

To:

**Kingston upon Thames Borough Council**

Subject:

**Internal review of Freedom of Information request - Sport England Response to planning application for new leisure centre 22/00602/FUL**

Dear Kingston upon Thames Borough Council,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Kingston upon Thames Borough Council's handling of my FOI request 'Sport England Response to planning application for new leisure centre 22/00602/FUL'.

I am asking for an Internal Review of Kingston Council's decision to withhold disclosure of Sport England's response dated 23 March 2021 to the planning application 22/00602/FUL (the "Sport England response").

I request that the Sport England response be published with immediate effect given the importance of the timing of its disclosure to decisions yet to be made about the provision of leisure facilities in Kingston Town and across the Borough and about the facilities that the council is planning to provide through this planning application.

Kingston Council (the "Council") asserts that it cannot disclose publicly Sport England's response to the planning application dated 23 March 2021 (the "Sport England response") because the requested information is exempt under Regulation 12(5)(d) (Confidentiality of proceedings) of the Environmental Information Regulations 2004 (EIR) and that it is not in the public interest to do so.

The Council goes on to say that it accepts that "there is a public interest in public authorities being open and transparent as far as decision-making processes are concerned and informing public debate about matters that affect the wider public. It considers that being able to have a voice and participate in planning matters is very important for the public". However, the Council also states that the planning process is "open and transparent and information is made public once a decision has been made and that routinely disclosing information prior to a decision being reached would undermine the whole process". For this reason, the Council "has concluded that the public interest in maintaining the exception, in al [council spelling] the circumstances of the case, outweighs that in disclosure of the withheld information."

I argue that the argument about confidentiality of the proceedings does not withstand scrutiny as explained below and that the public interest in disclosing the Sport England Response significantly outweighs any interest in withholding the response.

My reasons are as follows:

a. Whilst the planning application 22/00602/FUL (the planning application) is open and ongoing and the information requested relates to “material that is still in the course of completion” and “to unfinished documents” as listed under exemption 12 (4) (d) of the EIR 2004, the Council has published on 21 April 2022 on the council’s planning portal for the planning application the council’s response dated 20 April 2022 to the Sport England Response (the “Council Response”). Publication of the Council Response on Kingston Council’s planning portal by default removes any claim that Kingston Council may wish to make that the proceedings to which the Sport England Response relates are confidential

b. Kingston Council states that the requirement for transparency and openness is met by information being made public once a decision is made. However, the Council Response has been published as part of the planning application which is publicly accessible and to which the public is invited to reply. It therefore necessitates publication of the Sport England response to which it responds

c. The council’s statement that “routinely disclosing information prior to a decision being reached would undermine the whole process” is undermined itself by the publication by Kingston Council of the Council Response. The council has chosen “non-routinely” to disclose selected information purportedly taken from the Sport England response prior to a decision being made on this application. Now that Kingston Council has disclosed its response to the Sport England Response, it must by necessity be in the public interest for the council to disclose the Sport England Response in full that forms the basis of the Council Response

d. Having published the Council Response, full, accurate and timely public debate about the issues that the Council Response addresses can only properly take place if the Sport England response to which the Council Response is a reply is published in full. The full Sport England response would materially add to the public debate about the adequacy and viability of the planning application and inform public opinion on any changes the council may make to the planning application as a result of the Sport England response

e. The need for full public debate – with complete information to hand of which the Sport England response is a material part - is of significant public interest given the current circumstances in which Kingston Council has already approved demolition of the existing Kingfisher Leisure Centre without firm plans or funding to rebuild the leisure centre that is the subject of this planning application, given that consultation on the proposed facilities to be offered in the new leisure centre that is the subject of the planning application has closed and given that the council has heavily and widely publicised the facilities that the centre will contain as a certainty.

f. The public interest in disclosure of the Sport England response should be given significant weight as a large number of Kingston residents from across the Borough will be affected by proposed provision of leisure facilities in the new centre that is the subject of the planning application and because of the large sums of money involved – amounting to at least £40 million plus professional fees plus the costs of demolition of the existing leisure centre. The public interest in disclosure is

given even more weight by the fact that the proposed new leisure centre that is the subject of this planning application is so close to one of the top 10% most deprived lower super output areas

g. I have had sight of The Sport England Response and have checked it against the Council Response. The Council Response only contains reference to a small portion of the comments made in The Sport England Response:

i. The small number of excerpts from the Sport England Response quoted in the Council Response – 9 excerpts and one statement (the “excerpts”) do not reflect the whole of the Sport England Response or therefore allow a complete understanding of all the issues raised in the Sport England Response. By quoting only selected excerpts from the response, much critical contextual information surrounding the excerpts which makes up the bigger part of the Sport England Response - and which is needed to understand fully the position of Sport England and other sporting bodies in relation to this planning application - has been omitted, as have comments and doubts about details of the planning application expressed by Sport England and other sporting bodies

ii. The excerpts, taken out of context, and omitting other related comments made and concerns expressed and questions asked by Sport England on a specific issue, do not reflect Sport England’s full position on the planning application

iii. Having published a response to some of the issues raised in the Sport England response, it is imperative that the whole Sport England response is published so that the public can know if the Council Response has addressed all the issues raised by Sport England in the Sport England response and if it has addressed them adequately and in full

iv. There is a strong public interest in understanding all of the issues and all of the issues in full that Sport England raises in the Sport England response in order to allow a “full picture” to be formed of Sport England’s position relating to the planning application. This would assist an informed assessment of the responses given in the Council Response and would remove any impression of manipulation of the facts or “spin”. It would allow people to form their own impression and give their own view of the adequacy of the Council Response

v. Selective quotation and the omission of parts of Sport England’s response in the Council Response do not allow transparency and full understanding by the public of Sport England’s position to which response is being made in the Council Response

h. Publication of the Council Response to the Sport England Response as part of the planning application without simultaneous publication of the Sport England Response is materially misleading in that it hides from public view and scrutiny the rest of that response. Full publication of the Sport England Response could alter public perception of the planning application to which the public is invited to respond by nature of the Council Response having been added to the planning application

i. While the Sport England Response may not be Sport England’s final response on the planning application, the information it provides does not have to provide a complete or coherent picture of Sport England’s final opinion on the planning application for it to be in the public interest for public disclosure of the Sport England Response to be given significant weight. The Sport England Response helps provide a full picture of issues arising from the planning application and the public interest in it being published is significant given the timing of the planning application after approval for demolition of the existing leisure centre has been given but before a coherent leisure strategy for the whole of Kingston Borough has been agreed

j. The Council has not given any explanation of how it has weighed harm from disclosure of the requested information against the public interest benefits that such disclosure would bring, especially in the situation where the Council has already approved demolition of the existing leisure centre and before – by its own admission - a final, up-to-date leisure strategy for the Borough with a final assessment of need has been agreed. I argue that the disclosure would significantly further the public interest for all the reasons laid out in this response

k. No assessment of the severity of the harm the Council considers may be made by disclosure of the requested information has been made nor any assessment of whether such harm would be caused or would likely to be caused by disclosure

l. The Council should be minded of the fact that Section 12 (2) of the Environmental Information Regulations Act 2014 states that a public authority should apply a presumption in favour of disclosure

A full history of my FOI request and all correspondence is available on the Internet at this address:  
<https://www.whatdotheyknow.com/request/s...>

Yours faithfully,

Caroline Scott