

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 30 May 2012

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

### Decision (including any steps ordered)

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The complainant requested detailed information about 1,269 amateur basketball clubs which had been awarded grants by Sport England. Sport England calculated that the request could not be complied with without exceeding the appropriate costs limit, and that the exemption at section 12 applied. The Information Commissioner's decision is that Sport England was entitled to rely on section 12(2) of the FOIA, as to determine whether or not the information was held would exceed the appropriate limit. However, he also found that Sport England breached section 16 by failing to offer the complainant reasonable assistance with reducing the scope of his request.

### Request and response

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1. On 23 November 2011, the complainant wrote to Sport England and requested information in the following terms:

*"Reference: lottery awards spent date 2007/2011/small grants programme/main sport basketball*

1. *How many of the 1269 awards meet the criteria presented to us in letter of 13/November 2011*
2. *How many of the awards were completely new to the club prior to awards*
3. *How many of the respective awards did not have or never had coaching provision prior awards*

4. *How many of the respective awards did not have or never had a women's and or junior teams prior to awards*
  5. *How many of the respective clubs did not or do not levy participation or competition charges/fees and if they do or did what were the charges/fees and how do these relate to sport England's concept of barriers to participation*
  6. *How was the respective clubs measure of sustainability, how many are still running*
  7. *How was the respective clubs measure of value for money*
  8. *How many of the respective activities beneficiaries were completely new to the activity and club*
  9. *How many of the respective activities beneficiaries were members of the club!".*
2. A representative of Sport England spoke with the complainant on 25 November 2011, explaining that it would not be possible to provide the information in relation to each of his questions, due to the costs involved in consulting each of the 1,269 awards. She instead offered to provide information relating to a sample of 5 to 10 grant awards. The complainant declined the offer.
3. Sport England wrote to the complainant on the same day, confirming that it would not comply with his request for information because it was entitled to reject any request that would take longer than 18 hours to fulfil. Following an internal review, Sport England wrote to the complainant on 28 November 2011, upholding its decision. It provided more detail on why it considered that it could not easily retrieve the information he had requested by responding to each of the questions he asked in his original request:
- "1. These are not criteria but judgement points as to the added value of a project. We do not categorise awards according to these points.*
  - 2. Our priorities are Grow or Sustain so all awards are either completely new or added value to existing provision.*
  - 3. All affiliated clubs have coaches -*  
<http://www.englandbasketball.com/articles/article.aspx?aid=18&pid=670>
  - 4. This would not be data we would hold as we would not ask the entire history of an applicant. We do not categorise awards according to these matters.*
  - 5. This is not something we would necessarily assess depending on the project. Sustainability can take many forms, for example, sign-posting to partner organisations, charging for on-going participation. Again,*

*such information is not included in our databases and cannot therefore be easily retrieved.*

*6. See above - this depends on whether a club sets an attrition rate and the nature of the exit strategy for the project. This question would require an individual response for each award made which would be very time consuming.*

*7. Again, each award would have a different measure. Value for money is based on overall cost, cost per participant, cost per throughput and likely sustained value. There is no calculation because of the number of variables involved in arriving at the judgement.*

*8. This would be impossible to know without surveying every participant and collating that information centrally. We would not expect an applicant to baseline each participant in this way, even for Grow projects i.e. those projects where increased participation in the sport is the main aim.*

*9. For Grow projects this will be none. For Sustain projects i.e. those projects where we seek to improve the satisfaction of participants and reducing drop out in 16 to 18 year olds, this could be anywhere between none and all. Existing participants may not be existing members and Small Grants does not have membership as a specific measure on the application form so the question would be impossible to answer based on the records we have."*

4. While it maintained that the request could not be answered without exceeding the costs limit, Sport England repeated its offer to instead consider the request in respect of a sample of 5 to 10 awards.
5. On 15 December 2011 the complainant asked Sport England how the awards to be included in the sample would be identified. Sport England responded that it would select 5 to 10 funded projects that were within its funding policy and that sought to develop basketball participation.
6. The complainant replied the same day, stating:

*"I reiterate our concern about making a blind selection and dissatisfaction of the very limited number, but we will look at the published list to see if can make a go at it and to proceed with complaint to the information commissioner."*
7. The complainant heard nothing further from Sport England, and complained to the Information Commissioner about the handling of his request.

## Scope of the case

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8. The complainant contacted the Commissioner on 13 February 2012 to complain about the way his request for information had been handled. He explained that he required the requested information in its entirety for comparative purposes, as he had lodged a formal complaint about discriminatory practices relating to the way in which Sport England awarded grants.
9. The Commissioner considers that the focus of this complaint is Sport England's application of section 12 to the information the complainant requested. He has also looked at why Sport England did not proceed with its offer to supply the complainant with information relating to a sample of 5 to 10 awards.

## Reasons for decision

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### Section 12

10. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying would exceed the appropriate cost limit.
11. Subsection 12(2) states that section 12(1) does not exempt the public authority from its obligation at section 1(1)(a) to confirm or deny whether the requested information is held, unless the estimated cost of complying with that duty alone would exceed the appropriate limit. However, where a public authority estimates that to confirm whether or not the requested information is held would exceed the appropriate limit then, under section 12(2) of the Act, it does not have to deal with the substance of the request.
12. The appropriate limit in this case is £450, as laid out in section 3(2) of the Fees Regulations. This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours.

13. When estimating whether complying with a request would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in:
  - determining whether it holds the information;
  - locating the information, or documents containing it;
  - retrieving the information, or documents containing it; and
  - extracting the information from any documents containing it.
14. Section 12 makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation.
15. Sport England explained to the Information Commissioner that it was not possible to determine whether it held the requested information without consulting the records relating to each of the 1,269 awards individually. It said that the costs it would incur in doing this would exceed the appropriate limit.
16. Sport England explained that it operates a sophisticated database to manage its grant application and decision processes and that it stores a considerable amount of information relating to each application. Most applications are made online, although hard copy applications are still accepted. In addition, during the application and assessment process, applicants may submit further documentation in hard copy form to support their application or to provide clarity.
17. Each application is assessed against a fixed set of criteria and the extent to which each criterion has or has not been met is codified on the database and held in a readily accessible form. However, the judgements and observations made to support these ratings are held in free text and are not codified. To determine their specific contents would involve manually reviewing the information for each of the 1,269 awards in turn.
18. Sport England sought advice from its grants team on how long it would take to review the information relating to each award, to determine its specific contents. While the size and complexity of information held for each award varies, it estimated that, on average, it would take nearly two hours to consult each award. It supplied the following breakdown.

Activity	Average time (per award)
Locate and retrieve award documentation (possibly from off-site storage)	10 minutes
Review completed application form to determine whether its contents are relevant to the request	20 minutes
Review supporting information to determine whether its contents are relevant to the request	30 minutes
Review email dialogue to determine whether its contents are relevant to the request	20 minutes
Review free-text within each assessment to determine whether its contents are relevant to the request	20 minutes
Review comments made during the Case Conference (Decision Panel) Meeting to determine whether its contents are relevant to the request	15 minutes
Total (per award)	1 hour 55 minutes (or 115 minutes)

19. Sport England therefore estimated that simply to confirm or deny whether the requested information was held in relation to each award would take in excess of 2,432 hours (1,269 x 115/60).
20. This exceeds the appropriate limit of 18 hours set out in section 3(2) of the Fees Regulations.
21. The Information Commissioner accepts that in order to determine whether or not the requested information was held, Sport England would have to review the records relating to each of the 1,269 awards, and that the supporting information supplied in connection with award applications can be lengthy and quite detailed. It would be necessary to read through each set of information for any mention of the criteria set out in the request and it is reasonable to assume that the information would not necessarily be recorded in the form expressed in the request.

22. The Commissioner therefore accepts that Sport England has provided a reasonable estimate of the cost of compliance with section 1(1)(a). In view of the number of awards that would have to be consulted, he is satisfied that to determine whether the requested information is held would in itself exceed the appropriate limit of £450 (or 18 hours work).
23. The Commissioner therefore finds that Sport England was entitled to rely on section 12(2), as to determine whether or not the requested information is held would, in itself, clearly exceed the appropriate limit. Since section 12(2) applies, Sport England is not required to go on to deal with the substance of the request.
24. The Commissioner however finds Sport England in breach of section 17(5) for failing to cite section 12(2) in its refusal notice.

## **Section 16**

25. Section 16(1) imposes an obligation on a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the section 45 Code of Practice in relation to the provision of advice and assistance in that case.
26. Whenever the cost limit has been applied correctly, the Commissioner must consider whether it would be possible for the public authority to provide advice and assistance to enable the complainant to obtain information without attracting the costs limit, in accordance with paragraph 14 of the Code.
27. The Commissioner notes that in both its refusal notice and its internal review response, Sport England made the complainant aware that it would be willing to reduce the scope of the request and provide the requested information in respect of a sample of 5 to 10 awards.
28. The Commissioner further notes that while the complainant initially rejected this suggestion, he appeared to accept the offer in his second email of 15 December 2011. However, Sport England did not subsequently provide him with the information.
29. Sport England explained that its understanding of the complainant's second email of 15 December 2011 was that the complainant was going to take some time to consider the proposal and would be in touch again. Specifically, it was the following sentence which led it to this conclusion:

*"...we will look at the published list to see if [we] can make a go of it."*

30. When it did not hear from the complainant it assumed he did not wish to pursue this option.
31. The Information Commissioner accepts that the wording could lend itself to the interpretation that Sport England placed upon it. Equally, however, he thinks it could be interpreted as being the complainant's agreement to the sampling exercise going ahead.
32. Given the background of the case, and the fact that the complainant had previously engaged with the possibility of reducing the scope of his request, the Information Commissioner considers that an objective reading of the email should have identified this ambiguity, and that it is reasonable to expect Sport England to have referred back to the complainant for clarification on this point. The Commissioner considers that by failing to do this Sport England breached section 16 of the FOIA, in that it did not offer reasonable assistance to the complainant.
33. The Commissioner is aware that subsequent to him notifying Sport England of this breach, it liaised with the complainant and processed the request against a reduced sample of awards. While the complainant remains dissatisfied with what Sport England was able to provide, the Commissioner considers that Sport England has now discharged its responsibility to provide reasonable assistance to the complainant in respect of his request and that no further action is required.



## Right of appeal

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34. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

35. 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.
36. 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** .....

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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