

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 November 2024

Public Authority: Gwynedd Council
Address: Council Offices
Shirehall Street
Caernarfon
Gwynedd
LL55 1SH

Decision (including any steps ordered)

1. The complainant requested from Gwynedd Council (the Council) information relating to the running of Ysgol Treborth/Ysgol Coed Menai school. The Council confirmed that it does not hold information within scope of part 4 of the request.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold any information falling within scope of part 4 of the request, and it has complied with section 1(1)(a) of FOIA. However, the Commissioner finds that the Council breached section 10(1) (time limits for compliance) of FOIA by not responding to the request within 20 working days.
3. The Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

4. On 10 October 2022 the complainant wrote to the Council and requested information in the following terms:

"All information held by Gwynedd Council relating to the running of Ysgol Treborth/Ysgol Coed Menai, LL57 2RX. Under the National

Minimum Standards for Residential Special Schools, I believe the school produced the following information which should be available:

1. Any risk assessments that were carried out in relation to the school's premises and grounds
 2. Any risk assessments that were carried out in relation to potential risks to children from public access to children at the school or during activities or outings
 3. Any previous prospectuses for the school
 4. Any information from the meeting of governors relating to the grounds of the school e.g. access, security, members of the public etc.
 5. Any School Policy/Rules Documentation or Handbook
 6. Any additional information or correspondence relating to the running of the school that concerned security (gates, barriers, patrol staff etc.) or access."
5. On 16 November 2022 the Council responded. It said the information requested had been destroyed in accordance with the Council's retention schedule as detailed in a table, which the Council drafted for the complainant. With regard to part 4 of the request, the Council said it would provide a response to the complainant the following week.
 6. On 14 November 2023 the complainant asked the Council for the requested information dated 16 November 2022. He also informed the Council that he did not receive the information to part 4 of his request.
 7. On 15 November 2023 the Council informed the complainant that it had passed the request to the relevant officer and was waiting for a reply.
 8. On 20 and 23 November 2023 and 12 December 2023, the complainant asked the Council for an update regarding the response to his request.
 9. On 12 December 2023 the Council responded to part 4 of the request. It stated there is no information held regarding this request (the Council's request ref: 417).
 10. On 9 February 2024 the complainant asked for an internal review regarding part 4 of his request.

11. On 1 March 2024 the Council provided its review response and maintained its original position. It explained that the documents had not been disposed of but the Council could not provide copies of the documents.

Reasons for decision

12. During the Commissioner's investigation of this complaint, the complainant was asked to confirm the information he is seeking, he confirmed it was information to part 4 only of his request (ref: 417).
13. This reasoning covers why, on the balance of probabilities, the Council does not hold any information to part 4 of the request.

Section 1 – information held/not held

14. Section 1 of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
15. The Commissioner's role when determining whether a public authority has complied with section 1(1) of FOIA, is limited to whether it is more likely than not that the public authority has provided all the recorded information it holds. The Commissioner is not required to challenge the accuracy or adequacy of this information. This is because the terms of FOIA only relate to the provision of information as it is recorded, regardless of its accuracy or validity.
16. Where there is some dispute between the amount of information identified by a public authority and the amount of information a complainant believes may be held, the Commissioner is led by a number of First-tier Tribunal decisions. He must decide whether on the civil standard of the balance of probabilities, the public authority holds any information which falls within scope of the request at the time it was made.
17. Within the Council's review response, it reiterated the position on the governors' minutes. The Council stated it had spoken with the officers involved and they had conducted searches in the Council's records for such information.

18. It said "Ysgol Coed Menai was formally closed at the end of August 2013. As a maintained school its premises and use of the facilities would generally have been under the control of the governing body. So, information about day-to-day site and operational matters, would have been with the school. On closure of the school, the remaining records would have transferred to the local education authority. These should have been held, or disposed of in accordance with the relevant retention policy."
19. The Council also said it is aware that the retention period for minutes of governing bodies is stated to be indefinite in the Council's Document Retention Policy. However, the minutes of the governing body for the period leading up to the closure, the Council said "cannot be found". It explained to the complainant it could not offer any explanation "as to the plight of these documents which have clearly gone astray." The Council said this does not mean the documents have been disposed of, but it cannot provide copies of the documents due to the reasons described. It added, searches including within the County Archives had been conducted, but documents stored there are up to around 1972.
20. The Council informed the Commissioner that the school was originally opened as Ysgol Treborth in 1950, and it changed its name to Ysgol Coed Menai in 2003. The Council also stated that the school later closed on 31 December 2012.
21. The Council explained to the Commissioner thorough searches had been carried out, and any records that would have been held by Ysgol Coed Menai school would have been transferred to the Council at the time of closure. It further explained that as the school was responsible for its own record keeping practices, it could have disposed of any records it had created at any time prior to closure, or they could have been mislaid by the school.
22. The Council said the transfer was overseen by the Records Management Officer, and any such records that could be located at the time, and needed to be retained in accordance with the retention schedule, would have been safely transported to Caernarfon. For that reason, the Council considers there to be no evidence of any data breach occurring.
23. With regard to the searches carried out to check no information was held within scope of the request, the Council confirmed any paper documents, including Governors' minutes would have been transferred to the Records Management centre following the school's closure. The Council said these documents would not necessarily be a complete set of documents, as this would be dependent upon the school's record keeping practices.

24. The Council said that its Records Centre is a repository for inactive paper documents which are transferred there from various departments within the Council, and also from any schools that are closed.
25. The Council confirmed the searches it conducted, this included searches within the records management centre (manual search through paper files) – “with regards to question 4” of the request. It also confirmed the searches with different departments; Education – regarding questions 1 – 6; Environment – regarding questions 1 and 6; Housing and Property – regarding questions 1 and 6; Gwynedd Council Archives - regarding questions 1 – 6 but focusing on question 4.
26. The Council stated the search terms used: for electronic data searches, a search within the Council electronic SharePoint filing system titled “iGwynedd” was carried out by the Education department. The Council said there was no specific wording used to conduct the search, the officer responsible had searched all files. It also stated searches had been conducted using the words “Treborth, Ysgol Treborth, Coed Menai and Ysgol Coed Menai on the Records Management system”. The Council said this provides a number and location of file(s) containing paper records matching the search criteria (paper records management centre). None of these returned any results.
27. With regard to any recorded information ever held relevant to the scope of the request but deleted/destroyed, the Council informed the Commissioner that the school would have been responsible for its own record keeping arrangements as a separate Data Controller.
28. The Council was also asked by the Commissioner whether it had a record of the document’s destruction, it replied saying;

“The Records Centre system stores paper documents that are transferred there from various departments within Cyngor Gwynedd. The Record Centre system retains a record of any documents destroyed. The retention period for Governors Minutes at the time of school closure was permanent therefore no Governors’ meeting documents would have been destroyed by the Council. The record of destruction is kept permanently.”
29. The Council provided the Commissioner with the table – ‘extracts of retention schedule’ this was included in its response to the complainant, and which illustrates its record of destruction. The table showed the function: “Principal Set (signed), the retention period: “Permanent” and Action: “If the school is unable to store these then they should be offered to the County Archives Service.”

30. The Council also referred the Commissioner to its original response to the request sent on 16 November 2022. The Council said, "this information was based on the retention periods at the time of the request which were modelled on the IRMS toolkit."
31. With regard to the Commissioner's question about copies of the information made and held in other locations, the Council said it is highly likely all documentation consisted of manual paper records. This is because of the date of the school opening and its closure. The Council reiterated that any paper files would have been transferred to its Records Management centre and stored in line with specified retention periods. It stated no electronic files were transferred to the Council at the time of closure.
32. The Council confirmed there is no business purpose to hold the information. It said the only exception are the Governors' minutes, which would have been transferred to the Records Management centre. As explained above, searches of information held at the centre returned no results.

The Commissioner's position

33. It is not the Commissioner's position to determine what information ought to be held by the Council in this matter, but rather what is held, and whether appropriate searches have been conducted.
34. The Commissioner notes the complainant disagrees with the Council's position that it does not hold the information requested. The complainant believes "the Council has intentionally concealed this information." He referred to the Council's review response about the information which said, "This does not necessarily mean that they have been disposed of but the Council cannot provide copies of the documents for the reasons outlined above." The complainant deems the Council is withholding the information or "there appears to be a massive data protection breach as some of these minutes would have contained personal information to do with former students." He went on to say that he does not "believe the Council has simply misplaced these important documents."
35. It is clear to the Commissioner that the complainant not only considers the Council does hold the information requested, but he believes the Council has purposely concealed the information.

36. While the complainant refuses to accept the Council's response and he views an element of mistrust, the Commissioner has found no evidence which would indicate the Council holds information. Specifically, information from the meetings of governors relating to the running of the school in question. He also sees no reason to doubt the Council's explanation.

Conclusion

37. The Commissioner considered the Council's explanation regarding the searches carried out to check whether information was held. He also considered the Council's response to the complainant's argument.
38. The Council stated there is no evidence of any data breach occurring during the transportation of any records.
39. The Commissioner accepts that following the school's closure, any paper documents would have been transferred to the Records Management centre (a repository for inactive paper documents). He viewed the table – 'extracts of retention schedule' which shows the record of destruction provided by the Council.
40. Based on the evidence provided to him, the Commissioner is satisfied the Council conducted appropriate searches for information, and he accepts its reasoning.
41. In conclusion, the Commissioner determined that on the balance of probabilities, the Council does not hold any information within scope of part 4 of the request. He is therefore satisfied that the Council complied with the requirements of section 1(1) of FOIA in this case.

Procedural matters

42. Section 10(1) of FOIA says that a public authority should comply with section 1(1) promptly and no later than the twentieth working day following the date of receipt of the request.
43. In this case, the Council provided its response (retention schedule table) to the request of 10 October 2022 on 16 November 2022, and said it would provide its response relating to part 4 the following week. The Council responded to part 4 of the request on 12 December 2023 over a year after the request was submitted. As this is significantly outside the 20 working day time limit, the Council breached section 10(1) of FOI, the Council must confirm or deny within the time limit whether it holds the information.

Right of appeal

44. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

45. 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.
46. 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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