

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 March 2013

Public Authority: Aberystwyth University
Address: Old College
King Street
Aberystwyth
Ceredigion
SY23 2AX

Decision (including any steps ordered)

1. The complainant requested information from Aberystwyth University in respect of its Welsh for Adults Department. The University initially cited section 21 of the FOIA. However, following the intervention of the Commissioner the University identified 12 documents written in Welsh as falling within the scope of the complainant's request which it is willing to provide to the complainant. The University stated that it did not hold the requested information in English and stated that it was not required under the FOIA to translate information into alternative languages.
2. The Commissioner's decision is that the University should provide this information to the complainant to ensure compliance with section 1 of the FOIA. The Commissioner is also satisfied that the University is under no obligation to translate the documents into English, and as such, section 11 of the FOIA does not apply.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the information it holds to the complainant.
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 11 December 2011, the complainant wrote to Aberystwyth University requesting information in the following terms:

"Please state the measurable and quantifiable objectives of the Welsh for Adults Department."
6. The University sent a response on 15 March 2012 marked private and confidential which the complainant responded to on 17 March 2012. This included a request for the University to respond to his outstanding FOI request. The complainant sent a further letter to the University on 14 April 2012 pointing out that the University had failed to respond to his request. This was followed by a further letter to the University dated 3 May 2012 asking it to review its decision not to provide the information he had requested on 11 December 2011 and 17 March 2012.
7. Following further correspondence between the two parties, the University provided its response to the complainant's FOI request on 15 June 2012. The University cited section 21 of the FOIA and provided links to the Welsh Government's website which it considered contained relevant information. The complainant contacted the University on 20 June 2012 confirming that he was not satisfied with its response.

Scope of the case

8. The complainant contacted the Commissioner 2 July 2012 to complain about the way his request for information had been handled. The complainant raised concerns about not receiving a response to his request, that the information provided was not what he requested and with the exemption cited.
9. During the course of the Commissioner's investigation additional relevant information was identified by the University as falling within the scope of the request. This constituted 12 documents written in Welsh. The University confirmed that it was prepared to provide copies of these documents to the complainant but that it did not hold English translations. The scope of this notice is whether the University has therefore complied with the requirements of section 11 of the FOIA and consideration of the University's procedural handling of this request for information.

Reasons for decision

Section 11 – Means by which communication to be made

10. Section 11 of the FOIA states that where an applicant expresses a preference for communication by one or more of the following means,
 - (a) *"the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,*
 - (b) *the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and*
 - (c) *the provision to the applicant of a digest or summary of the information in a permanent form or in another form acceptable to the applicant.*

the public authority shall so far as is reasonably practicable give effect to that preference."
11. The complainant has stated that as his preference is to receive English translations of the documents, the University is obliged under section 11 of the FOIA to give effect to this preference.
12. However, whilst the University is willing to provide the information it holds to the complainant, it has stated that it is under no obligation to translate the documents into English for the purpose of responding to a request for information under the FOIA. The University has estimated that to translate these documents into English would cost £4000 and has offered the complainant English translations if he is willing to pay the cost of translation.
13. The University has further argued that section 11 also states that a public authority is only required to give effect to the applicant's preference, in so far as it is 'reasonably practicable' to do so. The University considers that a £4000 cost to comply with the complainant's preference is not 'reasonably practicable' and would view such a requirement as unreasonable.
14. The Commissioner notes that section 11 of the FOIA does not require public authorities to translate information into other languages.
15. The complainant believes the University is in contravention of its Welsh Language Scheme by not translating the documents into English. He has further stated that the University has confirmed that translations are routinely provided by the Centre for Welsh Language Services.

16. The University has confirmed to the Commissioner that it does use the Centre for Welsh Language Services for documents it has routinely translated. However, the 12 documents in question would not be documents it has routinely translated.
17. The Commissioner is mindful that nothing in the FOIA overrides public authorities' duties under other statutory provisions. If a public authority is required under other legislation to produce information in an alternative language, the information which is held must be provided in the alternative language.
18. The Commissioner notes that the Welsh Language Act 1993 requires all public bodies in Wales to adopt and implement a Welsh Language Scheme which sets out how it will treat the Welsh and English languages equally when providing services for and communicating with the public. If the complainant does not believe that the University has acted in accordance with the provisions of its Welsh Language Scheme or its obligations under the Welsh Language Act 1993, he would need to take this matter up either directly with the University or with the Welsh Language Board who approve such schemes.
19. The Commissioner is therefore satisfied that the University has complied with its obligations under section 11 of the FOIA.

Procedural requirements

20. Section 10 of the FOIA deals with the time for compliance with a request for information. It states that a public authority must comply with a request for a information no later than the twentieth working day following the date of receipt of the request.
21. The Commissioner notes the complainant originally made his request on 11 December 2011 and reiterated it again on 17 March 2012. He further notes that despite the complainant's further correspondence asking for a response to his request, the University did not provide a response under the FOIA until 15 June 2012. This is clearly well in excess of the 20 working day requirement therefore the Commissioner has recorded a breach of section 10(1) of the FOIA.
22. The Commissioner would also remind the University of its procedural obligations under the FOIA and would expect that it deals with all future requests within the timescales stipulated under section 10(1) of the FOIA.

Right of appeal

23. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

24. 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.
25. 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