

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 05 December 2016

Public Authority: Isle of Anglesey County Council
Address: Council Offices
Llangefni
Anglesey
LL77 7TW

Decision (including any steps ordered)

1. The complainant requested various items of information from the Isle of Anglesey County Council ('the Council'). The Council provided some information and stated other information was not held. In its internal review the Council provided some additional information relevant to one part of the request and maintained it did not hold any further recorded information relevant to the request. During the course of the Commissioner's investigation the Council disclosed some additional information relevant to one part of the request. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any additional information other than that which it has disclosed. However, the Council breached section 10 of the FOIA in failing to comply with section 1 within the statutory time for compliance. The Commissioner does not require any steps to be taken.

Request and response

2. On 1 August 2015 the complainant wrote to the Council and requested information in the following terms:

"I shall be grateful if the Council will let me have the following information, which is requested under the freedom of information legislation. I assume the Council will have it because it is essential to the preparation of the emerging Development Plan. However, if this is not the case I shall be grateful if the Council will pass the request the public body [sic] that will have it

1. The most recent data of the total number of permanent residents living on Ynys Mon, divided into the following age classes (or whatever age classes the Council has used):
 - < 18 years of age.
 - 18-64 years of age.
 - 65-75 years of age.
 - > 75 years of age.
 2. The number of permanent residents who are in receipt of any type of social benefit, for the avoidance of doubt it should include benefits provided by the Council.
 3. The number of vacant dwellings of any sort – the most recent data held by the Council. I will assume it will be sometime in 2014 or 2015.
 4. The total number and total area of previously developed sites.
 5. The legal/administrative/planning status of the area known as Pengorffwysfa, which appears to be in the Parish of Llanelan.
 6. The total number and area of sites of local nature conservation interest and RIGS"
3. The Council responded on 15 October 2015 and provided information relating to questions 1 to 5 and advised that information relating to question 6 could be obtained from Natural Resources Wales.
 4. On 21 October 2015 the complainant requested an internal review of the Council's handling of the request, specifically, its response to questions 1, 2, 5 and 6.
 5. The Council provided the outcome of its internal review on 18 January 2016. It provided some additional information relating to question 5, and stated that no additional information was held relevant to questions 1 and 3. The Council also confirmed that it did not hold any information relevant to question 6.

Scope of the case

6. The complainant contacted the Commissioner on 19 May 2016 to complain about the way his request for information had been handled.
7. During the course of the Commissioner's investigation and as a result of some additional clarification that the complainant provided to the

Commissioner in relation to part 6 of the request, the Council disclosed information relating to sites of local nature conservation.

8. In light of the above, the scope of the Commissioner's investigation into this complaint is to determine whether the Council holds any additional information relevant to parts 1, 2 and 5 of the request.

Reasons for decision

Section 1 – general right of access

9. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
10. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held; she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
11. The Council advised the Commissioner that on receipt of the request it was forwarded to the relevant Council departments in order to identify information relevant to the request. Based on the topics covered by the request it was passed to the Planning service (including the Joint Planning Policy Unit), the Highways service and the Finance service. The information that was identified during the searches conducted was disclosed to the complainant.
12. The Council confirmed that individual mailboxes were not searched in this instance because "the information requested was clear and deemed that if it was held, it would be held in distinct [paper and electronic] files rather than in any mailboxes". The Council advised that the searches were undertaken using keywords relevant to the separate parts of the request, eg "Pengorffwysfa". The Council also confirmed that no recorded information relevant to the request has been deleted or destroyed.

13. The Council also provided the Commissioner with representations in respect of each part of the request that this notice relates, with specific reference to points that the complainant has raised in support of his view that the Council does/should hold additional information. These are covered in details below.

Part 1 of request – demographic information

14. In its initial response to the request the Council provided a table of information showing a breakdown of residents living in its area into the various age categories requested. The Council confirmed that the information had been taken from "table QS103EW regarding Age by Single Year by the Office for National Statistics in the 2011 Census".
15. In his internal review request the complainant questioned whether the table of information disclosed was the most up to date demographic information held by the Council. The Council confirmed that it was the most up to date information held. In his complaint to the Commissioner the complainant indicated that he did not believe that the information disclosed was the most up to date held by the Council. He stated that the information in question is essential to the preparation of the Council's Local Development Plan ('LDP'). As such, he suggested that the current/draft LDP may not be based on up to date information.
16. The Council advised the Commissioner that it is working jointly with Gwynedd Council to prepare the Anglesey and Gwynedd Joint LDP. The joint LDP covers the period 2011 to 2026, and as such 2011 is the base year of the LDP. The process of preparing an LDP involves collecting information about a range of economic, social, and environmental issues from a number of sources, including information held by third parties.
17. The results of the 2011 Census provides the Council with useful information about the area's demographic profile. On the basis that 2011 is the base year for the joint LDP, that the request referred to information required to inform the LDP preparation process, and that the Census provides a record of 'actual' as opposed to 'estimated' information, the Council accessed information held by Stats Wales about the 2011 Census to provide the total number of permanent residents divided into the required age groups.
18. The Council advised that there are a number of sources that provide publicly available demographic information and statistics, for example Stats Wales¹ and InfoBase Cymru². The Council also stated that the

¹ <https://statswales.gov.wales/Catalogue>

Office of National Statistics ('ONS') releases *estimates* of population for each local authority since 2011. These estimates are then in turn held on the Stats Wales and InfoBase Cymru websites.

19. The Council's position is that it does not hold any additional recorded information relevant to the request ie more up to date information than that which it has disclosed. However, the Council does have access, as and when required, to additional information relating to population estimates which is publicly available online via the Stats Wales/InfoBase Cymru websites.

Part 2 of the request – social benefit recipients

20. In its initial response to the request, the Council provided figures for the number of residents in receipt of housing benefit and council tax reduction benefit. In its internal review response the Council explained that whilst the request was for "any type of social benefit", it only holds information on the benefits it administers.
21. In his complaint to the Commissioner, the complainant explained that he disagrees with the Council's position that it does not hold details of residents claiming other benefits (ie those that the Council does not itself administer). He believes the Council requires this information for four purposes:
- In relation to the determination of planning policies and related issues.
 - The information is required to be taken into account in relation to the Council's social care policies.
 - The Council is required to take into account information about other benefits when determining and administering the benefits that the Council is responsible for.
 - The Council requires information about *all* benefits to provide evidence and/or support statements about social deprivation in the area.
22. In respect of the complainant's points, as referenced above, the Council provided some background information about the preparation of the LDP. The Council confirmed that preparation of the LDP involves building a picture based on various sources of information. As an example, the

² <http://www.infobasecymru.net/IAS/>

preparation of the joint LDP has been informed by a Sustainability Appraisal (SA), which incorporates a Strategic Environmental Assessment (SEA). The initial stage in the SA/SEA process collecting information about the relevant area from a variety of sources. The information is recorded in the SA/SEA scoping report published in July 2011. It includes information from the Welsh Index of Multiple Deprivation, unemployment related benefits, income support, working family tax at a point in time. Therefore, the Council's position is that it has access to information held by third parties about benefits to inform the SA/ SEA scoping stage. However, the Council does not hold the information itself.

23. In terms of social care policies and benefits information the Council confirmed that when the request was received it was forwarded to the Finance Service for a response in relation to part 2 of the request. The information obtained in relation to housing benefit and council tax reduction benefit was provided to the complainant.
24. In response to the Commissioner's enquiries, the Council confirmed that it needs to know whether people are in receipt of certain benefits, for example to process blue badge applications and care home invoices. However, the Council advised that this is more of a "tick box exercise" rather than something that the Council actually administers i.e. is this person in receipt of benefit – yes or no? The Council advised that not everyone who has a blue badge is in receipt of benefits and neither is every elderly person in a care home in receipt of benefits. The Council stated that:

"To provide such information to the requestor, the Council would need to look at each individual account and even then the resulting information would not be an accurate reflection of 'the number of permanent resident who are in receipt of any type of social benefit'.

The information about 'all types of social benefits' is a central government matter and the information would be available from the Department of Work & Pensions".

25. In essence, the Council *may* hold some additional info about other social benefits of certain residents in its area, for example via the blue badge application process etc but this would require reviewing all such documentation to identify what benefits people had declared. However, the Council pointed out that this is not the information which the complainant has requested ie "the number of permanent residents who are in receipt of social benefit". The Council explained that residents could be claiming social benefits such as jobseeker's allowance etc which have not been declared to the Council nor has there been any reason for them to notify/provide the information to the Council. As such, the

Council's position is that it does not hold information/data on the total number of residents claiming any other form of social benefits other than the information it has disclosed relating to the social benefits that it administer ie housing benefit and council tax reduction benefit.

Part 5 of the request - Pengorffwysfa

26. This part of the request was for the "legal/administrative/planning status of the area known as Pengorffwysfa". In its initial response to the request, the Council confirmed that Pengorffwysfa is:

- Identified as a Listed Settlement under policy 50 of the adopted Ynys Môn Local Plan (1996)
- In the stopped Unitary Development Plan (2005) which is a material planning consideration it is identified as a Cluster under policy HP5.
- In the emerging joint LDP it is identified as a Cluster under policy TAI 18.

The Council also provided some additional information about the various policies referred to above.

27. The complainant accepts the information that the Council has provided information regarding the planning status of Pengorffwysfa but considers the Council should hold further information about its legal/administrative status. The complainant pointed out that the Council includes Pengorffwysfa as a geopolitical unit within its current development plan. As geopolitical units are subject to statutory planning and other policies the complainant considers "it is essential that the public is aware of its boundary and legal status". The complainant also states that the Council identifies the 'unit' with road signs but it is not shown on the OS maps he has examined. In erecting such road signs, the complainant contends that the Council "must have considered the status of the 'area' in legal terms' – I am seeking what that status is". In addition, as far as he is aware, the 'unit' is not recognised by the Royal Mail or other.

28. The Council explained that road signs do not usually refer to a physical boundary but provide general information to travelling members of the public. They are generally placed near the last building at either end of a village or locality or occasionally where a speed restriction commences. Over time, both of these can change but the Council confirmed that there is no policy relating to the placement of such signs.

29. In its internal review response the Council confirmed that it holds a gazetteer of place names and Pengorffwysfa is contained within it. It also stated that Post Office towns and localities are used, therefore,

addresses within Pengorffwysfa are listed as Llaneilian for locality and Amlwch for town. The electoral ward is Twrcelyn and the parish Llaneilian. The Council also confirmed that Ordnance Survey has the area marked as Pengorffwysfa, but “the boundaries used are probably historical rather than legal ones”.

30. The Council advised the Commissioner that, as far as it is aware, ‘geopolitical unit’ is not a term contained within the Welsh Government’s national planning policy and it is not a term referred to in its existing development plan or the emerging joint LDP. The Council’s existing development plans and the emerging joint LDP all include a “Settlement Hierarchy”. Generally, a Settlement Hierarchy is a land use planning policy tool which classifies settlements so that a plan’s growth may be directed appropriately across a Plan area. In its initial response the Council confirmed the settlement status of Pengorffwysfa as contained in the various local development plans (as detailed in paragraph 26 of this notice). Neither of the development plans provide ‘development boundaries’ for listed settlements or clusters, although the stopped UDP does provide an inset map, which identifies the extent of individual Clusters³. The emerging Joint LDP also shows the boundaries of Pengorffwysfa by colouring relevant buildings⁴. The Council confirmed that full copies of the three development plans referred to, including associated supporting documents and maps have previously been sent to the complainant.
31. In summary, the Council’s position regarding this part of the request is that the information it has provided to the complainant represents all the recorded information about the legal/administrative/planning status of Pengorffwysfa.

Section 10 – time for compliance

32. Section 1 of FOIA provides for a general right of access to information held by public authorities. Section 10(1) provides that a public authority must comply with section 1 promptly and in any event not later than the twentieth working day following the date of receipt of a request for information.

³ http://www.anglesey.gov.uk/Journals/public/attachments/75/Clusters_20461.pdf - Page 1

⁴ <http://www.anglesey.gov.uk/Journals/2015/02/16/m/e/b/Clusters---Ynys-Mon.pdf> - Page 22

33. In this case the complainant submitted his request for information on 1 August 2015 and the Council received it on 7 August 2015. The Council responded on 18 October 2015 and provided some information. The Council also provided additional information in its internal review response dated 18 January 2016. The Council also disclosed some additional information during the Commissioner's investigation.
34. The Council explained to the Commissioner that the complainant corresponds prolifically with various departments. The background and context of the Council's dealing with the complainant has resulted in him being advised to address all correspondence to its Chief Executive. The request in this case was received at a time when the Council's new Chief Executive had just begun in post, and his predecessor's Personal Assistant was on annual leave. This resulted in a delay in the information request being forwarded to the Corporate Information Office. As the request covered a number of different issues, it then had to be forwarded to a number of different council departments at a peak annual leave period. This resulted in the delay in the Council's initial response to the request.
35. The Commissioner notes the Council's explanations for the delay in responding to the request. However, as the Council did not respond to the request within the required timescale and failed to comply fully with section 1(1)(b) within the required timescale the Council breached section 10(1) of the FOIA.

Other matters

Internal reviews

36. There is no explicit timescale laid down in the FOIA for completion of internal reviews. However, the Code of Practice issued under section 45 explains that such reviews should be completed within a reasonable timeframe. The Commissioner believes that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
37. In this case the complainant requested an internal review on 21 October 2015, which the Council received on 28 October 2015 and the Council did not respond until 18 January 2016. The Council explained to the Commissioner that the delay with the internal review response was due to resource issues experienced within the relevant team during the period. Whilst the Commissioner notes the Council's explanations for the delays experienced in this case, she does not consider that any

exceptional circumstances existed to justify the delay. The Commissioner would like to take this opportunity to remind the Council of the expected standards in this regard and recommends that it aims to complete its future reviews within her recommended timescale of 20 working days.

Right of appeal

38. 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

39. 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.
40. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF