

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 January 2016

Public Authority: Welsh Assembly Government
Address: Cathays Park
Cardiff
CF10 3NQ

Decision (including any steps ordered)

1. The complainant has requested all emails sent and received by a named individual that makes reference to Ideoba. The Welsh Government indicated that it was considering withholding some of the information by virtue of section 43 of the FOIA but needed additional time to consider the public interest test. Despite various reminders from the complainant and the Commissioner, the response remains outstanding.
2. The Commissioner's decision is that in failing to provide some of the information within the required timescale, the Welsh Government has breached section 10(1) of the FOIA. Additionally, in failing to provide a valid refusal notice in respect of other parts of the information within the required timescale, the Welsh Government has breached section 17(1) of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a valid response to the request.
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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 6 June 2015, the complainant wrote to the Welsh Government and requested the following information:

"Please provide copies of all emails received or sent by [named individual] that makes reference to Ideoba."

6. The Welsh Government clarified its understanding of the request on 8 June 2015 and the complainant confirmed that this was correct on 16 June 2015, also confirming that the relevant time period was from October 2014.
7. On 6 July 2015, the Welsh Government wrote to the complainant informing him that it was considering refusing his request by virtue of section 43 of the FOIA but needed time to consider the public interest test. The Welsh Government further informed the complainant that it would write to him again by 31 July 2015.
8. The Commissioner also notes that in the same letter, the Welsh Government informed the complainant that if he was not satisfied with its handling of his request, he could request an internal review.
9. Following an internal review of the Welsh Government's procedural handling of the request, it contacted the complainant on 20 August 2015. It stated that:

"...consideration of the public interest test is being given to some of the information you requested, but not all of it...I can also confirm that your request is nearing completion and you should receive a full response within the next few days."
10. The Commissioner notes that to date, the Welsh Government has not provided any further response to this request.

Scope of the case

11. The complainant contacted the Commissioner on 22 September 2015 to complain about the way his request for information had been handled.
12. The Commissioner considers that it is likely from the Welsh Government's letter of 20 August 2015, that although it is considering refusing to provide some of the information on the basis of section 43 of the FOIA that it also intends to provide the complainant with part of the information. On this basis he has therefore considered whether the

Welsh Government has complied with its obligations under section 10 and section 17 of the FOIA.

Reasons for decision

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. The complainant submitted his request on 6 June 2015. However, despite the Commissioner contacting the Welsh Government on two occasions, its substantive response to the request remains outstanding. In failing to provide its substantive response which is likely to include provision of some of the requested information, the Welsh Government has therefore breached section 10(1) in its handling of this request for information.

Section 17(1) – Refusal of request

15. Section 17(1) provides that where a public authority in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –
 - (a) states that the request is being refused,
 - b) specified the exemption in question,
 - c) states why the exemption applies.
16. In failing to provide a substantive refusal notice to part of this request, the Welsh Government has breached section 17(1) of the FOIA.

Other matters

Internal reviews

17. The Commissioner accepts that in some circumstances where a public authority is considering applying a qualified exemption to at least some of the requested information, it may require additional time to consider

the public interest test. However, this is not the time to invite the applicant to request an internal review. The appropriate time for the internal review is after the public authority has provided its substantive response.

18. The Commissioner considers that the premature invitation to request an internal review may have contributed to the delay in providing a substantive response in this case. Nevertheless, the Commissioner is disappointed that having contacted the public authority on two occasions, the response remains outstanding.
19. The Commissioner would also wish to highlight, that where a public authority is considering applying an exemption to only some of the information, but may disclose other parts of the information, that it should disclose the information not subject to an exemption within the 20 working days specified under the FOIA.

Right of appeal

20. 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

21. 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.
22. 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
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Water Lane
Wilmslow
Cheshire
SK9 5AF