

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 7 August 2022, the complainant wrote to Sport England and requested information in the following terms:
 - 1) "SE to provide communications with SS referred to in an email from EA dated 21 May 2018 that discussed a review of the safeguarding criteria

- 2) SE to provide the instruction to SS that only a UK Coaching safeguarding awareness workshop is accepted for a ClubMark
- 3) There is a public interest in the disclosure of all communications related to the arrangement and conclusion of a meeting the CPSU suggested to SS on 2 Nov 2018 at 12:57. And whether SE or SS had any other meetings with the CPSU
- 4) There is a public interest in the disclosure of the attendees at a meeting dated 22 Nov 2018 and provision of an unredacted copy of the minutes together with an account of why the CPSU advice was not recorded in the minutes
- 5) There is a public interest in the disclosure of all communications received by Ms Benson in the period 2 Nov 2018 – 26 Nov 2018 that reviewed or contributed to the draft email Ms Benson sent to the CPSU on 26 Nov 2018 at 10:52.
- 6) There is a public interest in the disclosure of all redacted parties in the email trail 'CLDocs 191029 RE_ Site visit and assessment to date_Redacted.pdf'
- 7) SE to disclose who informed Ms Benson about a difficult conversation between the ClubMark team and BAC
- 8) There is a public interest in the disclosure of the role and responsibility of the CL C&G Manager, SM1 and SM2 (identified in email 13 Nov 2019 at 15:39) including who they reported to in relation to this matter.
- 9) There is a public interest in the disclosure of all correspondence between SE and the CL C&G Manager in relation to BAC
- 10) There is a public interest in the disclosure of all redacted parties in the email trail 'CLDocs 191113 1 RE_ Bannister Athletics Assessor Responses_Redacted.pdf'
- 11) There is a public interest in the disclosure of all redacted parties in the email trail 'CLDocs 191113 2 RE_ Bannister Athletics Assessor Responses_Redacted.pdf'
- 12) There is a public interest in the disclosure of all communications by SM1 and SM2 with any other party related to BAC
- 13) There is a public interest in the disclosure of all redacted parties in the email trail 'CLDocs 191119 RE_ Bannister AC_Redacted.pdf'

- 14) There is a public interest in the disclosure of all redacted parties in the email trail 'CLDocs 191118 Clubmark Accreditation - Safeguarding Qualifications _Redacted.pdf'
- 15) There is a public interest in the disclosure of all redacted parties in the email trail 'CLDocs 191125 RE_ Bannister AD Documentation_Redacted.pdf'
- 16) SE are asked to disclose all communications that concerned the interrelationship between BAC, its chair and Harrow AC
- 17) There is a public interest in the disclosure of all redacted parties in the email trail 'CLDocs 191125 RE_ Bannister AD Documentation_Redacted.pdf'
- 18) There is a public interest in the disclosure of all redacted parties in the email trail 'CLDocs 191128 1 RE_ Bannister Athletics Club - Clubmark Application_Redacted.pdf'
- 19) There is a public interest in the disclosure of all communications between Ms Benson / Mr Judge and SS in relation to BAC
- 20) There is a public interest in the disclosure of all redacted parties in the email trail 'CLDocs 191128 2 RE_ Bannister Athletics Club - Clubmark Application_Redacted.pdf'
- 21) There is a public interest in the disclosure of all communications between Ms Benson / Mr Judge and CL in relation to BAC
- 22) Disclose all communications and parties that received a letter from BAC dated 30 Nov 2019 and titled "ClubMark Application Appeal"
- 23) Given that Mr Judge had concealed a breach of confidentiality during the ClubMark assessment and Ms Benson had obstructed the national safeguarding awareness effort, and both Ms Benson and Mr Judge were running an appeal that concerned a review of their wrongdoing, it is reasonable to request all communication at any time that involved Ms Benson or Mr Judge in connection to BAC, to allay any suspicion that Ms Benson or Mr Judge engaged in activity intended to discredit a whistle blower.
- 24) Provide all information the CEF team exchanged with EA, SS or CL from Apr 2020
- 25) SE to provide MS Word file used to create the corresponding pdf 'Summary_Approve_Athletics_Bannister_Athletic_Club_3076.docx'

- 26) SE to provide the full transcript of GMS Notepad Re 2020008961.eml
 - 27) SE to provide all communication and reports exchanged between SE and Verita in relation to advice sought about BAC on 25 Aug 2020
 - 28) SE is asked to confirm whether Muckle LLP advised in respect of the BAC constitution, and to share that advice or in the alternative to disclose what if anything was advised about the Muckle Template.
 - 29) SE is asked to prove that a monitoring form was sent to BAC in Jul / Aug 2020"
5. On 26 September 2022 Sport England wrote to the complainant. For parts 1, 2, 3, 7, 8, 16, 19, 24 and 28 it stated information was not held. For part 4 it stated no minutes of the meeting were taken but the names of attendees were being withheld under section 40(2). For parts 5, 6, 10-15, 17, 18, 20, 23 and 25 Sport England stated this would be considered as part of the internal review for an earlier information request that is the subject of another decision notice by the Commissioner (IC-201535-Y9Q6). Sport England provided emails in response to part 9, 21, 22, 26 and 29 (both with section 40(2) redactions). For part 27 Sport England stated no records were held where Bannister Athletic Club (BAC) were specifically named but an email between Sport England and Verita regarding correct processes was provided.
 6. The complainant requested an internal review on 30 September 2022. They acknowledged some parts of the request had been responded to adequately. The complainant asked Sport England to explain how it searched for information as they considered information was missing. In terms of the parts of the request Sport England considered fell under the earlier request; the complainant asked Sport England to clearly state what part of the earlier request the information was covered by. The complainant also asked Sport England to consider the redactions made to information disclosed.
 7. Sport England responded on 25 November 2022 with the outcome of its internal review. It upheld its position in relation to a number of the requests. For parts 6, 10, 11, 12, 13, 14, 15, 17, 18, and 20 that had been refused as they were considered part of the earlier request, Sport England now cited section 40(2) to withhold the names. For part 8 Sport England provided some additional explanations. Sport England identified two email chains in relation to part 9, 19, 21, and 22 and provided these with section 40(2) redactions. With regard to part 26 that asked for the full Notepad transcript, Sport England considered if it had to provide the

full suite of documents and attachments for Notepad then this would engage section 14 of FOIA due to the significant volume of information and burden.

Scope of the case

8. The complainant contacted the Commissioner on 5 March 2023 to complain about the way their request for information had been handled. They considered the section 40(2) redactions should be disclosed and that further information was held. The complainant withdrew part 26 of their request that had engaged section 14.
9. The Commissioner considers the scope of his investigation to be to determine if any further information in scope of any part of the request is held and to establish if section 40(2) had been correctly applied to redact personal data from the information provided.

Reasons for decision

Section 40(2) – third party personal data

10. 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.
11. 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.
12. The complainant has provided an extensive spreadsheet detailing his 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.
13. 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.
14. 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.

15. 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

16. 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.
17. 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.
18. 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.
19. 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.
20. 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.

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

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

21. 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.
22. 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.
23. 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.
24. 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

25. 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

26. 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.

27. 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
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Wycliffe House
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