

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 April 2018

Public Authority: Sport Wales

Address: foi@sport.wales

Decision (including any steps ordered)

1. The complainant requested copies of correspondence concerning the Welsh Crown Bowling Association. Sport Wales confirmed that it had provided all the information it could on the matter in question and referred to a previous decision notice issued by the Commissioner. During the course of the Commissioner's investigation Sport Wales confirmed it considered the request to be vexatious under section 14 of the FOIA. The Commissioner's decision is that Sport Wales is entitled to rely on section 14(1) of the FOIA to refuse the request. The Commissioner does not require Sport Wales to take any steps.

Request and response

2. On 18 July 2017 the complainant submitted a request for information in the following terms:

"Will you please send me copies of correspondence between UK Sport and Sport Wales regarding the Welsh Crown Green Bowling Association around 2005 and before".

3. Sport Wales responded on 9 August 2017 and referred the complainant to a previous decision notice issued by the Commissioner on 3 May 2016 regarding a complaint from him. Sport Wales stated that it had provided *"all we can on this issue and consider the matter closed"*.

4. On 9 August 2017 the complainant requested an internal review of the handling of his request. He pointed out that his latest request was substantially different from the previous request. He also indicated that he had evidence in his possession that one of Sport Wales' officers was in correspondence with UK Sport at the time.
5. Sport Wales provided the outcome of its internal review on 4 September 2017 and stated that:

"As previously mentioned and in line with the ICO ruling detailed below, we consider this case closed.

We will not engage in any further discussion on this matter".

Scope of the case

6. The complainant contacted the Commissioner on 4 September 2017 to complain about the way his request for information had been handled.
7. During the course of the Commissioner's investigation, Sport Wales confirmed that it considered the request of 18 July 2017 to be vexatious and as such, it was seeking to rely on section 14(1) of the FOIA.
8. In light of the above, the scope of the Commissioner's investigation is to determine whether Sport Wales correctly applied section 14(1) to the request of 18 July 2017.

Reasons for decision

Section 14 – Vexatious requests

9. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
 10. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*¹, the Upper
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¹ UKUT 440 (AAC) (28 January 2013)

Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

11. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) any harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

12. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
13. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or
14. The Commissioner has previously issued a decision notice which determined that a request from the complainant dated 22 July 2015 relating to the subject matter was vexatious. A copy of this notice can

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

be found on the Commissioner's website³. Sport Wales contend that the request of 18 July 2017 can be linked to other requests received from the complainant relating to issues around a dispute between him and the Welsh Crown Green Bowling Association ('WCGBA'). This includes the request which was the subject of the previous decision notice issued by the Commissioner.

15. Sport Wales considers that the representations it submitted in relation to its application of section 14 to the request of 22 July 2015 remain of relevance in this case, as the subject matter of the requests is the same ie they relate to a dispute the complainant has had with the WCGBA which dates back to 1998. Sport Wales acknowledges that the request dated 18 July 2017 is the first request that the complainant has submitted since its application of section 14(1) to the request of 22 July 2015. Sport Wales also confirmed that it has "*received no other interactions with anyone else involved in the issues in question that alters our situation from that time*". Sport Wales is of the view that the request of 18 July 2017 is a further attempt to re-open a matter which has already been comprehensively addressed. Sport Wales maintains that section 14(1) is applicable for the same reasons as it provided in respect of the previous request.
16. In his internal review request the complainant pointed out that "*there is a major difference*" between his request of 18 July 2017 and the previous request of 22 July 2015. He also indicated that he had evidence in his possession that one of Sport Wales' officers was in correspondence with UK Sport at the time (ie 2005). Sport Wales considers that the request of 18 July 2017 is "*not substantially different than requests he has made in the past*". It also confirmed that the only information it holds regarding the subject matter has been provided to the complainant on various occasions during the period that his dispute with WCGBA has been ongoing.
17. In determining whether section 14 was applied correctly to the request which is the subject of this notice, the Commissioner has considered the representations and evidence previously provided by Sport Wales. Whilst the Commissioner notes that the request which is the subject of this notice is different to the request of 22 July 2015, she considers that the request can be linked to the complainant's dispute with the WCGBA, a dispute which has been ongoing since 1998. In light of this, the

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624127/fs50587507.pdf>

Commissioner's analysis relied on in the previous decision notice continues to be relevant in this case. For brevity, the Commissioner will not reproduce the content of the previous decision notice here but she has concluded, on the same basis, that Sport Wales again correctly relied on section 14(1) when considering this request.

Right of appeal

18. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

19. 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.
20. 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

Andrew White
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