

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 November 2013

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

Decision (including any steps ordered)

1. The complainant has requested various items of information in three separate requests from the Medical Directorate of the Welsh Government regarding its spiritual care initiative. The Welsh Government provided some information but has stated that it holds no further information falling within the scope of these requests.
2. The Commissioner's decision is that the Welsh Government has complied with section 1 of the FOIA in relation to all three requests for information. The Commissioner requires no steps to be taken.

Request and response

Request one

3. On 8 June 2012, the complainant wrote to the Welsh government and requested the following information:

"...minutes and other records of the Medical Directorate's discussions, referred to in your letter, with the Health Boards in the course of the Directorate's review of the Boards' action plans for the implementation of the Department's Spiritual Care Initiative, and also the updated action plan, referred to in your letter, of the Abertawe /Bro Morgannwg University Health Board."
4. The Welsh Government responded on 2 July 2012 confirming that although it does not have a Spiritual Care initiative it had interpreted the request as referring to the Standards for Spiritual Care Services in

Wales, issued in May 2010. The complainant was also provided with a link to the relevant standards on the Welsh Government's website.

5. The Welsh Government also confirmed that the Medical Directorate had not had any face to face discussions with the Local Health Boards in respect of the current review of the Boards' action plans for the implementation of the Spiritual Care standards and that all dialogue had been via email. Copies of the emails were enclosed with the response.
6. With regard to the complainant's request for a copy of the Abertawe Bro Morgannwg action plan, the Welsh Government confirmed that at the time of writing it had not received a copy but provided the address of the Health Board to the complainant should he wish to request a copy directly from the Health Board.
7. Having complained to the Commissioner, the complainant was advised to request an internal review which he submitted on 30 May 2013. The review dated 1 July 2013 upheld its original decision and reiterated comments about contacting the Abertawe Bro Morgannwg Health Board directly for a copy of its action plan.

Request two

8. On 25 October 2012 the complainant requested the following information from the Welsh Government:

"...copies of the revised action plans produced by the chaplaincy and spiritual care departments of each of the health boards, including the plan of the Abertawe/Bro Morgannwg UHB...the report by the Medical Directorate to the Chief Nursing Officer on its review of the plans; and the record of any action taken by the CNO in response to the Medical Directorate's report."
9. The Welsh Government responded on 21 November 2012 providing copies of the action plans for all Health Boards, the Velindre NHS Trust and the Welsh Ambulance Service Trust but confirmed that at the time of writing, it had not received a copy of the Abertawe Bro Morgannwg University Health Board action plan. Again, it provided the contact details for the Health Board should he wish to contact it directly.
10. The complainant was also informed that the Welsh Government did not hold any information relevant to the remainder of his request.
11. As stated in paragraph 7 of this notice, the complainant requested an internal review on 30 May 2013, the outcome of which was provided to the complainant on 1 July 2013.
12. The review made no reference to this request from the complainant.

Request three

13. On 15 January 2013, the complainant wrote to the Welsh Government and requested the following information:

"I should very much be obliged if you would let me know, after making inquiries if necessary, whether the Medical Directorate, or whatever other entity was reviewing the revised spiritual care action plans, did in fact consider the lawfulness or otherwise of the religious installation at the Garden of Life and, if so, what conclusions they reached."

14. The Welsh Government responded on 6 February 2013, confirming that it had nothing further to add to its previous replies on this issue and in the absence of any new information it would not be responding further on this topic.

15. Following an internal review, the Welsh Government wrote to the complainant on 1 July 2013. It stated that:

"There is no recorded information held by the Welsh Government that would fall within this request."

Scope of the case

16. The complainant contacted the Commissioner 8 July 2013 to complain about the way his request for information had been handled. He is not satisfied that he has received all information held relevant to his requests of 8 June 2012 and 25 October 2012. In respect of his third request (15 January 2013), the complainant believes that he is entitled to be told whether or not the Medical Directorate did in fact investigate the concerns he had raised regarding a religious installation referred to as the Garden of Life in the Princess of Wales Hospital, Bridgend and to be given some explanation regarding its failure to do so if that is the case.
17. The complainant has outlined long-standing concerns to the Commissioner that he believes the installation at the Garden of Life is discriminatory and possibly even illegal although he has acknowledged that an investigation of such concerns is beyond the Commissioner's remit. He has however asked the Commissioner to investigate whether the Welsh Government should have responded differently to his complaint about the installation in 2011, and the manner the review itself was conducted.

18. The Commissioner would wish to highlight that each of the concerns outlined in paragraph 17 of this notice are beyond his remit and these will not therefore form part of his investigation.
19. The Commissioner would also confirm, that in relation to the complainant's second request for information, his investigation does not include information that was provided to the complainant at the time of his request.

Reasons for decision

Section 1

20. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
21. In his consideration of this case, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that additional information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any additional information the normal standard of proof to apply is the civil standard of the balance of probabilities.
22. The Commissioner's judgement in cases such as this therefore is based on both the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner has therefore taken into consideration both the arguments of the complainant and the response from the Welsh Government.
23. As stated in paragraph 16 of this notice, the complainant considers that the Welsh Government must hold more information in respect of his request dated 8 June 2012 for a copy of minutes, emails and other records of the review and his request dated 25 October 2012 for a copy of the action plan and report to the CNO.

Request one

24. The Commissioner notes that the Welsh Government has stated to the complainant that no face-to-face discussions with the Health Boards

were held in respect of the review of the their action plans and that all dialogue between the Medical Directorate and the Health Boards was conducted via email.

25. The Commissioner therefore asked the Welsh Government to confirm whether any internal minutes or other records of the Medical Directorate's discussions regarding the review are held, and if not, to provide an explanation of how it was able to reach this conclusion.
26. The Welsh Government has confirmed that it holds no records relevant to the request other than the emails sent to the complainant at the time of his request. It has stated that there have been no meetings or discussions within the Medical Directorate, therefore it is satisfied that it holds no further relevant information.
27. The Welsh Government has also confirmed that at the time of the internal review, it had not received a copy of the final version of the action plan from Abertawe Bro Morgannwg University Health Board. It has however confirmed that it did receive a draft copy of the action plan in December 2012. The Commissioner will refer to this draft plan again at paragraph 44.
28. Whilst the Commissioner accepts that the complainant might reasonably have expected that the Welsh Government would hold more information relevant to his request, he has no reason to doubt the explanation provided by the Welsh Government and has therefore concluded that based on the balance of probabilities, no additional relevant information is held. He has therefore concluded that the Welsh Government's response to the complainant's request for information dated 8 June 2012 was compliant with section 1 of the FOIA.

Request two

29. The complainant has also asked the Commissioner to investigate the Welsh Government's response to his request for a copy of the report by the Medical Directorate to the Chief Nursing Officer ('the CNO') on its review of the action plans. He has provided copies of correspondence which includes a letter from the Welsh Government dated 14 March 2012 confirming that although there was no formal review panel, a policy team within the Welsh Government was undertaking a review of the actions plans of each health board and would inform the CNO for Wales on the progress regarding implementation of the standards.
30. Two further letters dated 24 April 2012 and 11 May 2012 state that the review was to look at the action plans of each Health Board and to provide a brief report to the CNO.

31. The Commissioner therefore asked the Welsh Government to comment further on its information not held response in relation to the report based on its statements in the letters referred to in paragraphs 29 and 30 of this notice.
32. The Welsh Government has informed the Commissioner that it was never the intention of officials within the Medical Directorate to undertake a formal review of the action plans or to provide a written report to the CNO and has confirmed that a report was not produced. The action plans were examined on receipt to verify that they complied with the minimum standard required however, they were not subjected to a more formal review.
33. The Welsh Government has acknowledged that its previous responses to the complainant were misleading in this respect. It has explained that the situation arose as the person who drafted the letters was not the person responsible for this policy area and it appears there was a misunderstanding between the two. The Welsh Government has further acknowledged that the letters should have been worded differently and conveyed that the officials within the Medical Directorate operate to ensure that implementation of standards has been achieved.
34. The Commissioner has also been informed that whilst the plans were not formally reviewed, officials within the Medical Directorate update the CNO on how implementation is progressing and the Welsh Government has confirmed that this was done via various 1:1 catch up sessions. However the results of the searches undertaken reveal that no notes were prepared either in advance of, or following such meetings but copies of the revised plans were discussed.
35. Having considered the arguments put forward by the complainant and the explanation provided by the Welsh Government, whilst the Commissioner acknowledges that the Welsh Government did provide misleading information to the complainant, there is no reason to doubt its subsequent explanation. He has therefore concluded that based on the balance of probabilities, the Welsh Government's response to the complainant's request for information dated 25 October 2012 did comply with section 1 of the FOIA.

Request three

36. As stated in paragraph 14 of this notice, the Welsh Government's response to the complainant's third request for information dated 15 January 2013 informed the complainant that it had nothing further to add to its previous replies on this issue.

37. Based on the letters referred to in paragraphs 29 and 30 of this notice, it is clear that the Welsh Government had given the complainant the impression that a review of the revised spiritual care action plans had been undertaken. The Commissioner also notes that its letter of 14 March 2012 confirmed that the relevant team had seen all of the complainant's correspondence in relation to his concerns about the installation at the Garden of Life, that his views had been noted and would be taken into consideration during the review.
38. The Commissioner does not therefore think it an unreasonable expectation that the complainant would want to know whether the review did include a consideration of his concerns regarding the Garden of Life at the Princess of Wales Hospital. He therefore asked the Welsh Government to confirm whether or not the complainant's concerns were included in the review.
39. As outlined in paragraph 32 of this notice, the Welsh Government has confirmed to the Commissioner that there was no formal review of the revised action plans. The logical conclusion from this therefore is that there could have been no formal consideration of the concerns expressed by the complainant about the Garden of Life at the Princess of Wales Hospital.
40. The Commissioner notes that in addition to the three FOIA requests subject to this notice, there is considerable correspondence between the complainant and the Welsh Government regarding this matter and the Welsh Government has stated that its officials addressed the lawfulness of the Garden of Life, and indeed the Standards of Spiritual Care, in a letter to the complainant dated 2 December 2011. The letter includes the following paragraph :
- " You also suggest that the Garden of Life at the Princess of Wales Hospital is unlawful. Ultimately the Standards for Spiritual Care provide guidance on implementation to Health Boards and Trusts and it is for them to work towards compliance with these. Colleagues in the Welsh Government's Medical Directorate who are responsible for quality and safety in the NHS across Wales are in the process of monitoring the spiritual care action plans which have been produced by each Health Board and Trust."*
41. However, the Commissioner also notes that in a letter to the complainant dated 4 January 2012, the Welsh Government stated:
- "The Welsh Government's Medical Directorate is in the process of monitoring the spiritual care action plans produced by each Health Board and a review of these will take place in April 2012. Whilst the Abertawe*

Bro Morgannwg Health Board continues to progress this work it would be premature for the Welsh Government to take steps to intervene."

42. Having considered the complainant's concerns and the explanation provided by the Welsh Government, the Commissioner considers that as the Welsh Government did not undertake a formal review, it does not hold any information relevant to the request. However, he also considers that the public authority could have provided this explanation to the complainant at the time of his request.
43. The Commissioner's decision is that the Welsh Government has complied with its obligations under section 1 of the FOIA in relation to the complainant's request for information dated 15 January 2013.

Other matters

44. The Commissioner notes that the public authority received a draft copy of the action plan for Abertawe Bro Morgannwg University Health Board on 12 December 2012, yet the outcome of its internal review of all three of the complainant's request for information was not provided to the complainant until 1 July 2013. Whilst he notes that an internal review is not a formal requirement under the FOIA and a public authority is only required to consider the circumstances at the time of the actual request(s), he considers that it would have been good practice to have informed the complainant that it does now hold a draft copy of the requested action plan.

Right of appeal

45. 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

46. 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.
47. 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
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