

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 22 June 2017

Public Authority: Llanbedr Community Council
Address: cyngorllanbedr@gmail.com

Decision (including any steps ordered)

1. The complainant requested copies of the minutes of a particular meeting, details of councillors and various other pieces of information. Llanbedr Community Council ('the Council') refused to comply with the request as vexatious under section 14(1) of the FOIA. The Commissioner's decision is that the Council was not entitled to refuse to comply with the request under section 14(1) of the FOIA.
2. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request that does not rely on section 14(1).
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 June 2016, the complainant wrote to the Council and requested information in the following terms:
 1. "Please provide me with minutes of the special meeting, including the names of those who were present and in English please, that apparently took place on 10th March 2016 to consider a letter that I

sent to the council. Two previous requests for information about this meeting have been made on 28th April 2016 and 20th May 2016 both of which have been ignored. My initial request should have been dealt with within twenty working days (see FOI Act, Sec 10(1)). I must therefore draw your attention to the fact that the community council is in breach of the legal requirements of the act. Please also be aware that Sec 1 of the FOI Act requires that a public authority must confirm or deny whether requested information is held.

2. Please provide me with the names and addresses of all the current community council members.
3. Please provide me with the names and addresses of anyone who has served on the community council since the beginning of September 2012 but whose name is not included in 2 above.
4. Concerning each person named in relation to 2 and 3 above, I wish to know:
 - a) The date on which each became a member of the community council.
 - b) If people have served more than one term on the council then I wish to know the start and end dates of each of their terms as members.
 - c) In each instance relating to 4(a) and 4(b) above, I wish to know whether the person was elected in a competitive public election, was returned unopposed, or whether they were co-opted.
 - d) Whether any of the above were non-Welsh speaking.
 - e) The names of any non-Welsh speakers who are known to have served on the community council at any time.
5. Please provide me with copies of the English version of all agendas for community council meetings that have been posted on the village notice board, or elsewhere, for the purpose of publicising council meetings, for the period from September 2012 to the present time together with where they were posted and when.
6. Please provide me with copies of the community council's audited accounts for the years 2014-15 and 2015-16.
7. Please provide me with a copy of Llanbedr Community council's Welsh Language Scheme if there is one".

5. The Council wrote to the complainant on 13 June 2016 asking him to "familiarize yourself with Section 14(1) of the Freedom of Information Act 2000". The Council also indicated that it had already offered assistance to identify information sought by the complainant and brought the provisions of section 12 of the FOIA to his attention.
6. The Council wrote to the complainant again on 14 June 2016 and advised that the audited accounts and other documents were available to view, by appointment, up until 8 July 2016.
7. The complainant wrote two communications to the Council on 17 June 2016. In relation to the audited accounts, he pointed out that he had requested "copies" rather than an opportunity to inspect them. He said that he was happy to receive either electronic copies or pick up hard copies from Wenallt Store. He stated that it was only the accounts he had requested and not the vouchers and supporting documents. In his second communication he asked the Council to confirm whether its email of 13 June 2016 represented a formal refusal notice, refusing his request by virtue of section 14 of the FOIA.
8. The Council issued a refusal notice to the complainant on 20 June 2016 stating that it was refusing the request of 10 June 2016 under section 14(1) of the FOIA as it considered the request to be vexatious.
9. On 29 July 2016, following advice from the Commissioner, the complainant wrote to the Council and asked whether it had an FOIA internal review procedure to allow him to challenge its decision relating to his request.
10. The Council responded on 1 August 2016 and stated that:

"You have stated that 'the Public Services Ombudsman for Wales will not consider this matter' (your email of 17 June 2016).

If this is the case, the Community Council cannot proceed with further decision on the matter while this is in progress".

Scope of the case

11. The complainant contacted the Commissioner on 1 August 2016 to complain about the way his request for information had been handled.

12. The Commissioner has considered the scope of the case to be whether the Council is entitled to rely on the vexatious provision at section 14(1) of the FOIA.

Reasons for decision

Section 14(1) – vexatious requests

13. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
14. The Commissioner has published guidance on vexatious requests¹. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.

The Council's position

15. The Council advised the Commissioner that the decision to apply section 14(1) to the request was taken "following a lengthy series of requests.....dating back to 21 July 2015". The Council did not provide the Commissioner with copies of these requests, or a summary of them. However, the Council advised that the complainant's initial communications referred to a proposed road scheme to improve access to Llanbedr Airfield. The scheme in question was funded by the Welsh Government and Gwynedd County Council was responsible for the consultation process.

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

16. The Council advised that it took steps to keep members of the local community, which include the complainant, informed of the scheme and many opinions were returned through its website. The Council advised that it made all efforts to answer the complainant's enquiries but he "became convinced that the Council was in support of a bypass that he was fiercely opposed to". The Council advised that the complainant was dissatisfied with YGC, (the Gwynedd County Council agency that was responsible for the consultation on the bypass) and obtained information from them through a number of FOIA requests. The complainant later began making information requests to the Council and the Council stated that it made every effort to provide the information requested and engage in discussion with him about the subject matter.

17. On 28 April 2016 following attendance at a Council meeting on 7 April 2016, the complainant submitted a request in the following terms:

" At the last Community Council meeting I asked what procedures had been employed by the community council to consult the community before deciding to support Gwynedd Councils proposal to build a bypass round the village. Unfortunately I was unable to obtain a satisfactory answer to this question.

I now wish to familiarise myself with all the references to this scheme, and any related matters, contained in the community council minutes in recent years. I am aware that minutes from September 2012 are available on llanbedr.com website, but that they are not available bilingually. Translations of all these documents will therefore be required."

In this letter the complainant suggested that the Council arrange for a professional agency to undertake the task of translating the relevant minutes.

18. Because of the scale of the task to translate all minutes from 2012, the Council offered to meet with the complainant to identify all relevant excerpts in the minutes and translate them verbally. The complainant rejected this offer and made the following comment:

"Translation of official documents is a specialised undertaking that requires training. It is not one that is likely to be carried out satisfactorily by amateurs, however well meaning. So far as cost is concerned, this is only significant in this case because there is now a considerable backlog of minutes that need translation. Had this been done on a monthly basis over the past four years in order to ensure that the council was seen to be acting in an open and transparent way, the annual cost would have been insignificant in relation to the funds available from the precept. You say that financial assistance for this

purpose is not available, but I understand that Cynwyd Community Council in Denbighshire recently obtained funds from the National Assembly for Wales for the development of a bilingual website²."

19. The Council responded to the complainant stating that it did not accept the inference that its "translating capabilities are amateurish or inferior, and therefore further consideration of your request is now halted". The Council suggested that the complainant referred concerns about the quality of its bilingual publications to the Welsh Language Commissioner. The Council also suggested that the complainant refer any future concerns about the proposed road scheme to YGC, the consultants undertaking the consultation.
20. The Council advised the Commissioner that it considers some of the comments made by the complainant as referenced in paragraph 16 and 17 above to be 'vexatious'. It does not accept the inference that it works in an 'amateurish' way and believes the complainant is also challenging its right to conduct its business through the medium of Welsh. The Council considers the reference to Cynwyd Community Council was raised in order to provoke this element, particularly in light of the fact that the complainant later advised he would be referring the matter to the Public Services Ombudsman for Wales ('the PSOW'). The Council pointed out that the PSOW had previously considered a complaint against Cynwyd Community Council on the issue of the rights of non-Welsh speakers.
21. The Council provided the Commissioner with a letter from the PSOW sent in September 2016 which outlined its decision in relating to the matters raised by the complainant. The complaints included the failure by the Council to consult and represent the views of the public regarding the proposed road scheme in the area, the failure to provide translated copies of minutes of agendas and minutes since 2012, the failure to provide information relating to the names and addresses of current and previous councillors and copies of audited accounts, and the failure by one elected member to declare an interest in a planning application. The PSOW determined that, based on the evidence available, the complaint should not be investigated.
22. The Council confirmed that it considered the serious purpose and value of the request before applying section 14(1) of the FOIA. The Council is

² See Public Service Ombudsman for Wales: *The investigation of a complaint by Mrs X against Cynwyd Community Council*, para 16. https://www.ombudsman-wales.org.uk/~media/Files/Cases_en/201403092%20-%20Final%20s16%20Report.ashx

of the view that the requests which are the subject of this notice appear to "have a purpose of continuing the inference that the Council is amateurish and not fit for purpose because of its membership being Welsh speakers. The scrutiny of the democratic process of electing and co-opting councillors seems to be the underlying purpose of the requests". The Council advised the Commissioner that it considered the purpose behind each of the requests contained in the complainant's letter of 10 June 2016, as detailed below:

Part 1 of the request – this refers to a meeting that was not called for the sole purpose of discussing the complainant's requests. The full minutes of the meeting in question are available on the Council website in Welsh only and the specific reference to the excerpt the complainant is seeking access to is also available on the website in English.

Parts 2 to 4 of the request – refer to information about individual councillors. The Council considers these requests suggest that the information will be used to question whether undemocratic methods have been utilised to manipulate the membership to comprise of Welsh speakers only.

Part 5 of the request relates to English versions of agendas. The Council considers this has connotations to the Cynwyd Community Council case considered by the PSOW. The Council considers that this shows "further provocation regarding the publication of information in a particular language". The Council confirmed to the Commissioner that it has taken steps to publish agendas and minutes in both languages on its website, a point which was recognised by the PSOW in its response to the complaint.

Part 6 of the request was for copies of audited accounts. The Council stated that the complainant was provided with the opportunity to view the account in line with normal procedures. The Council believes that the complainant's request to have information "on his terms" challenges the correct and secure practices of the Council.

Part 7 of the request is for a copy of the Council's Welsh Language Scheme. This request included the comment "if there is one", which the Councils considers to be sarcastic and inappropriate.

23. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in paragraph 25 in her published guidance on vexatious requests. The Council advised the Commissioner that, in this case, it considered the following indicators to be relevant in this case – abusive or aggressive language, burden on the authority, personal grudges, unreasonable persistence, unfounded accusations, intransigence, frequent or overlapping requests,

and disproportionate effort. However, other than quote from the Commissioner's guidance on these indicators, the Council did not submit any detailed representations relating to each of these indicators, despite being given an opportunity to do so.

The Commissioner's analysis

24. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in the Commissioner's guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
25. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in providing it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.
26. In the circumstances of this case the Commissioner accepts that there has been a considerable number of exchanges between the Council and the complainant which date back to October 2015. The Commissioner considers that compliance with the individual request in this case, in isolation, may not have been too burdensome; however when taken in context, the Commissioner is satisfied that the request formed part of a collective burden of correspondence that the Council had handled for around 8 months. The Commissioner is satisfied that the Council has demonstrated that it has spent a considerable amount of time dealing with requests and queries brought by the complainant and this imposed a burden on the limited resources of a small community council.
27. The Council allege that some of the language used by the complainant is "vexatious". Whilst some of the complainant's language may be described as accusatory it is not, in the Commissioner's view, of such magnitude or severity to make the request a vexatious one. Public authorities, of course, routinely deal with members of the public. Whether through frustration, or some other reason, the language used by a member of the public may sometimes be "challenging". The

Commissioner considers however that those holding a public position should be accustomed to a certain amount of criticism but accepts that there is obviously a boundary of what is or is not acceptable. However, based on the examples and evidence provided by the Council, although the language of the complainant may not be complimentary, in this case the Commissioner does not consider it has crossed that boundary.

28. The Commissioner does not consider that the complainant is attempting to re-open an issue which has been comprehensively addressed previously. Whilst the Commissioner notes that the PSOW has not upheld the complaint submitted by the complainant, it appears that the complainant referred his concerns to the PSOW after submitting the request which is the subject of this notice.
29. The complainant has not provided any contextual information about the purpose or value of the request. However, the Commissioner recognises that the request seems to have resulted from a number of concerns that the complainant has about the Council, in terms of the way it responded to a proposed road scheme, the representative balance of elected members and the fact that as the Council primarily conducts its business in Welsh, he is unable to read certain documentation published by the Council, such as agendas and minutes of meetings.
30. A large proportion of the correspondence refers to, or stems from, the proposed road scheme referred to earlier in this notice. The complainant's concerns about the building of a bypass road are that it would divert traffic away from the village of Llanbedr and thus adversely impact on the amount of passing trade to businesses in the village. The complainant considered that the views and objections of the community to the proposal were not being adequately represented by members of the Council. In addition, the complainant has expressed concern that, as the Council conducts its business primarily in Welsh, a large proportion of the community it represents (the complainant has alleged that around 39% of the community have no Welsh language skills) are unable to understand documentation published by the Council in Welsh only.
31. In terms of the purpose and value of the request, the Commissioner notes that the complainant does not appear to have a solely 'personal' interest in the subject matter. The requests initially focussed on the proposed road scheme, and subsequently his attention changed to election of councillors and the fact that a large proportion of documents published on the Council's website are in Welsh only and the complainant (and other non-Welsh speaking members of the community) are unable to understand them. However, in this respect, the Commissioner notes that the Council has made efforts and offers to translate information which the complainant is particularly interested in accessing into English, on an informal basis.

32. The Commissioner is not satisfied that the complainant's request was designed to cause annoyance or that it has no serious purpose or value. Whilst the Commissioner is not in a position to comment on the validity, or otherwise of the complainant's allegations about the Council, she accepts that the complainant has genuine concerns for the wider public living in the village of Llanbedr.
33. Whilst the Commissioner acknowledges that this case is finely balanced, for all the reasons set out above and taking into consideration the findings of the Upper Tribunal that a holistic and broad approach should be taken in respect of section 14(1), she has concluded that the Council has failed to provide sufficient evidence or arguments to support its assertion that the request in this case was vexatious. The Commissioner's decision is that the Council was not entitled to rely upon section 14(1) of the FOIA to refuse to comply with this request. At paragraph 2 above, the Council is now required to issue a fresh response to this request.

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@hmcts.gsi.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

David Teague
Regional Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF