

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 July 2021

Public Authority: Welsh Government

Address: freedom.ofinformation@gov.wales

Decision (including any steps ordered)

1. The complainant requested information in relation to the selling of essential and non-essential items for a specific date and time during the national firebreak period in Wales during October and November 2020. The Welsh Government responded by providing an explanation in relation to its decision to close non-essential shops, and provided a link to its most up to date list of goods which could be sold.
2. The Commissioner's decision is that the Welsh Government has breached section 1 and section 10 of the FOIA.
3. The Commissioner requires the Welsh Government to take the following steps to ensure compliance with the legislation.
 - Provide a fresh response to the request, that addresses the date and time specified in the request.
4. The Welsh Government 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 25 October 2020, the complainant wrote to the Welsh Government and requested the following information:

"...under the terms of FOI legislation, I ...seek the following information as in operation today, Sunday 25 October 2020 at 12 noon..."

Is it currently legal for a shop in Wales to sell me alcohol?

Is it currently legal for a shop in Wales to sell me a bible?"

6. The Welsh Government responded on 30 October 2020. It provided some background to its decision to close non-essential shops and prohibit the sale of non-essential items in supermarkets. It also informed the complainant that Ministers had been meeting with retailers, representative groups and trade unions to clarify the guidance, and confirmed that an updated list of goods which can be sold had been circulated to retailers providing the complainant with the link to its updated list.
7. The complainant expressed dissatisfaction with this response on 30 October and again on 7 November 2020 on the following grounds:
 - (a) The response failed to acknowledge the formal FOI nature of the request with no case number being provided.
 - (b) The very specific information requested was not contained within the documentation supplied.
 - (c) The information supplied was no more than a live link to documents which had been modified on 29 October 2020 whilst his request had specifically asked for the regulation as it stood at noon on 25 October 2020.
8. The complainant has not received an internal review to date, despite the Commissioner writing to the Welsh Government on 15 December 2020 asking it to do so, and informing it that it should be undertaken within 40 working days of receipt of its letter.

Scope of the case

9. The complainant contacted the Commissioner on 25 November 2020 to complain about the way his request for information had been handled. He is not satisfied that the Welsh Government directed him to a live link which declared that it had been amended after the date he had specified in his request.
10. The scope of the Commissioner's investigation is to determine whether the Welsh Government has complied with its obligations under sections 1 and 10 of the FOIA.

Reasons for decision

Section 1 – General right of access to information held

11. Section 1 of the FOIA concerns the general right of access to information held by public authorities and section 1(1)(a) requires a public authority to inform the applicant in writing whether it holds information of the description specified in the request. Where relevant information is held, section 1(1)(b) places an obligation on the public authority to provide that information, (unless an exemption under Part II of the FOIA applies).
12. In this particular case, the Welsh Government provided information which did not apply at the date and time the complainant specified in his request. The Commissioner has no alternative but to conclude therefore, that the Welsh Government has failed to comply with its obligations under section 1(1) of the FOIA.

Section 10(1) – time for compliance with request

13. Section 10 of the FOIA states that, subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
14. As the Commissioner has concluded that the Welsh Government has not complied with its obligations under section 1(1) of the FOIA, the Commissioner also finds the Welsh Government in breach of the requirements of section 10(1) of the FOIA.

Other matters

15. Whilst the Commissioner is mindful of the pressures placed on the Welsh Government during the pandemic and the resultant resource constraints, she is disappointed that the Welsh Government failed to respond to her letter of 15 December 2020 asking it to conduct an internal review within 40 working days of the date of her letter.

Right of appeal

16. 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

17. 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.
18. 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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