

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 December 2011

**Public Authority:** Monmouthshire County Council

**Address:** County Hall  
Cwmbran  
NP44 2XH

### Decision

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1. The complainant has requested whether there was any CCTV footage of an incident involving one of the Council's buses on 16 November 2010.
2. The Commissioner's decision is that Monmouthshire County Council did not deal with the request in accordance with the Freedom of Information Act ('the Act').
3. The Commissioner requires the public authority to comply with section 1(1) of the Act by either:
  - Confirming whether the requested information is held, and if so, disclosing it to the applicant, or
  - Issuing a valid refusal notice in accordance with section 17.
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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### Request and response

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5. On 16 February 2011, the complainant wrote to the Council and requested information in respect of an incident which occurred on 16 November 2010 involving one of the Council's buses. He specifically requested the Council to:

*...study and pass on all information to myself and [named solicitors], my solicitors, including copies of the CCTV, Motion sensor readings..."*

6. The complainant contacted the Council on a number of occasions in relation to his request for information and on 5 July 2011 the Council contacted the complainant informing him that there had been a technical problem which had rendered the information from the hard drive unreadable. It also stated that:

*"You will shortly receive a formal response to your request for this information from ...the Council's Performance Management Officer."*

7. The Council further contacted the complainant on 7 July 2011 informing him that his request for information regarding the CCTV tape was being dealt with by [named council employee] and that he should receive a formal reply shortly.

### **Scope of the case**

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8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He was particularly concerned about the delays he has experienced while waiting for a formal response from the Council, some apparently contradictory information regarding his request as well as other aspects of its procedural handling of this request for information.
9. On 7 September 2011 the Commissioner contacted the Council to remind it of its requirements to issue a refusal notice in compliance with section 17 of the Act and provided links to his specialist guidance to assist the Council in this regard.
10. On 22 September 2011 the complainant contacted the Commissioner to confirm that he had still not received a formal response from the Council.

### **Reasons for decision**

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11. Section 1(1) of the Act requires a public authority in receipt of a request to confirm whether it holds the requested information, and if so, disclose it to the applicant. Alternatively, a public authority can issue a refusal notice compliant with section 17 of the Act. Where the public authority is refusing to provide information under any exemption in Part II of the Act, the public authority should cite the specific exemption(s) that it is relying on to refuse the request.

12. The Commissioner understands that the Council has not issued a formal response in compliance with section 17 of the Act. The Commissioner requires the Council to confirm to the complainant whether it holds the information falling within the scope of his request. If so, it should either disclose the information to the complainant or issue a valid refusal notice.

## **Other matters**

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### **Procedural matters**

13. The complainant has alleged that he was mis-informed by the Council in relation to the procedural requirements of the Act. He has stated that he was informed that any request made under the Act should be headed 'Freedom of Information Act Request'.
14. The Commissioner would wish to highlight that it is the responsibility of the public authority and not the applicant to identify the correct access regime under which any request for information should be considered.
15. The complainant has also alleged that the Council informed him the Act did not apply in his situation because there were children on the CCTV footage.
16. Again, the Commissioner would point out that regardless of the content of the information, the public authority is required to comply with its duties under section 1(1)(a) of the Act.

## Right of appeal

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17. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

18. 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.
19. 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** .....

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**