcommunityfund.org.uk/funding/managing-your-grant/over-10k/progress-updates>

42. It is apparent that there is not a specific, annual monitoring report form that NLCF asks organisations to complete and submit to it. It is up to projects such as the Community Library to draft their own reports drawing from the above, published monitoring information that NLCF expects to collect. Therefore, NLCF does not hold a template copy of any such monitoring report.
43. The Commissioner is satisfied that the NLCF does not hold an annual monitoring report form template. Having reviewed the area of NLCF's website to which NLCF directed the complainant, the Commissioner is satisfied that information relevant to question 3 is published on its website.
44. NLCF says that the complainant has not made it aware of any reason that would preclude them from using a computer or accessing the internet. The fact that the complainant's requests have all been submitted via email which suggests to NLCF a basic level of IT literacy.
45. The complainant has not indicated to the Commissioner (or NLCF) that they cannot access the internet. The Commissioner's decision is that information within scope of the complainant's request is already reasonably accessible to them and is therefore exempt information under section 21(1) of the FOIA.

Right of appeal

46. 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

47. 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.
48. 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

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