

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2012

Public Authority: Sport England
Address: 3rd Floor
Victoria House
Bloomsbury Square
London
WC1B 4SE

Decision (including any steps ordered)

1. The complainant made his request on 23 September 2010, which has been considered and can be seen in full in the body of this notice.
2. The Commissioner's decision is that Sport England has correctly stated that it does not hold the requested information which has not already been disclosed. However, in not providing one specific report until during the course of the Commissioner's investigation, Sport England did breach section 10(1) FOIA.
3. The Commissioner requires the public authority to take no further steps to ensure compliance with the legislation.

Request and response

4. On 23 September 2010, the complainant wrote to Sport England and requested the following information:

'I seek copies of the most recent Quest reports, including mystery visitor reports, for the following centres managed by Leisure Connection / Harpers Fitness.

Bedfordshire, Dunstable Leisure Centre
Bedfordshire, Houghton Regis Leisure Centre
Bedfordshire, Tiddenfoot Leisure Centre
Bedfordshire, Wyboston Health and Fitness
Berkshire, Carnival Pool Leisure
Berkshire, Loddon Valley Leisure

Berkshire, St Crispin's Leisure Centre
Brent, Vale Farm Sports Centre
Brent, Willesden Sports Centre
Buckinghamshire, Bisham Abbey
Buckinghamshire, Stoke Mandeville Stadium
Cambridgeshire, Paradise Pool
Cornwall, St Ives Leisure Centre
County Durham, Peterlee Leisure Centre
County Durham, Seaham Leisure Centre
Devon, Meadowlands Leisure Pool
Devon, Okehampton Parklands Leisure Centre
Essex, Great Dunmow Leisure Centre
Essex, Lord Butler Fitness & Leisure Centre
Essex, Mountfitchet Romeera Leisure Centre
Hertfordshire, Abbey View Golf Course & Outdoor Facilities
Hertfordshire, Harpenden Leisure Centre
Hertfordshire, Harpenden Swimming Pool
Hertfordshire, London Colney Adventure World & Harpers
Hertfordshire, Westminster Lodge Leisure Centre
Leicestershire, Oadby Swimming Pool
Leicestershire, Parklands Leisure Centre
Leicestershire, Wigston Swimming Pool
Lewisham, Downham Health and Leisure Centre
Lincolnshire, Bourne Leisure Centre
Lincolnshire, Castle Sports Complex
Lincolnshire, Castle Swimming Pool
Lincolnshire, Deepings Leisure Centre
Lincolnshire, Grantham Meres Leisure Centre
Lincolnshire, North Kesteven Centre
Lincolnshire, Sleaford Leisure Centre
Lincolnshire, Stamford Leisure Pool
Lincolnshire, The Peele Leisure Centre
Harrow, Bannister Sports Centre
Harrow, Harrow Leisure Centre
Harrow ex, Hatch End Pool
Northumberland, Ponteland Leisure Centre
Northumberland, Riverside Leisure Centre, Morpeth
Norwich, Riverside Leisure Centre, Norwich
Shropshire, Lilleshall National Sports Centre
Surrey, Dorking Sports Centre
Worcestershire, Worcester Swimming Pool and Fitness Centre

In addition, I seek copies of all Quest report between 1 January 2007 and 23 September 2010 for
Maldon, Blackwater Leisure Centre
Maldon, Dengie Hundred Sports Centre.'

5. Sport England responded on 4 November 2010. It provided the complainant with the majority of the requested reports. It explained that five of the Quest Reports could not be provided as these were not held by Sport England. The reports which could not be provided to the complainant are for the following leisure centres: Wyboston Health and Fitness, Norwich - Riverside Leisure Centre, Harrow - Bannister Sports Centre, Abbey View and Castle Swimming Pool.
6. Following an internal review, Sport England wrote to the complainant on 22 December 2010. It stated that it had not provided the five remaining Quest reports to him as these could not be found by the administrators of the company which had handled the Quest reports on behalf of Sport England and as such they were not held by it.

Background

7. Sport England contracted a third party, PMP Consultancy Limited (PMP), to administer reports into leisure centres. These reports are named 'Quest' reports and were created under the Quest scheme, which PMP oversaw. All Quest reports which were produced by PMP were held by it but Sport England has stated that PMP held them on behalf of Sport England.
8. PMP subsequently went into administration, and the Quest reports were transferred to PMP's administrators, BDO. Sport England attempted to locate and provide the requested reports to the complainant at a time when they were in the possession of BDO. Sport England was able to provide the majority of the requested reports to the complainant; however, it could not provide five of these reports as BDO advised that these could not be located.
9. Sport England has subsequently informed the Commissioner that a new company, Quest NBS, has taken over the running and managing of Quest from BDO.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He believed the remaining information was held by Sport England. The complainant also raised issues of how the reports were provided to him and concerns over the copyright ownership of the reports.
11. The Commissioner has not considered the method of how the reports were provided to the complainant as he did not specify a preferred

method of disclosure at the time of his request, in line with section 11 FOIA. Copyright has not been considered in this notice as it is not relevant to the Commissioner's consideration of section 1 of the FOIA. The Commissioner considers that copyright is a matter for consideration by the Intellectual Property Office under the Re-Use of Public Sector Information Regulations 2005.

12. The Commissioner has therefore limited the scope of his investigation to whether Sport England was correct to state that they do not hold the remaining five Quest reports.

Reasons for decision

13. Section 3(2) of FOIA states that:

"For the purposes of this Act, information is held by a public authority if –

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

14. This section therefore provides that another 'person' (this can include legal persons such as companies) can hold information on behalf of a public authority. Furthermore, it provides that if the information is held by another 'person' on behalf of a public authority, it is still held by the public authority for the purposes of FOIA.
15. Sport England contracted with PMP to run and produce Quest and the Quest reports. Having examined the contract between Sport England and PMP, the Commissioner considers that Sport England retains all rights in any information produced by PMP through the running of Quest. As the requested reports fall within the category of, any information produced through the running of Quest, and Sport England retains all rights in such information, the Commissioner accepts that PMP held the Quest reports on behalf of Sport England.
16. The Commissioner understands that when PMP went into administration and BDO began to administer it, BDO took the place of PMP and its functions. The Commissioner accepts that as Sport England retains all rights to the Quest reports, the reports are essentially an asset or holding of Sport England. As such, when BDO took over the functions of PMP, they also took over the holding of the reports for Sport England and for the purposes of FOIA. BDO therefore held the reports on behalf of Sport England at the time of the complainant's request.

17. Section 1(1) of FOIA states that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

18. Public authorities are under a duty to confirm to a requestor whether or not it holds the requested information and if it does, to provide it to the requestor unless it can rely on one of the Act's exemptions.

19. In determining whether a public authority holds requested information, the Commissioner makes enquiries that will satisfy the civil standard of proof, that is, the information is or is not held on the balance of probabilities.

20. In deciding where the balance of probabilities lies, the Commissioner will consider the searches carried out by the public authority. He considers the extent of the searches the public authority made, the quality of those searches and the results those searches yielded. He will also consider any other information or explanation offered by the public authority which is relevant to his determination.

21. Sport England confirmed that upon receiving the complainant's request, it contacted BDO to request they provide it with all of the requested reports. BDO employed two people from its Forensics unit to search Quest's computer systems. As mentioned earlier, BDO then provided the majority of these reports to Sport England. It could not provide the five reports being considered in this notice, as these were not among the other requested reports which were provided. It appeared that these reports were lost, could not be located or were not recorded as held and therefore Sport England stated that the information was not held by it.

22. Following further enquiries by the Commissioner, Sport England requested Quest NBS (the company who has taken over Quest's business) to perform further searches for the requested information. This was requested as Quest NBS has access to the database which records those leisure centres which have had been reported on. Following this search, one of the five reports was located and provided to the complainant, that report being for the Castle Swimming Pool leisure centre.

23. Quest NBS advised Sport England that following its search of the database, it could find no record of the remaining four reports. Sport England has therefore suggested that rather than the reports having been lost, it appears more likely that they had not been produced at the

time of the request. Although he cannot accept this as fact, the Commissioner understands this to be a reasonable explanation.

24. The Commissioner accepts that Sport England was correct to request the reports from BDO and that BDO took the correct measures to search for the reports. The Commissioner also accepts that Sport England was correct to request Quest NBS to perform further searches for the requested reports, given that it had access to the Quest reports database. The Commissioner considers these to have been the most appropriate actions likely to locate any of the remaining requested information.
25. In the Commissioner's view the four remaining reports (separate to Castle Swimming Pool) are unable to be located. The Commissioner also accepts that on the balance of probabilities, the information is not held by Sport England. His decision is based on there being no records of the remaining reports and his acceptance that appropriate searches were performed to locate the information.
26. However in not providing the Castle Swimming Pool report with the other reports at the time of the request (as it had not been located at the time), the Commissioner concludes that Sport England breached section 10(1) FOIA, with regards to this specific report. This is because it did not provide the request within the statutory 20 day timescale.

Right of appeal

27. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

28. 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.
29. 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

**Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
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Cheshire
SK9 5AF**