

Freedom of Information Act 2000

Decision notice

Date: 26 March 2012

Public Authority: Department for Culture, Media and Sport (Sport England)¹

Address: 3rd Floor Victoria House
Bloomsbury Square
London
WC1B 4SE

Decision (including any steps ordered)

1. The complainant requested copies of communications between Sport England and the Department for Culture, Media and Sport in connection with his ongoing disagreement with British Judo Association (the BJA) over a fee requirement for judo coaches from non-affiliate judo centres wishing to obtain a UKCC² qualification.
2. The Commissioner's decision is that the complainant's request was not vexatious within the meaning of section 14(1) of the Freedom of Information Act 2000 (the Act).
3. The Commissioner requires Sport England to take the following steps to ensure compliance with the Act:
 - Respond to the request of 13 September 2011 in accordance with its duty under section 1(1)(a) of the Act.

¹ The complaint was made against Sport England, an agency of the Department for Culture, Media and Sport (DCMS). The DCMS is therefore named as the public authority for that reason. However, to avoid confusion, Sport England is directly referred to in the main body of the notice.

² UK Coaching Certificate issued by Sports Coach UK. Sports Coach UK is a registered charity with the primary objective of developing & supporting coaching programmes.

Request and response

4. On 13 September 2011 the complainant wrote to Sport England to request information under the Act. The request was worded as follows:

'Recently my MP Hugo Swire wrote to Minister Hugh Robertson regarding Save Independent Judo campaign. Subsequently, I understand, DCMS contacted Sport England for information on the Minister's behalf.....I request that under the FOI Act I can view these communications between Sport England and DCMS.'

5. Sport England responded on 5 October 2011. The request was denied on the basis that it was vexatious within the meaning of section 14(1) of the Act.
6. Following an internal review Sport England wrote to the complainant on 11 October 2011. It upheld the original decision to deny the request on the basis that it was vexatious under section 14(1).

Scope of the case

7. On 11 October 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically disagreed with Sport England's decision to deny his request on the basis of section 14(1) of the Act.

Reasons for decision

Section 14(1)

8. By virtue of section 14(1) of the Act, a public authority is not obliged to comply with a request for information if the request is vexatious.
9. Sport England explained that the complainant's request is in connection with a disagreement he has with a BJA policy of charging £200 per individual for a compulsory technical assessment to obtain a UKCC coaching certificate delivered through the non – National Governing Bodies for Sport (NGB) of which the BJA is one. In other words, a technical assessment for judo coaches who have undergone UKCC training delivered by an organisation not affiliated to a NGB such as the BJA. The complainant disagreed with the fee (i.e. £200) imposed to carry out the required technical assessment. Sport England claimed that the complainant had been championing his cause to have the fee reversed for nearly 5 years because there is less incentive for judo coaches to complete their training at a non – affiliate centre.

10. According to Sport England, it had tried, through various avenues, to resolve the issue and had recently reached an agreement with the BJA that the £200 could be reduced where more than one person is attending a technical assessment in the same area. Sport England considered this a good result that addressed the complainant's main issue regarding the BJA policy.
11. However, according to Sport England, the complainant has refused to accept the outcome of its negotiations with the BJA, and as a result has continued to communicate with it regarding the issue. Given that in its view the matter had been adequately addressed, Sport England considered there was nothing to be gained by making further requests for information. It submitted therefore that the request above of 13 September lacked any serious purpose or value, is obsessive, is harassing to Sport England and its staff and would place an unacceptable burden on Sport England.
12. In determining whether a request is vexatious, the Commissioner will generally consider the context and history of a request as well as the strengths and weakness of the arguments in relation to some or all of the following factors³:
 - Whether the request could otherwise fairly be characterised as obsessive
 - Whether the request has the effect of harassing the public authority
 - Whether compliance would create a significant burden in terms of expense and distraction, and
 - Whether the request is designed to cause disruption or annoyance
 - Whether the request has any serious purpose or value

Whether the request could otherwise fairly be characterised as obsessive

13. According to Sport England, the request is vexatious because the complainant persisted in making complaints and putting in requests for information regardless of the fact that it had done all it could to resolve the issue. Sport England also claimed that the complainant had refused to have meetings with the BJA in the spirit of compromise and had instead pursued his own interests relentlessly. It further claimed that

³ In no particular order.

the complainant's emails are often verbose, inflammatory and accusatory. In support of the claim that the request is part of an obsessive pattern of behaviour, Sport England provided the Commissioner with a chronology of its contact with the complainant from 09 January 2009 to 27 June 2011 in connection with his disagreement with the BJA over the fee for the technical assessment.

14. As mentioned, the Commissioner considers the context and history of a request relevant in determining whether a request is vexatious within the meaning of section 14(1) of the Act. A request made against the backdrop of an ongoing disagreement or grievance is more likely to have a vexatious element to it. However, it is equally important to consider the nature and frequency of previous requests for information in that context.
15. The Commissioner notes that the complainant has had a prolonged period of contact with Sport England in connection with his concerns regarding the fee charged by the BJA for a technical assessment. However, he understands that the complainant had previously made only two requests for information on 10 December 2009 and 27 June 2011 in connection with the matter. The first request was for minutes of a meeting between Sport England and the BJA, the second was for documents relating to negotiations between Sport England and the BJA following two meetings in January and June 2011.
16. From the chronology detailing the nature of the contact, the Commissioner agrees with Sport England that accusatory remarks were made by the complainant in some instances. However, he does not consider that the remarks are demonstrative of an obsessive pattern of behaviour. They do reveal the complainant's frustrations regarding the fee for a separate assessment for coaches trained by non – affiliate judo centres which he considered should be challenged. Sport England's effort to achieve a negotiated settlement to the dispute is evidence that it did not consider the BJA's stance definitive.
17. Whilst the Commissioner agrees that the contact between the complainant and Sport England regarding the issue has been prolonged, he is not persuaded that the nature and frequency of his requests for information is sufficient evidence to characterise his request of 13 September 2011 as obsessive. There was an interval of approximately 18 months between the previous two requests. In the Commissioner's view, all 3 requests although made in the context of a disagreement appear to be legitimately seeking information to assist the complainant in his effort to have the BJA policy reversed. On the strength of the nature and frequency of the previous requests and the context in which they were made, the Commissioner is not persuaded that the request of 13 September is evidence of a demonstrable pattern of obsessive behaviour. Although Sport England may have

achieved the best possible outcome, the Commissioner does not consider that in the circumstances of this case, a request for communications with DCMS on the matter is conclusive evidence of an obsessive pattern of behaviour.

Whether the request has the effect of harassing the public authority

18. Sport England claimed that the only purpose of the request of the request was to harass its staff because in its view, the complainant does not think he will discover any new or useful information. Sport England further claimed that the complainant had published on the internet notes he made from his meetings with Sport England containing comments it did not agree with. Sport England also claimed that the complainant demands the time and attention of its staff and pursues them relentlessly if he does not get what he wants immediately.
19. As mentioned, the Commissioner considers the request a legitimate attempt to obtain information which may shed light on the response he received from his MP, John Swire. He disagrees that it had the effect of harassing Sport England's staff. He accepts that the prolonged contact and possibly its frequency would have placed considerable demand on Sport England's staff. However, the Commissioner is not persuaded that any of the comments noted by Sport England in the chronology of its contact with the complainant mentioned at paragraph 13 above would have had the effect of harassing officials with experience in dealing with dissatisfied members of the public. No additional evidence was provided by the public authority in this regard.

Whether compliance would create a significant burden in terms of expense and distraction.

20. Sport England claimed there was a strong likelihood that responding to the request would generate further correspondence. It further pointed out that the continuous contact had taken up an inordinate amount of time which could have been spent doing other productive work.
21. Given the history of the complainant's contact with Sport England, the Commissioner finds that responding to the request of 13 September would have likely led to further contact from the complainant. However, the history of the contact does not support a strong likelihood of further requests. As mentioned, the complainant had only made two requests over an 18 month period prior to the request of 13 September. Therefore, in terms of the number and nature of the requests for information, the Commissioner is not persuaded that responding to the request of 13 September (the third request in nearly two years) would have imposed a significant burden on Sport England in terms of expense and distraction. In terms of the possibility of future

requests, the Commissioner finds that the history of the complainant's contact does not support Sport England's argument.

Whether the request has any serious purpose or value

22. Sport England submitted that the request had no serious purpose or value because it had addressed the complainant's concerns by reaching a negotiated settlement with the BJA. It further claimed that the request did not have a serious purpose because the substantive points in its letter to Hugh Robertson MP, Minister for Sport and the Olympics would have no doubt been relayed to the complainant through his MP, John Swire. Sport England therefore submitted that it would be pointless to provide the complainant with information he already has.
23. The Commissioner disagrees with Sport England and finds that, from an objective point of view, the request can be seen as having a serious purpose. Whilst Sport England may consider that it had addressed the complainant's concerns to the extent possible, it is clear that he remained dissatisfied. The information he sought therefore was to assist him in determining whether his concerns had been satisfactorily dealt with. Furthermore, the Commissioner considers it reasonable in the circumstances for the complainant to want to see copies of the actual communications between Sport England and the DCMS in addition to the information which had been provided to him through his MP, John Swire.
24. In view of the above, the Commissioner finds that in the circumstances, Sport England was not entitled to refuse to comply with the complainant's request of 13 September 2011 on the basis that it was vexatious within the meaning of section 14(1) of the Act.

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: 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

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

**Gerrard Tracey
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