

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2018

Public Authority: Welsh Government

Address: freedom.ofinformation@wales.gov

Decision (including any steps ordered)

1. The complainant submitted four multi-part requests for information in relation to the TrawsCymru T3 bus service from Wrexham to Barmouth. The Welsh Government refused each of these requests in reliance on section 14(1) of the FOIA. The Commissioner's decision is that the Welsh Government was entitled to rely on section 14(1) for each of the separate requests for information. The Commissioner does not require the public authority to take any steps.

Request and response

Request one ATISN 12006

2. On 22 January 2018 the complainant wrote to the Welsh Government and requested 24 items of information in respect of the TrawsCymru bus network relating to a review of the Bevan Foundation Report and services of the T1, T2, T3 and T5 routes. Due to the length of the request it has been reproduced in full in the attached annex.

Request two ATISN 11954

3. On 25 January 2018, the complainant wrote to the Welsh Government and requested the following information:

"1. All communications (written and email) between 21/11/17 and 25/1/18 made by the Cabinet Secretary for Economy and Transport and all communications (written and email) between 01/11/17 and 25/1/18 made by the TrawsCymru Network manager on the topic of the TrawsCymru T2 and T3 service changes introduced in January 2018.

2 All Communications (written and email) between 21/11/17 and 25/1/18 made by the Cabinet Secretary for Economy and Transport and all communications (written and email) between 21/11/17 and 25/1/18 made by the TrawsCymru Network Manager on the topic of the freedom of information request edated 22/11/17 regarding the "high level" review into operation of TrawsCymru services between Wrexham and Aberystwyth"

Request three ATISN 12050

4. On 7 February 2018, the complainant wrote to the Welsh Government in a 14 part request for information in respect of the 2013 Bevan Foundation Report regarding the TrawsCymru bus network and the feasibility of the routing of the T3 service from Wrexham to Aberystwyth as opposed to the actual Wrexham to Barmouth. As with request one, due to the length of this request, it has been reproduced in the attached annex to this notice.

Request four ATISN 12099

5. On 18 February 2018 the complainant submitted a 10 part request to the Welsh Government for information in respect of the new TrawsCymru bus routes in North Wales. Again, the full request can be found in the attached annex to this notice.
6. The Welsh Government responded to requests one to three on 19 February 2018 and request four on 14 March 2018 refusing all requests in reliance on section 14(1) of the FOIA on the basis that all requests were vexatious.
7. Following an internal review the Welsh Government wrote to the complainant on 21 March 2018 in respect of requests one to three and on 1 May 2018 in respect of request four. It stated that it was satisfied that its original responses were correct.

Scope of the case

8. The complainant contacted the Commissioner on 21 March 2018 to complain about the way his first three requests for information had been handled, and on 3 May 2018 in respect of request four. He was not satisfied with the Welsh Government's reliance on section 14(1) of the FOIA and does not accept that his requests contained aggressive or abusive language, reflected personal grudges, demonstrated unreasonable persistence or intransigence, contained unfounded accusations or were frequent or overlapping.

9. The Commissioner considers that the scope of her investigation is to determine whether the Welsh Government was entitled to rely on section 14(1) in respect of the above four requests for information.

Reasons for decision

Section 14(1) - Vexatious requests

10. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
11. The term 'vexatious' is not defined in the FOIA, however, the Upper Tribunal in the Information Commissioner vs Devon CC and Dransfield [2012] UKUT 440(AAC), (28 January 2013) took the view that the ordinary dictionary definition of the word 'vexatious' is only of limited use, because the question of whether a request is vexatious ultimately depends on the circumstances surrounding that request.
12. In further exploring the role played by circumstances and whether the request has adequate and proper justification, the Tribunal concluded that 'vexatious' could be defined as the "*...manifestly unjustified, inappropriate or improper use of a formal procedure.*" (paragraph 27)
13. Consistent with the Upper Tribunal's decision which established the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious, the Commissioner's guidance for section 14 confirms that the key question to ask when weighing up whether a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
14. Where this not clear, the public authority should weigh the impact on the authority of complying with the request and balance this against the purpose and value of the request. In doing this, public authorities will inevitably need to take into account the wider factors such the background and history of the request.
15. The Welsh Government provided some background information to the request informing the Commissioner that the complainant first contacted it in January 2016 to request two changes to the timing of the TrawsCymru bus service in Aberystwyth, one of which it was able to accommodate. However, it could not accommodate his request to retime key north to south TrawsCymru buses in Aberystwyth at 18:40.

16. The complainant has also been in correspondence with the Welsh Government in respect of the routing of the T3 TrawsCymru bus service from Wrexham to Barmouth as opposed to his preferred option of Wrexham to Aberystwyth. Much of the complainant's correspondence in the intervening period has been in relation to these issues.
17. When considering refusing a request on the basis that it is vexatious, the Commissioner's guidance in respect of section 14(1) refers to a number of indicators which a public authority may find helpful and notes that the Welsh Government considered the following indicators as relevant factors in respect of all four requests:
 - Abusive or aggressive language
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
18. The Commissioner also considers that even though the Welsh Government did not explicitly refer to 'burden on the authority' (another potential indicator), that the Welsh Government has provided sufficient arguments and evidence in support of its more general reliance on section 14(1) that this is also applicable.

Burden on the authority

19. Since January 2016, the Welsh Government informed the Commissioner that it has received voluminous correspondence (including many FOIA requests), from the complainant, responding to which has proved extremely time consuming. This has been exacerbated by the nature of the requests themselves which were very detailed, repetitive and contained extracts from various other pieces of correspondence in an ad-hoc and unclear way, often being received before responses to earlier correspondence had been issued.
20. Ultimately therefore, the Welsh Government considered it necessary to develop a coping strategy to deal with the multitude of correspondence, so created a separate iShare folder and provided a table of contents to the Commissioner as evidence in support of the above.
21. The Commissioner notes that since January 2016, there has been in excess of 150 items of correspondence in the form of emails direct to named officials and Ministers, correspondence to other AM's and MP's

and various FOI requests. Having had sight of the supporting evidence from the Welsh Government, the Commissioner can also confirm that it tends to be very detailed, contains extracts from other pieces of correspondence making it very time consuming to unpick, and often overlapping previous correspondence.

Abusive or aggressive language

22. In its response to the complainant dated 19 February 2018, the Welsh Government stated that the tone of his frequent correspondence goes beyond the level of criticism that employees of a public authority should reasonably expect to receive, adding that he has frequently branded Welsh Government employees and Welsh Ministers as liars and questioned their behaviour. It cited the following extracts from the complainant's correspondence as evidence:

"Government Advisers and Officials know they are allowed to lie and make incorrect statements with impunity and follow their own strategies rather than the Welsh Government strategies"

Personal grudges

23. The Commissioner would highlight that her guidance in respect of this indicator states:

"For whatever reason, the requester is targeting their correspondence towards a particular employee or office holder against whom they have some personal enmity."

24. In its letter to the complainant dated 19 February 2018, the Welsh Government informed the complainant that he has referenced one particular Welsh Government official in almost every piece of correspondence he has submitted to it, branding that individual a liar whilst submitting that correspondence to a varied and wide audience. The Welsh Government further informed the complainant that he appears to be targeting his correspondence towards this particular employee in a hostile manner in order to incite a response from the numerous and varied recipients that had been copied in.
25. The Welsh Government informed the Commissioner that this one individual has been subjected to extreme criticism and has provided the following list of criticisms the complainant has subjected them to:
- Lying on multiple occasions to the public and the media;
 - Being evasive, unprofessional and dishonest;

- Favouring bus routes in his home county over other areas in Wales;
- Being negligent in managing the TrawsCymru network;
- Creating fictional responses to questions;
- Attempting to divert responsibility for actions he has supposedly taken;
- Deliberately altering the text of the complainant's FOIA requests in order to avoid answering questions;
- Providing incorrect statements to Ministers.

26. The Welsh Government also provided the following extract from the complainant's email of 16 December 2016 regarding the offer of a meeting:

"...then I see no point in having a meeting. This is a very simple problem that is easily solvable. However, [named individual] (a government official) has refused to put it right and resorted to lying in order to justify his refusal. [Named official] has opposed 2 previous complaints and lost both those...[Named official] has therefore decided he will not lose a third complaint and has therefore resorted to lying and devious responses rather than considering the facts..."

27. The Commissioner was informed that these are very serious allegations to make against a Crown official in terms of the Civil Service Code and the fact that they have been published has caused further embarrassment and distress to the individual in question.

28. The Welsh Government further informed the Commissioner that the complainant has called for this individual to be sacked and the Commissioner has reproduced the following extract provided by the Welsh Government as supporting evidence:

"The Welsh Government official responsible for not correcting this problem should be sacked for that alone and certainly should be sacked for repeatedly lying over a period of 2 years."

Unreasonable persistence

29. The Welsh Government informed the complainant that it considers that in submitting his requests, there is evidence of unreasonable persistence

in the sense that he appears to be attempting to reopen an issue on which he has already received responses or which have been subject to independent scrutiny through Dr Winckler's review¹ of TrawsCymru commissioned by Welsh Ministers, which reported in August 2013.

30. The Welsh Government informed the Commissioner that Bus Users Cymru² had offered to meet with the complainant when he first raised his concerns, but this was declined. The Deputy Director also offered a meeting which has not been taken up. Additionally, Welsh Government officials have met with the Traffic Commissioner to discuss his concerns and the Public Service Ombudsman for Wales informed the Welsh Government that it would not be investigating a complaint made to them by the complainant in relation to TrawsCymru.

Unfounded accusations

31. The Welsh Government referred to the complainant labelling its employees and Ministers as liars, accusations which it stated are based entirely on the complainant's own assumptions or conclusions. It further stated that where the complainant has asked for recorded information about meetings with local authorities, and have received a response which states no recorded information is held, that will be a matter of fact as it does not necessarily follow that there will be record of those discussions.
32. In relation to the complainant's fourth request, the Welsh Government informed the complainant that he is repeating unfounded assumptions and accusations in this request where he is suggesting some routes are being favoured over others based on their geographical location.
33. The Welsh Government informed the Commissioner that in addition to the unfounded allegations levelled against one of its officials, there have been accusations that Ministers have breached the Ministerial Code.

"The First Minister seems to think that his Ministers, Advisors and Officials are allowed to disregard the Ministerial Code and are allowed to lie and make misleading and incorrect statements to the Welsh Assembly, fellow Assembly members, County Councillors and the public."

¹ <https://beta.gov.wales/sites/default/files/publications/2017-10/review-trawscymru.pdf>

² <https://www.bususers.org/cymru-wales/about-us>

34. The Welsh Government also provided the Commissioner with a document containing extracts of the complainant's allegations against its officials and ministers and the Commissioner has provided a small flavour of those extracts below:

(a) *"...[named Minister] has allowed his officials to lie and falsify Freedom of Information Requests ... [Named Minister has also refused to answer the questions ... "whether there is a Welsh Government procedure for dealing with situations where Welsh Government officials lie to the public and to the media.*

It seems [named Minister] is a) allowing favourable treatment to North Wales at the expense of Mid/West Wales and b) is not prepared to investigate the behaviour of his officials."

(b) *The Welsh Government is happy to sit back and protect Government Officials who are not doing their job and lying. They are lying not only to the general public, but to Local Authorities, Welsh MPs,, Welsh Assembly Members and Government Ministers alike. It is time you as Minister responsible for Transport and the First Minister as arbiter of the Ministerial Code took some action."*

(c) *Over the past 2 years I have been subjected to institutionalised bullying by Messers [named Minister and Official] in that [named Official] has been deliberately obstructive, has lied with impunity, has altered the questions in my Freedom of Information Requests to avoid answering, and has refused to answer questions relating to Trawscymru Services. [Named Minister] has refused to address this behaviour by [named Official] and has allowed ineffective Internal Reviews by Directors from his own department to take place which have not examined my complaints and have found that the behaviour of [named Official] was perfectly OK.*

Intransigence

35. In its letter dated 19 February 2018, the Welsh Government referred to Welsh Government Officials, Ministers and Bus Users Cymru having corresponded with the complainant on numerous occasions regarding various matters he has raised in relation to TrawsCymru bus services.

36. The correspondence also referred to the Welsh Government's offer to meet him to discuss his various concerns, including a meeting with Bus Users Cymru and the Deputy Directors of Network Management, and stated that the following comments taken from his email dated 31 July 2017:

Before I would take part in any meeting I would wish to have recorded before the meeting the facts relating to the T2/T1 service and whether

[named official] agrees or disagrees with these facts. This could be used as a basis for any discussions at a meeting. I enclose the list of facts relating to this service and would be grateful if you could ask [named official] to signify whether he agrees/disagrees with these facts.

indicated to the Welsh Government that he is unwilling to engage with it regarding his concerns.

Frequent or overlapping requests

37. In its correspondence to the complainant dated 19 February 2018, reference was made regarding the volume of correspondence he has submitted to both Welsh Government Ministers and employees regarding the TrawsCymru bus services. The Welsh Government referred to 15 FOIA requests since April 2016, and in the last three months at least 24 pieces of correspondence to Welsh Ministers on the TrawsCymru bus services. The Welsh Government further informed the complainant that his correspondence often overlaps before the Officials have had the opportunity to consider and respond to earlier enquiries. The Welsh Government considers that with each piece of correspondence submitted by the complainant, it is his intention to re-examine and re-open issues that have already been considered and addressed.
38. The Commissioner has already referred to the voluminous correspondence sent to the Welsh Government from the complainant in its section discussing the burden on the authority in paragraphs 19 to 21 of this notice so does not intend to repeat them here.

Conclusion

39. In reaching her decision, the Commissioner is mindful of the Tribunal's definition of the meaning of vexatious in the context of the FOIA (as referenced in paragraph 12 of this notice) as the:

"...manifestly unjustified, inappropriate or improper use of a formal procedure."

The Commissioner has also considered whether the requests were likely to cause a disproportionate or unjustified level of disruption, irritation or distress and has concluded that in taking one or two of the indicators in respect of a vexatious request in isolation, that the weight of evidence overwhelming supports the Welsh Government's decision to refuse the request on this basis. Taking the arguments and evidence as whole therefore, the Commissioner has no hesitation in concluding that the Welsh Government was entitled to rely on section 14(1) of the FOIA in respect of all four requests for information.

Right of appeal

40. 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

41. 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.
42. 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
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