

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 29 June 2018

**Public Authority:** Welsh Government

**Address:** [freedom.ofinformation@gov.wales](mailto:freedom.ofinformation@gov.wales)

### Decision (including any steps ordered)

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1. The complainant has requested various items of information in respect of the TrawsCymru bus services in the Aberystwyth area. The Welsh Government informed the complainant that it does not hold the information and during the course of the Commissioner's investigation provided him with some contextual background in respect of a number of items of the request. The Commissioner's decision is that the Welsh Government has complied with its obligations under section 1(1) of the FOIA. The Commissioner does not require the public authority to take any steps.

### Request and response

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2. On 22 August 2017 the complainant wrote to the Welsh Government and requested the following information:  
*"1. Why was the Northbound T5 37 minutes late on a journey from Cardigan which normally takes 1 hour and 28 minutes?*  
*2 What records are available to Trawscymru to monitor performance of the 3 operators (T1/T2?T50 providing services to Aberystwyth for Trawscymru?*  
*3 How do Trawscymru monitor performance of the 3 operators (T1/T2?T5) providing services into Aberystwyth for Trawscymru?*  
*4 What monitoring of Trawscymru arrival/departure times has been carried out in the past 12 months in Aberystwyth?*

*5 If monitoring has been carried out in Aberystwyth on which Trawscymru services and what percentage of Trawscymru services arrived within 5 minutes of their published arrival time?*

*6 If the answer is that "no monitoring has been carried out" could you please tell me when you plan to put monitoring in place in Aberystwyth?*

*7 Could you please tell me what instructions Trawscymru have issued on the 3 operators regarding their responsibility to connect with other Trawscymru services in Aberystwyth?*

*8 Could you please tell me how many time in the past 12 Months Trawscymru has issued warnings to any of the 3 operators regarding their responsibility to connect with other Trawscymru services in Aberystwyth?*

*9 Could you please tell me what instructions Trawscymru have issued to the 3 operators in Aberystwyth regarding situations where a Trawscymru service (just about to depart from the bus station) observes an approaching Trawscymru connecting service coming into the bus station?*

*10 Could you please tell me what action was taken by Trawscymru with the operator of the T1 service when I reported to you on 7<sup>th</sup> August exactly the same situation (where the T1 departed from Aberystwyth bus station with clear sight of an incoming T2 service)?"*

3. The Welsh Government responded on 8 September 2017. In respect of items 2, 3 and 4 of the request, it stated that it was not required to create new information in order to respond to a request for information under the FOIA, adding that a request asking it to explain an action is not a valid FOIA request. The WG further informed the complainant that it did not hold relevant information in relation to the remaining items of his request.
4. Following an internal review the Welsh Government wrote to the complainant on 6 October 2017. It informed the complainant that it was upholding its original response.

### **Scope of the case**

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5. The complainant contacted the Commissioner on 6 December 2017 to complain about the way his request for information had been handled. He does not accept the Welsh Government's information not held response or its response that his questions in respect of items two, three and four do not constitute valid FOIA requests.

6. The Commissioner considers that the scope of her investigation is to determine whether the Welsh Government has complied with its obligations under section 1(1) of the FOIA.

## **Reasons for decision**

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### **Section 1 – General right of access to information held**

7. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
8. In her consideration of this case, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that additional information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any additional information therefore, the normal standard of proof to apply is the civil standard of the balance of probabilities.
9. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
10. In this particular case, the Welsh Government has stated that it does not hold information in respect of items 1, and 5 to 10 of the request and provided some background information regarding the TrawsCymru service to the Commissioner, and considered items 2, 3, and 4 of the request as not valid FOIA requests.
11. However, the complainant does not accept this and has stated that the TrawsCymru service is performance monitored by Bus Users Cymru who say they provide reports on the data they collect to the Welsh Government's TrawsCymru Network Manager.

#### ***Items 1 and 5-10***

12. The Welsh Government informed the Commissioner that it takes a strategic role in relation to the TrawsCymru long-distance bus network in Wales. It sets the strategic priorities for the network, establishes quality standards and approves and provides funding to local authorities to undertake the required services. The local authorities use the funding

to deliver and contract out to private bus companies. It also provides grant funding to Bus Users Cymru to employ three bus compliance officers to monitor all bus services across Wales, including TrawsCymru.

13. The Welsh Government further informed the Commissioner that the TrawsCymru Network Manager is responsible to Welsh Ministers for the strategic development and on-going management of the bus services and regularly discusses issues relating the TrawsCymru network with the local authorities and bus operators. Where these discussions involve formal meetings or formal outcomes, an official record is created/retained.
14. Additionally, the WG participates in TrawsCymru Service Delivery Group meetings (which are minuted) to discuss a range of operational and planning issues. However, the Bus Compliance Officers are responsible for monitoring the TrawsCymru bus services and the operational data they gather is mostly relevant to the contracting local authorities and bus companies, although Key performance outcomes are discussed at the Service Delivery Group meetings.
15. The Commissioner was further informed that occasionally, the TrawsCymru Network Manager receives information electronically in advance of the Service Delivery Group meetings. However, given the strategic nature of his role, once he has skimmed the summary of the key findings, the email is deleted as it is not required for Welsh Government strategic monitoring purposes and not therefore required as an official record.
16. The Welsh Government therefore maintains that the information requested by the complainant all relates to operational matters and would either be held by the bus company or the contracting local authority and/or the bus compliance officers.
17. The Welsh Government informed the Commissioner that no searches were undertaken for information in respect of any of the 10 questions forming the request, as the information was either not held because it is information it would have to create in order to answer the questions, or it is beyond the strategic level of detail which the Welsh Government is responsible for.
18. The Commissioner asked the Welsh Government to either undertake a search of the minutes referred to in paragraph 14 of this notice, or if it considered that it did not need to conduct a search as it is confident they would not hold relevant information, to provide her with details of the type of information they contain compared to the information requested by the complainant. She further suggested that it would be helpful if it provided one or two sample copies of the minutes.

19. The Commissioner also asked the Welsh Government to confirm whether it contacted the TrawsCymru Network Manager directly in respect of the information he receives electronically in advance of the Service Delivery Group Meetings and whether it was the manager who confirmed that he deletes all of the emails/information. The Commissioner also asked the Welsh Government to clarify with the Network Manager whether any relevant information had been forwarded to its systems for retention and if he had not already been contacted directly, to do so as a matter of urgency providing details and evidence of his response.
20. In respect of a search of the minutes referred to in paragraph 15 of this notice, the Welsh Government informed the Commissioner that they did not consider it necessary to search these minutes as the meetings discuss strategic matters only so would not contain relevant information falling within the scope of the request. It also enclosed two examples for the Commissioner to assess the nature of the type of information discussed at the meetings.
21. Having considered the minutes, the Commissioner is satisfied that they do not contain information relevant to the request and on the basis that they are typical of the topics discussed at these meetings, the Commissioner is satisfied that a search was not necessary.
22. In respect of the Commissioner's queries regarding the TrawsCymru Network Manager, the Welsh Government informed the Commissioner that he had been directly consulted in respect of this request and confirmed during a telephone discussion that he deletes the information once he has skimmed a summary of the key findings. He further confirmed that he does not forward information to the Welsh Government's systems as it is not required as an official record.
23. Having considered the arguments put forward by the complainant and the background information and supporting documentation from the Welsh Government, the Commissioner has concluded that the Welsh Government does not hold relevant information in respect of items 1, 5 to 10 of the request and has therefore complied with its obligations under section 1(1) of the FOIA.

### **Items 2, 3 and 4 of the request**

24. The Commissioner notes that the Welsh Government's response to the complainant in respect of the items two, three and four of his request was that it is not required to create new information to respond to a request, adding that a request asking it to explain an action is not valid under the FOIA.
25. The Commissioner would point out that Section 8 of the FOIA deals with requests for information whilst section 8(1) provides that if a request

contains the criteria below it does constitute a valid request under the FOIA:

- (a) is in writing,
  - (b) states the name of the applicant and an address for correspondence, and
  - (c) describes the information requested
26. As all items of the complainant's request fulfil the above, the Commissioner considers that items 2, 3 and 4 constitute a valid requests for information. Whether relevant information is held to answer those items however, is discussed below.
27. In response to the Commissioner's queries in respect of these items, the WG informed the Commissioner that:
- "Whilst the Welsh Government officials might know the answers to these questions, the information is not held in recorded form and a narrative response would need to be drafted based on the knowledge of officials."*
28. The Commissioner would however point out that questions can be valid requests for information if a public authority has information in its records which answers the question, and whilst a public authority is not required to answer a question if it does not already have relevant information in recorded form, this does not prevent it providing answers or explanations as a matter of normal customer service.
29. Following the intervention of the Commissioner, the Welsh Government subsequently amended its response to the complainant in respect of these items confirming that whilst it does not hold relevant information which would allow it to answer those items of his request, that the respective local authorities may do so.
30. The WG further explained to the complainant that TrawCymru is not a body in its own right, but the name given to the bus services funded by the Welsh Government for local authorities to procure TrawsCymru bus services from bus operators, and does not therefore monitor performance of the specified bus services.
31. The Commissioner is satisfied that on the balance of probabilities that the Welsh Government does not hold relevant information in respect of items 2, 3 and 4 of the request and has therefore complied with its obligations under section 1(1) of the FOIA.

## Right of appeal

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32. 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)

33. 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.
34. 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 .....**

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