

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 May 2015

Public Authority: Carmarthenshire County Council

Address: County Hall
Carmarthen
SA31 1JP

Decision (including any steps ordered)

1. The complainant requested information about the Bwcabus scheme run by Carmarthenshire County Council ('the Council'). The Council provided information relating to one part of the request and refused the other parts of the request under section 12 of the FOIA as compliance would exceed the appropriate limit. The Commissioner's decision is that the Council has correctly applied section 12 to the request. However the Commissioner finds that the Council failed to provide adequate advice and assistance to the complainant under section 16 of the FOIA.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - to take reasonable steps to advise and assist the complainant with a view to refining the request to bring it within the cost limit.
3. 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

4. On 10 May 2014, the complainant wrote to the Council and requested information relating to the "Bwcabus" scheme in the following terms:

"Under the terms of the legislation identified I submit questions to which I request specific and detailed answers.

1. For each year of operation kindly state how many journeys have been undertaken by passengers. Kindly distinguish scheduled journeys and booked journeys and by area of operation. (Four discrete replies to this item)

2. What is the average number of passengers on scheduled and booked journeys? Kindly distinguish by area. (Four discrete replies)

3. How many passengers were carried on each scheduled service during the last two complete years of operation? Kindly distinguish by service number.

4. For each year of operation kindly give the number of cancellations made by users.

5. For each year of operation kindly give the number of unexpected service failures as revealed by complaints by frustrated users to the call centre to report abandonment.

6. For each year of operation kindly give the number of late arrivals as revealed by complaints by frustrated users to the call centre to report late running.

7. For each year of operation kindly give the number of missed connections with conventional bus services notified to the call centre by frustrated users

8. For each year of operation kindly give the number of refusals of service to users who have speculatively called the call centre to book a journey only to be informed that none is available.

9. In your calculation of 'Bwcabus' expenditure and income kindly provide a detailed analysis of item "Other supplies & services" for each year of operation as noted.

2008/9 £4,586 || 2009/10 £175,491 || 2010/11 £160,338 || 2011/12 £261,566

2012/13 to period 12 £359,985

2013/14 estimates £383,202 || 2013/14 estimates £628,072

Since the 2012/13 period of operation has now been concluded please substitute final total for this period and detailed analysis if this expenditure has now been reckoned. If it has not please indicate when it will be available.

Please provide any revised estimates for 2013/14 and 2014/15".

5. The Council responded on 5 June 2014 and provided information relating to part 9 of the request. In relation to parts 1-8 of the request, the Council stated that the requests were identical to eight questions (numbered 3, 4, 5, 6, 8, 10 and 11) that were included in a previous information request submitted by the complainant in April 2012. In its response to the earlier request, the Council confirmed that complying with the requests would exceed the appropriate limit. As the requests were identical the Council confirmed that its position was the same and compliance with parts 1 – 8 of the request of 10 May 2014 would exceed the appropriate limit.
6. The complainant wrote back to the Council and requested an internal review of its handling of the request, with reference to its reliance on section 12 of the FOIA in relation to parts 1-8 of the request. He referred to earlier requests for information he had submitted to the Council where it had initially relied on section 12 of the FOIA, however, in a later response it had confirmed it did not hold the information requested. The complainant asked the Council to confirm whether it held information relevant to parts 1-8 of his request of 10 May 2014.
7. The Council provided the outcome of its internal review on 18 July 2014. In relation to each part of the request, the Council confirmed it either held information relevant to the request, or it was held by a third party on behalf of the Council. The Council provided an estimate of the time it would take to comply with each part of the request, and confirmed it was relying on section 12 as the basis to refuse the request. The Council also provided advice and assistance in order that the request could be refined to bring it within the cost limit.

Scope of the case

8. The complainant contacted the Commissioner on 2 November 2014 to complain about the way his request for information had been handled.
 9. In his complaint to the Commissioner the complainant raised a number of concerns, some of which fall outside the remit of the Commissioner. The Commissioner wrote to the complainant to clarify his role and confirmed that, unless he heard from him to the contrary, the scope of his investigation would be to determine whether compliance with the request of 10 May 2014 would exceed the appropriate limit under section 12 of the FOIA.
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Reasons for decision

Background

10. The Bwcabus concept was developed by the Wales Transport Research Centre at the University of Glamorgan. Bwcabus was developed by a partnership between a range of stakeholders that include Carmarthenshire and Ceredigion County Councils, the University of Glamorgan's Wales Transport Research Centre, Welsh Government, Traveline Cymru, and bus operators Richards Bros and Morris Travel.
11. Bwcabus was established six years ago as a pilot scheme, with the aim of providing an effective solution for public transport in rural parts of Wales. The first Bwcabus scheme became operational on 24th August 2009, following the award of funding by the Welsh Assembly Government, the European Convergence Fund and Carmarthenshire County Council.
12. Bwcabus is a demand responsive flexible local public transport service, aimed at helping people living in parts of rural Carmarthenshire and Ceredigion get to work and access education, training and health services. The service is tailored to the needs of the passengers by operating in response to pre-booked journey requests.
13. The Bwcabus Demand Responsive Transport (DRT) service is integrated with strategic public transport services, feeding passengers into these routes at a number of designated hubs. The call centre service is provided through Traveline Cymru, the national passenger transport information service for Wales. As well as the DRT services, Bwcabus has a number of fixed routes that operate on certain days. These fixed routes do not require pre-booking and passengers are able to just turn up and catch the bus as they would for a regular bus service.

Section 12 – the appropriate limit

14. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying would exceed the appropriate cost limit which in this case is £450 as laid out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations'). This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours.
15. Regulation 4(3) of the Fees Regulations states that an authority, when estimating whether complying with a request would exceed the

appropriate limit, can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;
 - locating the information, or documents containing it;
 - retrieving the information, or documents containing it; and
 - extracting the information from any documents containing it.
16. Section 12(4) of the FOIA provides that in certain cases a public authority can aggregate the cost of complying with requests. Section 5 of the Fees Regulations sets out the circumstances in which it may be appropriate to aggregate requests. This states that two or more requests to one public authority can be aggregated for the purposes of calculating costs if they are:
- by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - for the same or similar information to any extent; and
 - the subsequent request is received by the public authority within 60 working days of the previous request.
17. The Commissioner will first consider whether the Council was entitled to apply section 12(1) to the eight requests. What the Commissioner must consider is whether the Council is entitled to combine the work together for these eight requests, or whether each request should be considered individually.
18. The Commissioner would characterise the complainant's letter of 10 May 2014 as containing more than one request within a single item of correspondence. Having considered the wording of the eight parts of the request, the Commissioner has concluded that they can be aggregated for the purpose of calculating the cost of compliance, in accordance with section 12(4) of the FOIA and regulation 5 of the Fees Regulations. This is because they follow an overarching theme and common thread relating to the operation of the Bwcabus. Having reached this conclusion, the Commissioner has gone on to consider the application of section 12(1).

Would compliance with the requests exceed the appropriate limit?

19. The Commissioner asked the Council to provide a detailed reasonable estimate of the time taken and cost that would be incurred by providing the information falling within the scope of the request. The Commissioner asked that, when the Council provided these calculations, a description of the nature of the type of work involved was also included.

20. The Council confirmed that information relevant to the request is held in a combination of paper documents and electronic documents/databases. The specific information which would need to be searched/reviewed/checked in order to comply with the request includes:

- Electronic data held in the Bwcabus system - this system is physically held by the University of South Wales who developed and maintain the system, but it can be accessed by the Council.
- Hard copy "no show" reports provided by bus operators
- Reports from Traveline Call Centre of cancellations by email – received on a weekly basis
- Raw ticket machine data sent electronically by bus operators showing fares, destinations etc – received on a monthly basis.
- Hard copies of ticket machine data provided by bus operators.
- TomTom Webfleet system data – an online tracking mechanism which enables the Council to track journeys made by buses to identify discrepancies.

21. As a result of the Commissioner's investigation, the Council conducted a timed sample exercise in relation to compliance with questions 2 and 3 of the request. This sampling exercise was undertaken for one month's data – December 2013. December is one of the quietest months for the Bwcabus scheme because it has less operational days due to public holidays. This sampling exercise took over 8 hours for data for December 2013. The Council therefore estimates it would take 104 hours for a 12 month period to comply with questions 2 and 3 of the request. The Council confirmed that its estimate is based on the processes and activities detailed below, which would be required in order to comply with questions 2 and 3 of the request:

- (1) Print and save the following documents which form the basis when referencing back to no show reports, call centre reports and Tom Tom tracking – 30 minutes.
 - weekly emails received from bus operators containing a breakdown of service statistics for the month – 8 or 9 documents.
 - schedule for each day, for each bus for the month approximately 6 pages for each day
 - Print off raw ticket machine data received from bus operators – one document for each bus – 13 documents – approximately 52 pages

- (2) In relation to raw data received for the DRT service, sort booked journeys for the three buses into journeys undertaken by each bus as the raw data is provided in time order and not by each bus – 74 minutes.
- (3) Extract total passenger numbers as shown on the ticket machine data for fixed services for each day of operation – 71 minutes.
- (4) Compare schedules for each day, for each bus against ticket machine data and statistical breakdowns provided by bus operators. This step is required to determine whether a passenger due to travel at a particular time was issued a ticket – 151 minutes.
- (5) If it is found in step 4 that a ticket has not been issued for a booked journey (for DRT service), compare schedules against no show statistics given by bus drivers and cancellation reports received from the call centre - 37 minutes.
- (6) Track journey on Tom Tom system to ascertain whether any journeys were undertaken for passengers who were on the schedule but did not have a ticket issued (step 4), no cancellation made, or no show report made (step 5) – 168 minutes

Total estimate for one month for questions 2 and 3 = 8 hours 51 minutes

Total for one year for questions 2 and 3 = 106 hours 12 minutes

The request covers a five year period. Therefore, the total estimate for complying with questions 2 and 3 = 531 hours

22. The Council confirmed that all of the steps detailed above are required in order to extract and verify information relating to questions 2 and 3 of the request. The verification procedures outlined in steps 4, 5 and 6 are necessary to eliminate errors arising from passengers booking a journey and then not showing up or cancelling. The bus schedules also need to be compared to ticket machine data received from bus operators to eliminate driver error. This is because drivers have been known to press buttons on ticket machines inadvertently. In light of these factors the Council contends that all of the processes identified are necessary to obtain accurate numbers of journeys undertaken by passengers. The Council advised that the sampling exercise it undertook to produce the estimate referred to above was undertaken was December 2013, which

is the quietest month for the Bwcabus scheme as it has less operational days.

23. The Commissioner notes that some of the processes contained in the Council's estimate for compliance with questions 2 and 3 would appear to an extent be dependant on results obtained from carrying out earlier processes. For example, if step 4 does not reveal any instances where a ticket has not been issued for a booked journey, step 5 may not be necessary.
24. The request in this case is broad, comprising eight parts and covering a five year period. On considering the arguments put forward by the Council the Commissioner has taken into account the amount of information which would need to be reviewed in order to extract information relevant to questions 2 and 3. The Commissioner is not aware of any reasonable alternative mechanism to identify the relevant information other than the processes detailed by the Council. Based on the nature of the information requested, the way in which it is recorded and held and the sampling exercise undertaken, the Commissioner accepts that it would significantly exceed the appropriate limit of 18 hours to comply with these parts of the request alone. The Commissioner's view is, that the Council's arguments are reasonable and based on cogent evidence. Therefore he accepts the estimate and his decision is that the Council is entitled to refuse the request under section 12 of the FOIA.

Section 16 – advice and assistance

25. Section 16 of the FOIA places a duty on a public authority to provide advice and assistance to someone making an information request, including helping an applicant refine a request so that it can be answered within the appropriate costs limit.
26. In its internal review response, the Council provided an estimate for the time to comply with each part of the request, in accordance with its obligations under section 16 to provide advice and assistance in order to help the applicant refine his request. However, the estimates provided in the Council's internal review response for questions 2 and 3 (7.5 hours and 2-3 hours in total for each) are vastly different to the estimates provided following the sampling exercise undertaken as a result of the Commissioner's investigation (and shown at paragraph 21 above).
27. The Commissioner accepts that, in light of the way that the information is held and the processes required to retrieve and extract information relevant to the request, it is entirely possible that the Council may not be able to provide any meaningful information to the complainant within the cost limit. It may be that any information which can easily be

located and provided is not of any interest to the complainant. However the Commissioner finds that, in light of the revised estimate for compliance with the request as considered within this notice, the public authority has failed to properly address its obligations to provide advice and assistance under section 16 of the Act.

28. The Council should now inform the complainant what, if any, information could be provided within the cost limit. If it is possible to provide information within the cost limit the Council should provide advice and assistance aimed at enabling the complainant to refine his request so as to target the information of most interest to him.

Right of appeal

29. 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

30. 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.
31. 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