

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **5 December 2025**

Public Authority: **Sport England**

Address: **SportPark
3 Oakworth Drive
Loughborough LE11 3QF**

Decision (including any steps ordered)

1. The complainant submitted a meta request to Sport England; that is, a request about a previous request. Sport England withheld the information under sections 41 and 43(2) of FOIA. It has subsequently advised that it considers that sections 40(2), 36(2)(b) and 36(2)(c) are also engaged. These exemptions concern information provided in confidence, commercial interests, personal data and prejudice to the effective conduct of public affairs, respectively.
2. The Commissioner's decision is that the withheld information engages sections 36(2)(b)(ii) and 36(2)(c) of FOIA. Sport England's late application of these exemptions and section 40(2) means that its refusal notice didn't comply with section 17(1) but the Commissioner doesn't require it to take any steps.

Request and response

3. In 2024, the complainant had submitted a request for information to Sport England about a Volleyball England Annual General Meeting. Sport England refused that request under sections 40, 41 and 43 of FOIA – its reference 240157. In an internal review of 19 December 2024 Sport England advised the complainant to submit a complaint to the Commissioner if they remained dissatisfied.
4. The complainant made the following information request to Sport England on 14 January 2025:

“...To ensure the completeness of my records, please furnish the specified items. (i) and (ii)....

In accordance with Section 43(2), factual substantiation is required for Volleyball England's statements about the commercial sensitivity of information. For the sake of transparency, Sport England is obligate to perform a detailed appraisal of the claims' validity and provide me with a copy of their methodology and the resulting assessment. This information is crucial to my understanding of your decision-making process...

...1. Please supply me with the evidence/reasons provided by Volleyball England that any of the material included in any email correspondence under review is related to the commercial activity or interests of Volleyball England.

2. Please advise what factors led Sport England to the conclusion that the content of the correspondence is in any way commercially sensitive and should not be made available.

3. You state Volleyball England "considers that some of the information would fall within this exemption". Also, "f [sic] have concluded that the balance lies in favour of withholding the elements of the requested information which are commercially sensitive under this exemption". Both statements confirm that in the view of both VE and Sport England some of the information is not commercially sensitive.

Please therefore supply copies of the emails redacting only the elements regarded as being commercially_sensitive...

...L. request further details on the process through which Sport England received the disclosed e-mails and any possible related correspondence. There must be yet another missing piece of correspondence. I await an explanation..."

5. On 11 February 2025, Sport England responded to this request – its reference 240240. The response focussed on the request for "evidence or reasons supplied by Volleyball England for the commercial sensitivity of information withheld" as part of its response to the previous request. Sport England explained it was relying on sections 41 and 43 of FOIA to withhold this information.
6. The complainant requested an internal review on 11 February 2025; this focussed on the section 41 exemption.
7. Sport England provided a review on 10 March 2025. It maintained its reliance on section 41 to withhold the requested information.
8. In its submission to the Commissioner, Sport England confirmed that it considers that the withheld information engages sections 41 and 43. But it said it has also now applied section 40(2) of FOIA to the names of

non-senior staff members in the withheld information and sections 36(2)(b) and 36(2)(c) to the information in its entirety.

Reasons for decision

9. In their complaint to the Commissioner, the complainant said,

“...Sport England has disclosed that it possesses two tranches of emails related to the aforementioned governance matters but has declined to provide unredacted copies of those communications. The full disclosure of these emails is of paramount importance, as they possess the potential to substantiate or refute SE's alleged involvement in these matters. The failure to disclose this information raises significant concerns, particularly considering the substantial reputational harm sustained by long-serving VE [Volleyball England] members who have been unjustly defamed by the Chair of VE.,”
10. The scope of the Commissioner's investigation is the request for the evidence on which Sport England based its application of section 43 to a previous request, and Sport England's withholding of this information.
11. The complainant's request for a review focussed on section 41 only. However, this reasoning will cover Sport England's reliance on section 36(2) of FOIA in the first instance. If necessary it will also consider its reliance on other exemptions it has cited. Finally, it will consider a procedural matter.

Section 36 – prejudice to effective conduct of public affairs

12. There are three separate exemptions under section 36(2) of FOIA. Section 36(2)(b)(i) concerns inhibition to the free and frank provision of advice, section 36(2)(b)(ii) concerns inhibition to the free and frank exchange of views for the purposes of deliberation and section 36(2)(c) concerns other prejudice to the effective conduct of public affairs.
13. In the record of its qualified person's opinion, there is reference to section “36(2)(b)” only, as well as section 36(2)(c). In its submission to the Commissioner, Sport England has said it considers that “section 36(2)(b)” is engaged as disclosure would be likely to inhibit the free and frank exchange of views for the purposes of deliberation. As such, the Commissioner understands that Sport England is relying on sections 36(2)(b)(ii) and section 36(2)(c).
14. The information being withheld under section 36(2) in this case is email correspondence between Volleyball England and Sport England. Sport England has also provided the Commissioner with a background and

context to the complainant's request(s), which won't be reproduced in this notice.

15. The Commissioner will consider section 36(2)(b)(ii) of FOIA first. As indicated, under this exemption information is exempt information if, in the reasonable opinion of a qualified person, its disclosure would or would be likely to inhibit the free and frank exchange of views for the purposes of deliberation.
16. The qualified person (QP) in this case is Sport England's Chief Executive, Simon Hayes. The Commissioner is satisfied that this individual was authorised as the QP under section 36(5) of FOIA.
17. Sport England has provided the Commissioner with a copy of the submission that was provided to the QP. From that submission the Commissioner accepts that the QP gave their opinion that the exemption was engaged. The submission indicates that the QP gave their opinion on 2 December 2025. Ideally, if a public authority is relying on section 36, the QP should provide their opinion at the time of the refusal, which would have been in February 2025 in this case. However, from the submission, the Commissioner accepts that Sport England's QP considered the situation as it was in February 2025, not December 2025.
18. The QP had been provided with a background to the request and a description of the requested information. They were advised that section 36(2) exemptions were being considered and the exemptions were explained. The QP was also advised why the prejudice envisioned under section 36(2)(b) could occur.
19. Of particular relevance to section 36(2)(b)(ii), the QP was advised that the information was provided to Sport England to support its decision making when it was considering a FOIA request and this needed a free and frank exchange of views. They were advised that disclosure could undermine the trust between Volleyball England and Sport England, damaging the ongoing relationship between them.
20. The QP's opinion was that disclosing the information "would be likely" to cause the envisioned inhibition detailed below. The Commissioner considers that the lower level of likelihood is a credible assessment.
21. Of relevance to section 36(2)(b)(ii) in particular, the QP's opinion was that disclosing the information would be likely to inhibit the free and frank exchange of views for the following reasons:

- Transparency and openness are vital for the effective conduct of public affairs [which would include exchanging views freely and frankly].
 - Sport England must carry out its central duty of investing, managing and protecting public money. To do this, it needs the full engagement of funded bodies in order to resolve concerns such as those discussed in this case.
 - Being able to collaborate freely with funded bodies puts Sport England in the best position to assess relevant matters and put in place action plans to improve standards where necessary. An ancillary benefit is that, as standards are improved, Sport England's investments are better protected.
22. The QP's submission also provides the reasoning behind the above opinion. It explains that to monitor funded bodies effectively, Sport England needs to establish relationships with relevant stakeholders. This includes open exchange and expression of views on the funded bodies' governing procedures. The issues discussed in this case are still live and Volleyball England provides Sport England with regular updates on how it's handling the situation.
23. It's important to note that 'reasonableness' in relation to the QP's opinion isn't determined by whether the Commissioner agrees with the opinion provided but whether the opinion is in accordance with reason. In other words, is it an opinion that a reasonable person could hold? This only requires that it's a reasonable opinion, and not necessarily the most reasonable opinion.
24. The Commissioner considers that the QP had sufficient background knowledge and was provided with sufficient information to enable them to form an opinion on the matter.
25. The Commissioner has reviewed the withheld information. First, he's satisfied that the information comprises an exchange of views for the purposes of deliberation; namely making a decision on whether requested information was exempt under section 43(2) of FOIA. At the time of the request, correspondence with the complainant was ongoing and the substantive matter that is the focus of the complainant's concern was still 'live.' As such, the Commissioner also considers it to be a reasonable opinion that disclosing the information at the time of the request would be likely to inhibit a specific partner of Sport England from engaging with it freely and frankly. More generally, disclosure would also be likely to weaken Sport England's partners' willingness to exchange views about sensitive matters with Sport England in the future.

26. The Commissioner therefore finds that the opinion that disclosing the information would be likely to cause inhibition under section 36(2)(b)(ii) is a reasonable opinion. The information to which Sport England has applied this exemption therefore engages that exemption. Although he's found this exemption to be engaged, he's also considered Sport England's reliance on section 36(2)(c).
27. Under section 36(2)(c) of FOIA, information is exempt information if, in the reasonable opinion of a qualified person, its disclosure would or would be likely to otherwise prejudice the effective conduct of public affairs.
28. Of particular relevance to section 36(2)(c), in the QP submission the QP was advised that disclosing the information could undermine Sport England's ability to continue its work to improve standards and undermine the public's trust in it.
29. The QP's opinion was again that disclosing the information "would be likely" to cause the envisioned prejudice detailed below which, again, the Commissioner accepts as a credible level of likelihood.
30. Of relevance to section 36(2)(c) in particular, the QP's opinion was that disclosing the information would be likely to prejudice how it conducts its affairs for the following reason:
 - Releasing the requested information would detract from Sport England's ability to review and improve standards effectively, for both Volleyball England and the wider group of funded bodies.
31. The reasoning behind this opinion in the QP's submission is as above. But the reasoning also explains that the "public affairs" in question are Sport England's governance function, including monitoring and assessing adherence to the Code for Sports Governance, establishing action plans with funded bodies to address non-compliance and improving governance and financial management standards across the sports sector generally.
32. The Commissioner considers it to be a reasonable opinion that disclosing the requested information at the time of the request would be likely to prejudice Sport England's ability to conduct its affairs, for the reasons given above. In his view, disclosing the information at the time of the request when matters were still live would also have been likely to frustrate Sport England's ability to conclude those matters as efficiently as possible.
33. The Commissioner therefore finds that the requested information also engages section 36(2)(c) of FOIA. He's gone on to consider the public interest tests associated with both exemptions.

Public interest test

34. The complainant considers that Sport England's involvement in their substantive concern may have exceeded its formal powers and they are seeking the information to strengthen a case they're making.
35. The information being considered here doesn't concern the substantive matter directly; it concerns Sport England's response to a previous request for information the complainant submitted to Sport England about that concern.
36. The Commissioner notes that in December 2024 the complainant had the opportunity to submit a complaint to him about Sport England's response to their earlier request. The complainant did so, but there had been an undue delay in bringing the complaint to the Commissioner and so it wasn't accepted. However, the complainant could have submitted the original request to Sport England again and brought a new complaint to the Commissioner. In that way they would have had the opportunity to bring the substantive matter to the Commissioner for investigation, rather than tackling it from a meta request perspective.
37. However, there's a general public interest in Sport England demonstrating that it's transparent and accountable. In its submission to the Commissioner, Sport England has noted this and the public interest in individuals being able to understand decisions that it makes.
38. Against disclosure, Sport England has noted that it considers disclosing the information may have an adverse impact on public affairs and the effectiveness of its decision-making process. It considers there's a stronger public interest in maintaining trust between Sport England and its stakeholders and protecting the interests of confidants who [voluntarily] provide information to it.
39. The Commissioner has found that disclosing the withheld information would be likely to inhibit Sport England from exchanging views freely and frankly and would be likely to otherwise prejudice its ability to conduct its affairs.
40. He will consider whether, in January 2025, the public interest in the information was such that it would justify causing the above inhibition and prejudice.
41. When he considers the balance of the public interest, the Commissioner takes account of the weight of the QP's opinion, the timing of the request, and the severity and extent of the envisioned inhibition and prejudice.

42. First, the Commissioner considers that Sport England's QP had the requisite knowledge of how their organisation works and the consequences of any disclosure. He has therefore given the QP's opinion a measure of respect.
43. In relation to timing, the public interest in Sport England being able to conduct its affairs without inhibition and prejudice will be greater if associated matters are ongoing and live at the time of a request. As noted, Sport England's correspondence with the complainant was ongoing in January 2025 and up to October 2025, and the complainant's substantive concern was still live.
44. The Commissioner has considered the wider circumstances and context of this request. He acknowledges the withheld information is of interest to the complainant but he doesn't consider that it has a degree of wider public interest such that it would justify potentially causing the inhibition and prejudice that Sport England envisions.
45. In relation to section 36(2)(b)(ii), the Commissioner agrees with Sport England that there's greater public interest in its stakeholder(s) being willing to volunteer their views freely and frankly so that Sport England can make decisions as efficiently as possible. And in relation to section 36(2)(c), he's satisfied that there's greater public interest in Sport England being able to focus on the substantive concern without distraction, in order to investigate and conclude that concern efficiently.
46. The Commissioner has weighed the arguments for and against disclosure and finds there's greater public interest in withholding the information to which Sport England has applied sections 36(2)(b)(ii) and 36(c) of FOIA.
47. Since these exemptions are engaged and the public interest favours maintaining them, it's not necessary to consider the remaining exemptions on which Sport England is relying.

Procedural matters

48. If a public authority is relying on an exemption to withhold information, under section 17(1) of FOIA it should issue the applicant with a refusal notice within the same timescale, that cites the exemption(s) on which it's relying.
49. In this case, Sport England made a late application of the two exemptions under section 36 and section 40(2). It therefore didn't comply with section 17(1) of FOIA.

Right of appeal

50. 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)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

51. 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.
52. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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