

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 June 2023

**Public Authority:** Elmbridge Borough Council  
**Address:** Civic Centre  
High Street  
Esher  
Surrey  
KT10 9SD

### Decision (including any steps ordered)

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1. The complainant requested from Elmbridge Borough Council ("the Council") information relating to throwing cages at a local sports centre. The Council stated that no information was held.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any relevant information.
3. The Commissioner does not require the Council to take any steps as a result of this decision notice.

### Request and response

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4. On 27 September 2021, the complainant wrote to the Council and requested information in the following terms:

**1) Please provide copies of all correspondence between the Council and the site operator Place Leisure at the Elmbridge Xcel Sports Hub concerning the maintenance of the athletic facilities and the drainage problems in the toilets and changing rooms.**

- 2) Please state if there are any penalties clauses in the contract with Places Leisure for not attending to the maintenance of the facilities.**
  - 3) The portable throwing cage was incorrectly installed is the Council going to rectify the incorrect installation?**
  - 4) When the testing company noted defects in the main throwing cage, what action was taken to rectify these defects?**
  - 5) Who is responsible for rectify the defects in (4)**
  - 6) What was the cost of rectifying the original faults in the installation of the main throwing cage?**
  - 7) What was the cost of rectifying other defects in the original installation of the athletic facility? If under warranty the installation company, ongoing maintenance**
  - 8) Who is responsible for the maintenance of the athletic facilities at the Xcel Sports Hub? Please provide their name and contact details.**
5. The Commissioner subsequent issued decision notice IC-149229-N8X7<sup>1</sup> in which he required the Council to issue a response.
  6. The Council issued a response on 31 October 2022. In this it disclosed held information and stated that no information was held for parts 6) and 7).
  7. The Council provided an internal review on 27 March 2023, in which it maintained its earlier response.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 10 May 2023 to complain about the way his request for information had been handled.
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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021854/ic-149229-n8x7.pdf>

9. The complainant stated that **"The Council have refused to provide the information relating to the costs of the remedial works needed to bring the athletics facilities up to the required UKA standard."**
10. The Commissioner notes that it is parts 6) and 7) of the request that seeks information about costs, and to which the Council has denied that information is held.
11. The Commissioner will decide whether, on the balance of probabilities, the Council holds any information relevant to parts 6) and 7) of the request.

### **Reasons for decision**

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12. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
13. The Commissioner has reviewed the Council's response to parts 6) and 7) of the request.
14. From this the Commissioner notes that the Council has clearly stated that it does not hold, and would not expect to hold, any recorded information. This is because it considers the premise of these questions to be incorrect (i.e., it does not consider that there were any original faults in the installation of the throwing cage for which the Council has incurred costs to repair).
15. The complainant has argued to the Commissioner that the cages do not meet the required standards of United Kingdom Athletics, and has provided copies of a report and tags provided by that body.
16. The Commissioner has considered the position of both parties. Whilst it is evident to the Commissioner that there is disagreement between the complainant and Council in respect of the throwing cages, this is not a matter that the Commissioner can determine. The Commissioner's role is only to consider whether the Council has complied with the terms of the FOIA. If the Council does not consider there to have been any defects in the installation of the throwing cages, the Commissioner must conclude that it would therefore not hold any information about the costs to address such defects.

17. Having considered all of the available information, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any information relevant to parts 6) and 7) of the request.
18. The Commissioner has therefore decided that the Council has complied with its obligations under section 1(1) of FOIA in this case.

## Right of appeal

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19. 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](mailto:grc@justice.gov.uk)

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

20. 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.
21. 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 .....**

**Daniel Perry**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**