

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 3 May 2016

**Public Authority:** Sport Wales  
**Address:** Sophia Gardens  
Cardiff  
CF11 9SW

#### Decision (including any steps ordered)

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1. The complainant requested copies of notes of a meeting held on 15 April 2005 to discuss complaints he had made against the Welsh Crown Green Bowling Association ('WCGBA'). Sport Wales provided a copy of the notes of the meeting in question. However, the complainant subsequently confirmed that he was seeking access to the notes of a pre-meeting which took place an hour before the formal meeting on 15 April 2005. Sport Wales confirmed that it did not hold the notes of any pre-meeting. In its internal review, Sport Wales confirmed that 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. Therefore, he does not require Sport Wales to take any further steps.

#### Request and response

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2. On 22 July 2015, the complainant wrote to Sport Wales and requested information in the following terms:  
  
"Please provide copies of all notes taken by [name redacted], SCW Development Officer/NGBSO and [name redacted], Sport Wales, on the 15 April 2005 in Llandudno concerning my complaints against the Welsh Crown Green Bowling Association".
3. On 20 August 2015, the complainant requested an internal review of the handling of his request as he had not received a response.
4. Sport Wales provided the outcome of its internal review on 18 September 2015. The internal review referred to previous requests on

the same subject matter, which had been treated as vexatious. Sport Wales stated that it had made many attempts to bring the subject matter relating to the request to a satisfactory conclusion, without success. In light of this, Sport Wales confirmed that it considered section 14 to apply to the request of 22 July 2015. Nevertheless Sport Wales provided a copy of the requested information, which it stated had previously been provided to the complainant.

5. On 18 September 2015 the complainant wrote to Sport Wales stating that the information provided was not the information he had requested. He stated that an hour before the meeting (relating to the notes provided) there was an earlier pre-meeting between himself, [name redacted] AM, [name redacted] and [named redacted] (who was taking notes). He confirmed that it was the notes of the earlier pre-meeting that he was requesting.
6. Sport Wales responded on 21 September 2015 and confirmed that the notes provided represented the only information held relating to the meeting on 15 April 2005.
7. On 21 September 2015 the complainant wrote to Sport Wales asking whether [name redacted] had been consulted about the notes of the pre-meeting as he had used the notes in question to produce an investigation paper into concerns he had raised.
8. Sport Wales responded on 21 September 2015 and confirmed that [name redacted] had been consulted about the request in question. Sport Wales also pointed out that it did not retain documentation indefinitely in accordance with its retention procedures.
9. Further exchanges took place between Sport Wales and the complainant about consulting with [name redacted] about the request.
10. On 21 September 2015, the complainant requested an internal review of the handling of his request.
11. Sport Wales provided the outcome of its internal review on 21 September 2015 and stated it was "officially declining your request for a second internal review based on section 14(1) of the FOI Act 2000 that 'does not oblige a public authority to comply with a request for information if the request is vexatious'".

### **Scope of the case**

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12. The complainant first contacted the Commissioner on 29 June 2015 about a request for information he had submitted to Sport Wales on 15

October 2014. Sport Wales had refused the request as vexatious under section 14 of the FOIA.

13. The Commissioner advised the complainant that he was unable to accept the complaint in accordance with section 50(2)(b) of the FOIA as there had been an undue delay in bringing the matter to the Commissioner's attention. The Commissioner pointed out that Sport Wales had responded to the complainant's expression of dissatisfaction with its handling of the request on 24 November 2014, confirming that section 14 of the FOIA applied to the request. The Commissioner explained to the complainant that he expected complaints to be submitted to him within three months of a public authority's refusal of, or failure to respond to a request. The Commissioner suggested that the complainant consider re-submitting the request to Sport Wales. The complainant subsequently re-submitted his request of 15 October 2014 on 22 July 2015.
14. The complainant contacted the Commissioner again on 28 September 2015 to complain about Sport Wales' handling of his request for information dated 22 July 2015.
15. The scope of the Commissioner's investigation into this complaint is to determine whether Sport Wales correctly applied section 14 of the FOIA to the request of 22 July 2015.

## **Reasons for decision**

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### **Section 14 – Vexatious requests**

16. 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.
17. The Commissioner's guidance<sup>1</sup> on the application of section 14(1) FOIA refers to an Upper Tribunal decision in *Information Commissioner v Devon County Council & Dransfield*<sup>2</sup> which establishes the concepts of

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

<sup>2</sup> *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC) (28 January 2013)

'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.

18. The guidance suggests that the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.
19. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests. 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.
20. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.

### **Sport Wales' position**

21. Sport Wales advised that it had been involved in extensive correspondence with the complainant since 1998. Correspondence began following the complainant's suspension from the WCGBA. Sport Wales considers that there is evidence that the request in this case falls clearly under the criteria of "unreasonable persistence", and "intransigence" as outlined in the Commissioner's guidance on vexatious requests. Sport Wales provided the Commissioner with representations and documentary evidence to support its position which is summarised below.
22. As early as 1998 Sport Wales advised the complainant that it was not an arbitration body and could not get involved in a dispute between an individual and its association or governing body. However, Sport Wales confirmed that it has hosted mediation meetings about the issue and involved the complainant's various Assembly Members. It is of the opinion that it has investigated and fully addressed the complainant's concerns. Sport Wales has informed the complainant on many occasions that it considers the matter closed, and will not enter into further correspondence. It provided evidence to the Commissioner to support this statement, the most recent occasion being on 15 January 2015.

23. Sport Wales advised that over the period since 1998 a number of other complaints/investigations have taken place relating to the subject matter as detailed below:
- i. A complaint to the Public Services Ombudsman for Wales ('PSOW') about the Welsh Government's refusal to intervene in the matter.
  - ii. Two complaints to the PSOW about Sport Wales' administration of his complaints.
  - iii. A complaint to the Sport Wales Audit Committee about the organisation's administration of WCGBA grant.
  - iv. A complaint to the Wales Audit Office and Sport Wales' Internal Auditors (KTS Owens Thomas) about the handling of point (iii).
24. Sport Wales chaired a mediation meeting between the complainant and the WCBA in April 2005. At this meeting a number of actions were agreed, which included the complainant being re-instated as a playing member of the WCGBA and the cessation of any further correspondence/discussion about the subject matter. Another of the actions agreed at this meeting was that Sport Wales would follow up the complainant's concerns about the WCGBA and respond to all parties in an impartial manner.
25. Following the mediation meeting, the complainant indicated that he still wished to pursue issues that went against the agreement that was circulated following the meeting. In May 2005 Sport Wales advised the complainant that if was unable to accept the agreement which had been circulated the mediation was deemed to have failed. Other than to complete and circulate the investigation, as agreed, Sport Wales stated that its staff would be unable to commit any further time to the matter. It also confirmed that the other parties had accepted the agreement and the terms contained within it.
26. In accordance with the actions agreed at the mediation meeting, Sport Wales carried out an investigation into the WCGBA, and circulated its findings. The complainant expressed dissatisfaction with the scope and content of the investigation conducted by Sport Wales, and other matters relating to its involvement in the dispute and its investigation into his complaints. In early 2006 Sport Wales explained that its investigation into the WCGBA was termed "Financial and Procedural Irregularities" as this was the only area over which it had a direct interest and influence over. Sport Wales also confirmed that it had no authority over the WCGBA and any dispute was a matter for the complainant and the WCGBA. As such it advised the complainant that it

considered the matter closed and asked him to refrain from sending any further correspondence about the matter.

27. In January 2008 the PSOW wrote to the complainant who had complained about the Welsh Government's response to his questions about policies and procedures. The PSOW's opinion was the complaint was not one that should be investigated.
28. In October 2010, in response to a further communication from the complainant the Chairman of Sport Wales suggested that he contact the WCGBA with a view to resurrecting the agreement reached at the mediation meeting in April 2005. This suggestion was reinforced in a subsequent communication from the Chief Executive of Sport Wales. The complainant responded advising that, in his opinion, Sport Wales had not adhered to the actions referred to in the mediation agreement as it had not conducted an impartial investigation into his concerns. Between December 2010 and February 2011 Sport Wales advised the complainant on a number of occasions that it would not enter into any further correspondence about the matter and asked him to refrain from writing further about it.
29. In February 2011 the complainant made a complaint to the PSOW about Sport Wales citing that "the chair of SCW will not investigate my written complaint about her Chief Executive. Nor will the Chief Executive of SCW provide evidence to substantiate his statement". The PSOW responded to the complainant advising that "I have concluded that your complaint is not one which we should investigate".
30. In June 2011 Sport Wales' internal auditors KTS Owens Thomas Ltd ('KTS') received an email from the complainant entitled "Internal Audit Concerns". Following this, during a telephone call with the complainant he provided a brief overview of the reason for his contact with KTS. In addition KTS had conversations with the Chair of the Audit Committee, the Chief Executive and Chairman of Sport Wales. It was agreed that a limited desk top review of correspondence held by Sport Wales be undertaken with a view to "considering the activity as reasonable and relevant against stated complaints procedures". A letter was sent to the complainant in August 2011 to confirm this.
31. The results of the Internal Audit Review referred to the fact that the correspondence file by Sport Wales "contains voluminous correspondence and demonstrates that there has been significant interaction with [the complainant] over an extended period". It also refers to the number of parties and organisations that had been involved in the matter including UK Sport, the Sports Dispute Resolution Panel, the WCGBA, the PSOW, solicitors and Assembly Members. The Internal Audit Review concluded that "From the information available to us, we

have not identified any deficiencies in the approach taken by Sport Wales in respect of its existing complaints policy”.

32. In 2014 Sport Wales again tried to facilitate an amicable solution and arranged a meeting with the relevant parties to discuss the matter, which the complainant declined to attend. The Panel considered representations made by the relevant parties and examined documents tabled by both the WCGBA and the complainant. The Panel concluded that no further action was required and agreed the adoption of six of the nine recommendations/actions agreed at the mediation meeting in April 2005.
33. Sport Wales contend that it has spent a considerable amount of time and resources on this matter over the past 18 years. It considers it unreasonable to invest any further public monies on the matter as there is nothing more, in its opinion, that can be done. Due to the length of time that the dispute has been ongoing, a considerable amount of documentation has been destroyed in accordance with its retention policies. Taking the request in this case as an example, the notes requested were taken by a member of staff at a meeting in 2005. Sport Wales contend that the meeting in question was an unofficial pre-meeting chat with the complainant and any notes that were taken were taken for the member of staff's personal use. The member of staff in question left Sport Wales in 2011. As such any notes that he may have taken were taken destroyed in accordance with Sport Wales' relevant retention policies and guidance.
34. Sport Wales has confirmed that the only information that it holds regarding the subject matter has been provided to the complainant on various occasions during the period the dispute has been ongoing and it does not hold any additional relevant information.

## **Conclusion**

35. As stated above, the Commissioner's approach is to assess whether the level of disruption, irritation or distress caused to the authority by the request is disproportionate or unjustified, when weighed against the purpose and value of the request. When making the assessment, he has also taken into account the context and history of the request, ie the wider circumstances surrounding the request.
36. The Commissioner notes Sport Wales' representations in relation to its previous dealings with the complainant. In this case, Sport Wales has been able to demonstrate that it has engaged to a significant extent with the complainant's correspondence regarding the subject matter over many years, and it has taken his correspondence seriously. The Commissioner is prepared to accept that, cumulatively, Sport Wales has

spent a significant amount of time and resources in dealing with requests and other correspondence and contacts from the complainant. The problem here appears not to be a lack of engagement from Sport Wales but rather that the complainant disagrees with what Sport Wales has done and its justification for it.

37. The Commissioner accepts that the request in this case can be linked to complaints and concerns against Sport Wales in relation to the complainant's suspension from the WCGBA in 1997, ie the issue at hand is one that individually affects the requestor. The matter has been subject to independent investigation via various complaints and reviews. The request is clearly a further attempt to challenge decisions and actions taken by Sport Wales. It appears to the Commissioner that Sport Wales has made all reasonable attempts to explain and justify its actions to the complainant.
38. The Commissioner also considers that, based on the evidence provided in terms of the length of time that the complainant has been corresponding with Sport Wales about the subject matter it is reasonable to conclude that the complainant will continue to submit requests, and/or maintain contact about the subject matter regardless of any response provided to the request in question. The Commissioner is therefore satisfied that, in the context of Sport Wales' previous and ongoing dealings with the complainant compliance with the request would result in a disproportionate burden on its resources.
39. Taking into account all the circumstances of the case, the Commissioner considers that a strong case has been presented to demonstrate that the request is vexatious. It was not the intention of the legislation that individuals should be allowed to pursue personal grievances to an unreasonable extent through the use of the FOIA. Limited public resources should not be spent on continuous unproductive exchanges. The FOIA gives significant rights to individuals and it is important that those rights are exercised in a reasonable way. There comes a point when the action being taken and the associated burden being imposed on the authority is disproportionate to the objective that the complainant is attempting to achieve. In the Commissioner's view, that point has been reached in this case. There is nothing to suggest that there is any serious purpose or value behind the request which is sufficient to warrant the Commissioner overturning Sport Wales' decision to rely on section 14(1).
40. Taking into consideration the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has concluded that Sport Wales was correct to find the request vexatious. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.



## Right of appeal

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41. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. 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.
43. 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** .....

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**