

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 June 2023

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

Decision (including any steps ordered)

1. The complainant has requested various items of correspondence, minutes and information in documents relating to Sport England, Bannister Athletics Club (BAC) and other parties' communications. Sport England provided some information with redactions made under section 40(2) for personal data and stated other information was not held.
2. The Commissioner's decision is that Sport England has correctly applied the provisions of section 40(2) to redact names and contact information and that, on balance, it has provided all the information it holds following reasonable searches.
3. The Commissioner does not require further steps.

Request and response

4. On 28 February 2022, the complainant wrote to Sport England and requested, within a wider document, information in the following terms:

"Complaint 1.8 Sport England must provide all communications between Ms Benson and the Children and Young People Team referred to in Ms Benson's email dated 30 Oct 2018

Complaint 1.9 Sport England must provide the minutes to the meeting between Ms Benson and England Athletics dated 20 Nov 2018

Complaint 1.10 Sport England must provide all correspondence between Ms Benson and the CPSU referred to in Ms Benson's email dated 15 Oct 2018 and 26 November 2018

Complaint 1.18 Sport England must provide all communications between Mr Judge and Ms Benson related to BAC or its chair in the period 29 Nov 2019 – 29 Oct 2020

Complaint 1.20 Sport England must provide a record of all communications between Ms Benson / Mr Judge and the CEF team related to BAC

Complaint 1.26 Sport England must provide all correspondence between Ms Benson / Mr Judge and England Athletics related to BAC or its chair in the period 1 Aug 2018 – present

Complaint 2.28 Sport England must disclose how many other organisations were penalised for holding a) a reserve and b) a reserve of less than 3-months

Complaint 2.34 Sport England must provide the exact statement from BAC where it confirmed it had no contracted staff

Complaint 4.2 Sport England must provide the input it provided to Verita in response to factual accuracy checking of the draft stage-2 report"

5. The wording of request 2.28 was refined and accepted by Sport England following email correspondence on 24 March 2022. The wording in the quoted request above is the agreed refined request.
6. On 25 April 2022 Sport England wrote to the complainant and disclosed some information in the form of documents but with redactions for personal data under section 40(2) of FOIA. Sport England also addressed request 2.34 (the exact statement from Bannister Athletics Club (BAC) where it confirmed it had no contracted staff) – stating this information was not held. Sport England stated the remaining requests would be addressed following an extension to consider the public interest test.
7. Sport England responded on 24 May 2022. It disclosed emails in relation to 1.8, 1.9, and 1.10, For 1.18, 1.20 and 1.26 it disclosed some information but withheld other information under sections 41 and 43 of FOIA. For 4.2 all information held was withheld under sections 41 and 43 of FOIA.

8. On 7 August 2022 the complainant asked Sport England to carry out an internal review in relation to the applications of section 40(2), 41 and 43 of FOIA to redact and withhold some of the requested information.
9. Sport England conducted an internal review and responded on 25 November 2022. It confirmed information had been provided in relation to part 2.28 with redactions under section 40(2) FOIA. Sport England upheld all redactions made under section 40(2) FOIA. It did not uphold the application of sections 41 and 43 FOIA and said that this information would be disclosed with redactions under section 40(2) as it considered appropriate.

Scope of the case

10. The complainant contacted the Commissioner on 9 November 2022 to complain about the way their request for information had been handled.
11. The Commissioner confirmed the scope of his investigation was to be to determine if further information was held in relation to parts 1.8, 1.9, 1.10 and 2.34 and whether Sport England was correct to make redactions to the information provided in relation to parts 1.18, 1.20, 1.26 and the modified 2.28. The Commissioner also explained he would determine if further information was held in relation to these parts.

Reasons for decision

Section 40(2) – third party personal data

12. Section 40 of FOIA allows a public authority to withhold information that is the personal data of third parties where there would be no lawful basis, under data protection law, for the information to be published.
13. The information that has been redacted all identifies particular individuals. The Commissioner has viewed the unredacted documents and notes the information is the names and contact information of junior individuals who either work for Sport England or with organisations which they corresponded with.
14. The complainant has provided an extensive spreadsheet detailing their concerns with the responses given by Sport England – with regard to the redactions made under section 40(2) the main argument presented is that unredacted names are required as there is a legitimate interest in issues affecting safeguarding and transparency around supplier relationships. The complainant believes all parties involved to be senior.

15. As mentioned above, the Commissioner has viewed the redacted information and considered this alongside the explanations given by Sport England about their staffing structure and who is considered a junior member of staff and maintains that the names redacted are not those of senior staff.
16. It is common practice for a public authority to argue that the names of junior officials are exempt from disclosure under FOIA on the basis of section 40(2) as disclosure would contravene the principles set out in Article 5 of the GDPR. Furthermore, unless there are very case specific circumstances, the Commissioner accepts that the names of the junior officials are exempt from disclosure on the basis of section 40(2) of FOIA. This is in line with the approach taken in the Commissioner's section 40 guidance¹.
17. Therefore, in this case the Commissioner adopts the reasoning set out in these previous decision notices² which found that the names of junior officials were exempt from disclosure on the basis of section 40(2) of FOIA.

Section 1 – information held

18. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
19. In cases where a dispute arises over the extent of the recorded information that was 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 check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
20. By way of background to the requests Sport England explained that there is a history of correspondence between itself and the complainant stemming from decisions made by Sport England to not award Bannister Athletic Club (BAC) a Clubmark accreditation in 2019 and to reject an application by BAC for Coronavirus Emergency Funding (CEF) in April, May and September 2020. The complainant has made several requests under FOIA to Sport England in relation to its decision making, alleging there was wrongdoing and inconsistency.

¹ [Requests for personal data about public authority employees \(ico.org.uk\)](https://ico.org.uk/requests-for-personal-data-about-public-authority-employees)

² [FOIA-EIR decision notice template \(ico.org.uk\)](https://ico.org.uk/foia-eir-decision-notice-template) paragraphs 49-71 and [ic-110922-t9r1.pdf \(ico.org.uk\)](https://ico.org.uk/foia-110922-t9r1) paragraphs 39-62

21. In the complainant's correspondence with the Commissioner about this complaint they provided a spreadsheet detailing each request, what was provided, what they considered the Commissioner should do/ask for and what information was, in their view, missing.
22. Particular issues highlighted included a .pdf of a Microsoft Teams Chat provided in response to part 1.18 that the complainant believed was not the full Chat transcript as it had missing 'starts' and 'ends'. Similarly a Teams Chat provided in response to request 1.20 was alleged to be incomplete as the chat implied information exchanges had occurred between various Sport England employees on other dates. In relation to request 1.26 the complainant alleges Sport England has failed to disclose information such as an email sent to England Athletics that they state England Athletics confirmed was sent. In relation to 4.2 the complainant stated a document dated 17 December 2020 was attached to an email and that email had not been provided.
23. The Commissioner asked Sport England to explain how it had identified the information it had disclosed and what searches it had conducted to ensure no further information was held.
24. Sport England addressed request 2.34 firstly – this asked for the exact statement from BAC that confirmed it had no contracted staff. It informed the Commissioner that:

"This information has already been provided to [complainant's name]. Please see attached the 22 page document of response which Sport England sent to [complainant] on 28 April 2022 in response to their 70+ complaints. You will see, on page 14 of 22, the following answer to that complaint:-

"As stated, it is not a question of BAC stating they had no contracted staff but the answer to the question "*Do the coaches have contracts of employment?*" (IP email 19th May 2020 @ 17:06) provided in the response dated 21 May 2020 12:41 did not give any indication they did. While only confirmation was provided that the "*club has not contracted staff through a PAYE scheme.*" no other mention of different types of contracts was presented."

In short, Sport England has never claimed that BAC made an exact statement which "confirmed it had not contracted staff". What we have said, repeatedly and clearly, is that BAC never advised us that it did have contracted staff. For absolute clarity, Sport England does not hold any document from BAC in which it confirms that it has no contracted staff; Sport England arrived at this conclusion because of other statements made by [name redacted] in forms/correspondence with us."

25. The Commissioner considers this comprehensively answers this part of the request and confirms no information is held in relation to 2.34.
26. Turning to the other requests; Sport England provided the Commissioner with details of how it had dealt with the requests and searched for relevant information. In providing this information Sport England stressed they had spent a substantial amount of time responding to requests from the complainant to date.
27. It explained on receipt of this request Sport England searched its electronic Grant Management System – this includes the details of all applications, both successful and unsuccessful. All information in this system is stored by applicant name and is fully searchable. Sport England expects this system to contain the majority of the information requested, if held. In addition to this Sport England asked relevant staff to undertake email searches of their Outlook accounts to locate any information within the scope of the complainant's request.
28. The Commissioner understands that the complainant is not convinced that they have been provided with all the information falling within the scope of their request. It is not the Commissioner's role to establish what information a public authority should hold, or whether it has a requirement, statutory or otherwise to hold certain information. Nor will the Commissioner undertake a forensic examination of all records held by a public authority if it is not proportionate to do so. The Commissioner's role is to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
29. Based on the evidence available to him, the Commissioner is satisfied that Sport England has carried out adequate searches, which would have been likely to locate information falling within the scope of the request. Based on the searches undertaken and the other explanations provided, as referred to above, the Commissioner is satisfied that, on the balance of probabilities, Sport England does not hold any additional information falling within the scope of the request other than that which it has already disclosed.

Right of appeal

30. 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

31. 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.

32. 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