

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 November 2019

Public Authority: Welsh Government

Address: Cathays Park
Cardiff
CF10 3NQ

Complainant: on behalf of Farmers' Union of Wales (FUW)

Decision (including any steps ordered)

1. The complainant has requested statistical information about the geographic locations from which responses to a consultation were made. The Welsh Government refused the request because it estimated that the cost of complying would exceed the appropriate limit.
2. The Commissioner's decision is that the Welsh Government is entitled to rely on section 12 of the FOIA to refuse the request.
3. The Commissioner does not require any further steps to be taken.

Request and response

4. On 25 April 2019, a representative of FUW wrote to the Welsh Government and requested information in the following terms:

"Given the recent revelation that 88% of signatures of a petition supporting a ban of pheasant shooting on land managed by Natural Resources Wales came from outside of Wales, and the significant number of campaigns which were aimed at encouraging individuals from across the UK and even further afield to respond to the Taking Wales Forward consultation, I am writing to request a breakdown of the responses to that consultation.

"[1] In particular, we would request details of the proportion of the 17,000 or so responses to the consultation submitted by residents:

(a) Of Wales

(b) From the UK but outside Wales

(c) From outside the UK

"[2] We would also be grateful for details of the proportion of Welsh respondents who were supportive or otherwise of each of the proposals set out in the consultation - in particular those relating to changes to access, which as you know were a focus of campaigning by organisations."

5. The Welsh Government responded on 8 May 2019. It estimated that responding to the request would take around 181 hours and cost in excess of £7,500. It therefore relied on section 12 of the FOIA (cost of compliance exceeds Appropriate Limit) to refuse the request.

6. FUW sought an internal review on 18 May 2019, it argued that the Welsh Government should have the information readily available but offered to refine the request in the following terms:

"Given the above, we would ask that this request be reconsidered and that at the very least the proportion of all respondents who come from Wales be ascertained - something we believe would cost well below the £600 limit."

7. The Welsh Government responded on 14 June 2019. It argued that, as responding to the refined request would involve essentially the same amount of work (ie. establishing the geographic origin of each submission), it would treat the correspondence of 18 May 2019 as a request for internal review of the way the original request was handled. It upheld its position that responding to the request would exceed the Appropriate Limit.

Scope of the case

8. FUW contacted the Commissioner on 8 July 2019 to complain about the way its request for information had been handled.

9. The Commissioner considers that the scope of her investigation is to determine whether the Welsh Government has reasonably estimated

that the cost of complying with the request would exceed the appropriate limit.

Reasons for decision

Section 12 – Cost of Compliance Exceeds Appropriate Limit

10. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

11. Section 12 of the FOIA states that:

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.*
- (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.*

12. The “Appropriate Limit” is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Regulations”) and is set at £450 for a public authority such as the Council. The Regulations also state that staff time should be notionally charged at a flat rate of £25 per hour, giving an effective time limit of 18 hours.

13. When estimating the cost of complying with a request, a public authority is entitled to take account of time or cost spent in:

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.

14. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".¹ The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

FUW's Position

15. FUW did not dispute the Welsh Government's estimate as such, but did note to the Commissioner what it felt was an "*overarching and irrefutable public interest argument in favour of undertaking such an assessment.*"
16. FUW contended that previous consultations carried out by the Welsh Government had resulted in large numbers of submissions from individuals and organisations outside of Wales. It argued that these additional submissions had had the effect of skewing the results away from what individuals and organisations based in Wales thought.
17. Finally, FUW pointed to a public statement made by a Welsh Government minister highlighting the high number of consultation responses. It argued that there was a public interest in understanding where responses had come from because it would reveal the evidence base on which decisions rested.

The Welsh Government's Position

18. In its submission to the Commissioner, the Welsh Government noted that:

"[The consultation] did not record the demographic information of respondents. There was no set form or format required for responses, which meant that some respondents recorded their address/location at the beginning of their response, some at the end, others made reference to their location in the body of their response and others made no reference at all.

¹ <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

"As demographic information of respondents has not been recorded, complying with the request would require a new analysis of the consultation responses. This would involve opening and reading all responses to determine if geographical information was contained and, if so, recording this appropriately. In some instances further analysis would be required to determine if the address given was in Wales or England noting that postcodes cover a broad demographic area and can encompass both countries (e.g. NP and SY postcodes)."

19. The Commissioner asked the Welsh Government to demonstrate why a manual search of the consultation responses was necessary and to provide details of any sampling work that had been carried out. The Welsh Government responded to say that:

"The consultation responses are held in electronic document form (i.e. pdfs, Word documents and emails). The estimate to provide the information was based on the time required to open each individual response, read it to identify if geographic information was stated, record this information and, where required, undertake further postcode analysis via a web-based postcode/address checking tool.

"A sampling exercise was conducted to determine the time required for these activities. It was determined that approximately 96 responses could be analysed and the relevant demographic information extracted each hour (based on a 30-minute sampling exercise). With a total of 17,391 responses it was calculated that this activity would take 181 hours."

20. The Welsh Government also noted that the original estimate had only considered the time necessary to respond to element [1] of the request and that element [2] would increase that estimate significantly as 56 proposals were consulted upon.
21. It did note that one particular policy team had recorded whether responses had or had not originated from Wales, but this team had only considered 88 responses and therefore the original estimate would be decreased by only one hour.

The Commissioner's view

22. The Commissioner considers that the Welsh Government has made a reasonable estimate of the cost of compliance.
23. Whilst the Commissioner notes FUW's arguments that the requested information *should* be readily available, her role is to determine whether it *is*, as a matter of fact, easily extractable.

24. Having considered the Welsh Government's response, the Commissioner accepts that the only way to extract all the information held within the scope of the request would be via a manual review of the responses.
25. Given that it is based on a sampling exercise, the Commissioner accepts the Welsh Government's estimate of processing 96 responses per hour to be a reasonable one. Furthermore, she notes that in order to process all 17,391 response within 24 hours would require each response to be processed in under five seconds – something she considers would not be feasible.
26. Whilst not quantified, the Commissioner further accepts that incorporating element [2] of the request into the response would add significantly to the time (and, hence, cost) required to comply with the request given its broad wording.
27. The Commissioner is therefore satisfied that the Welsh Government's estimate is a reasonable one and that the request could not be answered without exceeding the cost limit.

Section 16 – Advice and Assistance

28. Section 16 of the FOIA requires a public authority to provide “reasonable advice and assistance” to those making or wishing to make a request.
29. In cases where a public authority considers that a request could not be answered within the cost limit, the Commissioner would normally expect advice and assistance to be provided to help the requestor bring their request within the cost limit.
30. In its initial response to the request, the Welsh Government did not offer FUW any advice and assistance or suggestions as to how the request might be refined such as to bring it within the cost limit. It merely noted that any refined request from FUW would be treated as a fresh request.
31. At the outset of her investigation, the Commissioner asked the Welsh Government to consider whether its advice and assistance had been adequate. The Welsh Government responded to say that, whilst it might be able to process requests which were limited to one particular policy within the consultation, the original request had referred particularly to questions around access to land, which had been the most responded-to section. The Welsh Government noted that this particular section had received in excess of 16,500 responses and therefore a request restricted to just this area would also be likely to exceed the cost limit.
32. Whilst the Commissioner considers that the Welsh Government appears to have given much more thought to its section 16 obligations during her investigation than when responding to the request initially, she also

recognises that the request did note that FUW were particularly interested in the responses which related to "access." She therefore takes the view that there was no meaningful way in which the request could be refined such that it would fall within the cost limit and therefore no useful advice and assistance that the Welsh Government could have offered.

33. Whilst a clearer statement that it could not provide meaningful advice and assistance would have been preferable, the Commissioner does find that the Welsh Government complied with its section 16 duty.

Right of appeal

34. 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@justice.gov.uk

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

35. 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.
36. 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

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