

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2016

Public Authority: Welsh Assembly Government
Address: Cathays Park
Cardiff
CF10 3NQ

Decision (including any steps ordered)

1. The complainant has requested various items of information regarding the 'Wales Internet' including the number of complaints that the Welsh Government had received in the past year. The Welsh Government made one attempt to clarify with the complainant the nature of her request, however although it was still uncertain regarding the information she was seeking, it informed the complainant that it did not hold relevant information.
2. The Commissioner has determined that, on an objective reading, the clarification provided by the complainant was open to more than one interpretation, and her approach to section 1(3) of the FOIA is that a public authority must seek clarification of a request whose meaning is not clear or is open to more than one objective reading. As the Welsh Government made no further attempt to clarify with the complainant which interpretation she intended, it has failed to comply with section 16(1) of the FOIA. The Welsh Government's failure to respond to part A of the request also represents a breach of section 1(1) of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant after having clarified with her the exact nature of her request.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 23 April 2016 the complainant wrote to the Welsh Government and requested the following information:

"A The number of households in Wales.

1. *I would like to know how many households in Wales are connected to the Internet.*
 2. *How many complaints about the Wales' Internet has the Welsh government received in the past year?*
 3. *From which counties – and also areas within counties – have these complaints originated?*
 4. *And the numbers from each county – and area within?"*
6. The Welsh Government contacted the complainant on 28 April 2016 to clarify her request, and in particular what she meant by 'Wales internet'. On the same day, the complainant confirmed that she meant the following:

"Definition: Wales internet system – provides Internet capability to people resident in Wales – referenced by the above definition.

It's owned by BT, with which the WG [Sic] has a contract, serviced by Openreach and customers have contracts with commercial companies such as BT Sky."

7. The Welsh Government sent its substantive response to the request on 11 May 2016 informing the complainant that she may wish to redirect question one of her request to Ofcom and in respect of items 2-4 confirming that it does not hold any relevant information.
8. Following an internal review the Welsh Government wrote to the complainant on 13 June 2016. In relation to item A of the request, the Welsh Government confirmed the following:
- "...the omission of household data, part A of your original request was an error. Please accept our apologies for this. I understand you have received a response to this question via a separate request for information..."*
9. In respect of item one, it confirmed that its original reply that it does not hold the information, and its signpost to Ofcom was correct. However, it further stated that it may also have been appropriate to have signposted

the complainant to its National Survey for Wales and attached the relevant link.

10. In respect of items 2-4, the Welsh Government upheld its original response that it does not hold information. It added that the 'Wales internet' is not a recognisable or familiar term. It further stated that the clarification of the request was also ambiguous but suggested that the complainant's actual line of enquiry may be about connectivity to the internet i.e. broadband networks, and had the request asked for copies of correspondence relating to broadband, then there may have been scope to have provided a more informative response.

Scope of the case

11. The complainant contacted the Commissioner on 17 June 2016 to complain about the way her request for information had been handled.
12. In particular, she stated that it was a genuine matter of public interest to know how Wales compares to other parts of the UK in the provision of a vital method of communication – internet to its households. She added that she :

"...cannot believe that the Welsh Government does not have a single complaint on file about the use of the Internet in Wales."
13. The complainant further added that the Welsh Government provided no section 16 help and assistance to define 'Wales internet – for households' and left out parts of her request.
14. The scope of the Commissioner's investigation is to consider whether the Welsh Government has complied with its obligations under section 1(1) of the FOIA in terms of its response regarding item A of the request, and whether its response in respect of items one to four complied with section 16(1).

Reasons for decision

Section 1 – general right of access to information held

15. Section 1(1)(a) of the FOIA states:

"Any person making a request for information to a public authority, is entitled –

a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

b) if that is the case, to have that information communicated to him."

16. However, the Welsh Government did not respond to part A of the complainant's request in its response of 11 May 2016. The Welsh Government therefore failed to comply with section 1(1) of the FOIA in respect of this item of the request.

Section 1(3)

17. Section 1(3) of the FOIA provides that where a public authority reasonably requires further information in order to identify and locate the requested information, and it requests this from the applicant, it need not comply with section 1 until further information is supplied. The Commissioner's approach is to expect the public authority to seek clarification of a request where its meaning is not clear or where its meaning is capable of more than one objective reading.

18. The Commissioner notes that the Welsh Government did initially seek clarification of the request. However, even though it remained uncertain regarding the exact nature of the request following the complainant's clarification, it issued its substantive response maintaining that it did not hold relevant information.

19. Indeed, the Welsh Government itself stated in its internal review that the complainant's clarification was ambiguous as referred to in paragraph 10 of this notice. It further added that:

" we don't hold any information about the 'Wales internet' so we couldn't therefore identify complaints about it. Had your request asked for copies of correspondence received by the Welsh Government relating to, for example, broadband, then there may have been scope to provide a more informative response. While we can surmise, it was not clear exactly what information you were asking for."

Section 16 – advice and assistance

20. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request.
21. The Commissioner has no hesitation in concluding that, on an objective reading, the request was open to more than one interpretation. As the Welsh Government itself pointed out, the request could relate either to the 'Wales internet' or connectivity to the internet i.e. broadband networks. The Commissioner considers that the Welsh Government

should have clarified this with the complainant before it responded to her request.

22. By failing to give appropriate advice and assistance to the complainant, the Welsh Government breached section 16(1) of the FOIA.

Right of appeal

23. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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

Andrew White
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