

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2017

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

Decision (including any steps ordered)

1. The complainant has requested the original receipts for Welsh Government procurement cards for the purposes of an article reported in Wales Online showing that £1.4 million was spent on 237 active cards in the financial year 2015 to 2016. The Welsh Assembly Government refused the request on the basis of section 12 of the FOIA, inviting her to refine it. The Welsh Government subsequently refused the refined request on the same basis.
2. The Commissioner's decision is that the Welsh Government in failing to provide appropriate advice and assistance in its response to both the original and refined requests, has breached section 16 of the FOIA, and based on the information provided to date regarding its record held centrally, the Welsh Government cannot rely on section 12 in respect of the complainant's refined request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide suitable help and assistance as prescribed by section 16 of the FOIA as to the nature of the information held for both requests. Reconsider the refined request and issue a fresh response compliant with the FOIA that does not rely on section 12.
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 24 July 2016, the complainant wrote to the Welsh Government and requested the following information related to an audit of all Welsh Government procurement cards/invoices over the period described in the article totalling approximately £7.5 million:

"...the original receipts for WG [Welsh Government] procurement cards / invoices for the purposes of the audit described in article ...outlined in a 259-page document showing the £1.4 that was spent on the 237 active cards in the 2015-16 financial year."

6. The Welsh Government responded on 19 August 2016. It stated that it was unable to release the original procurement card receipts as they are master records which need to be retained for agreed retention periods to comply with HMRC and Audit rules. It further informed the complainant that to provide copies of the information requested would cost more than the appropriate limit and therefore refused the request by virtue of section 12 of the FOIA.

7. The complainant contacted the Welsh Government expressing dissatisfaction with its response on the basis that there was no weighing of the public interest test, and that it had not complied with its obligations under section 16 FOIA to provide advice and assistance. She also confirmed that if any of the receipts were pre dated April 2015, there would be no need to retain them for the current financial year's audited accounts.

8. The complainant also submitted a refined request as follows:

"...I wish to read the receipt for Victoria's Secret and any other receipts which have been deemed to be not complying with the criteria set for the use of WG cards...Those receipts that have been presented to the WG but have either been claimed and then repaid, or those that have had to be refused by the WG."

9. Following an internal review the Welsh Government wrote to the complainant on 20 September 2016. It did not uphold the complaint in respect of the public interest confirming that section 12 is not subject to the public interest test. The Commissioner can confirm that this is correct.

10. It partially upheld the complainant's concern that the Welsh Government had not complied with section 16 of the FOIA to provide advice and assistance as to how she might refine her request. However, it further stated that it was difficult to see how this request could be narrowed although offered the complainant the opportunity to submit a refined

request, taking into consideration the information previously supplied to her regarding the appropriate limit.

11. In response to the pre-April 2015 receipts, the Welsh Government confirmed that it is unable to release any of the requested original procurement card receipts as they are master records which need to be retained to comply with HMRC and audit regulations for a minimum of six years. It added that the processes required to locate, retrieve and extract copies of the requested documentation would exceed the appropriate limit under section 12.
12. In respect of the complainant's refined request, it confirmed that the Victoria's Secret transaction was fraudulent and was flagged by the Welsh Government's procurement card provider and did not involve a Welsh Government employee. It confirmed that it did not therefore hold any receipts in respect of this transaction.
13. In respect of the rest of the refined request, the Welsh Government confirmed it was refusing these on the same basis as the original request.
14. Following its internal review, the complainant contacted the Welsh Government on the same date asking it to confirm that no list of these financial payments was provided to the auditors, stating that a list made for accounting purposes would be likely to form part of the data the Welsh Government would hold on these transactions and would therefore be in scope.
15. The complainant again wrote to the Welsh Government stating that she had not received a reply as to why the information was not already listed for the auditors adding that there was no proper working estimate within the review in respect of how the narrowed request could not be met, and no section 16 help to allow her to narrow her request even further.

Scope of the case

16. The complainant contacted the Commissioner on 24 November 2016 to complain about the way her request for information had been handled.
17. In particular, she expressed concern that the Welsh Government had not given her suitable advice and assistance as to how she could refine her request, adding that it is not the responsibility of the requester to know how to refine the request, as it is the authority who understands its filing system. She further stated that she considered her request justifiably of public interest now that MP's have to state their expenses, and cannot see why Welsh Assembly Member's should be exempt from

the same scrutiny as MP's. Finally, she stated that the internal review, did not match the narrowing of her request.

18. The Commissioner has not considered the Welsh Government's reliance on section 12 in respect of the complainant's original request as she has not complained about it. Neither has she taken into consideration the complainant's comments regarding the expenditure of Assembly Members and would point out that there is nothing to stop the complainant submitting a request specifically in relation to the expenditure of AM's.
19. The scope of her investigation therefore, is to consider whether the Welsh Government complied with its obligations under section 16 FOIA in respect of both the complainant's original and refined requests and whether it can rely on section 12 FOIA in respect of the refined request.

Reasons for decision

Section 16 – duty to provide advice and assistance

20. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request, so far as it would be reasonable to do so. Paragraph 14 of the section 45 Code of Practice takes this further and explicitly states that where a public authority is relying on section 12 of the FOIA that it:

"...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focusing their request, information may be able to be supplied for a lower, or no fee."

21. The complainant has specifically raised concerns that the Welsh Government did not provide adequate advice and assistance to enable her to refine her request so that some relevant information might be provided. The Commissioner notes that she also raised this following both the Welsh Government's original response and its internal review. Indeed, the Welsh Government partially upheld this aspect of the complainant's concerns in its internal review, however then went on to say that it is difficult to envisage how this request could be further narrowed. It further stated that she may wish to submit a refined request taking into consideration the information previously supplied to her regarding the appropriate limit.
22. The Commissioner has therefore considered the information previously supplied to the complainant in relation to its record keeping, and notes

that it is the responsibility of each procurement card holder to retain on a registered file all original receipts and supporting documentation for each purchase they make on their card. For the financial year 2015-16 there were 10,436 card transactions with the receipts retained on 236 separate cardholder registered files. In addition, there were also 2,032 receipts relating to purchases made with procurement cards lodged with the Welsh Government's stationary provider and retained by 135 stationary officers.

23. Providing the information in respect of the original request, would require the Welsh Government to locate and collect the 236 cardholder files, plus the 135 stationary officer files and manually extract the information in respect of each receipt.
24. However, whilst the Commissioner notes the complainant had asked for original receipts/invoices, the Welsh Government has provided no information to the complainant in respect of the information it holds centrally within its finance department or for audit functions which may have allowed the complainant to refine her request.
25. The Commissioner raised this point with the Welsh Government during her investigation, and its response stated:

"...a full description of the Welsh Government's filing system in terms of procurement cards and receipts was set out in our original response to the requester..."
26. The Welsh Government further argued that it viewed both the original and the refined requests as very clear in that the complainant wished to read actual 'receipts'. It further considered that the complainant was unlikely to be satisfied by the provision of centrally held details relating to her refined request, adding:

"The request for receipts would imply that, if not only satisfied by copies of the receipts, at least the level of information on purchases contained on a receipt would be required. The information held centrally is basic transactional information..."
27. The Commissioner does not accept this and would refer to the complainant's post internal review correspondence referred to in paragraphs 14 of this notice where she asked the Welsh Government to confirm that no list of the financial payments was provided to the auditors. In the Commissioner's this view, this demonstrates that the complainant was open to compromise regarding what might be provided within the appropriate limit.

28. The Commissioner has considered the concerns raised by the complainant, the information provided by the Welsh Government in terms of its record keeping, and the Welsh Government's arguments, and considers that there were a number of ways it might have suggested the complainant refined her request. For example, a shorter time period, or for a particular group of card holders perhaps restricting it to senior civil servants. In her view therefore, the Welsh Government failed to offer appropriate advice and assistance to the complainant and has therefore breached section 16 of the FOIA.

Section 12 – cost of compliance exceeds the appropriate limit

29. Section 12 of the FOIA states that:

“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.”

30. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 'Regulations') sets the appropriate limit at £600 for the public authority in question. Under these Regulations, a public authority can charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.
31. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
- (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.
32. As stated elsewhere in this notice, the Commissioner has not considered the Welsh Government's reliance on section 12 in respect of the original request as it does not form part of the complaint. However, the requestor has expressed dissatisfaction with the Welsh Government's reliance on section 12 in respect of her refined request.
33. As stated in paragraph 8 of this notice, the refined request asked for receipts deemed to be not complying with the criteria set for the use of Welsh Government cards, presented to the Welsh Government but either claimed and then repaid, or those that had to be refused.

34. The Welsh Government informed the complainant and maintains to the Commissioner that the same processes necessary for complying with the original request, and outlined in paragraphs 22 and 23 of this notice, would need to be undertaken to comply with the refined request. However, the Welsh Government has not provided the Commissioner with sufficient information regarding its centrally held records of information relevant to this request, for her to determine whether this is indeed the only method available.
35. For example, the Welsh Government informed the Commissioner that it holds only basic transactional information centrally, which is required for the charging of expenditure to its ledgers and, by way of an example, provided a hyperlink to its transparency releases on its procurements card expenditure. The link opens a spreadsheet with information under the following headings:
- Expense type
 - Supplier name
 - Transaction date
 - Transaction reference
 - Amount
36. The Commissioner considers that in the process of collating this spreadsheet, the Welsh Government is likely to hold additional information centrally. This is further reinforced by comments that:
- "A limited number of transactions have been withheld from publication based on exemptions under the Freedom of Information Act 2000".*
37. Further, the Welsh Government also informed the Commissioner that an alternative interpretation of the refined request that focusses on the second sentence, would be that the requester was simply asking for receipts presented to the Welsh Government that have either been claimed and then repaid, or that have had to be refused. It added:
- We have a small number of cases where card holders have used their Welsh Procurement cards in error. In these cases the card has been used accidentally to purchase personal items and the usage declared by the card holder and refunded... Charges refused by the Welsh Government are by definition not Welsh Government expenditure...*

As in either case no receipts are presented, the information relating to receipts "presented to the WG but have either been claimed and then repaid, or those that have had to be refused by the WG ...is not held..."

38. The Commissioner considers that the Welsh Government's 'alternative interpretation' of the refined request, is very similar to her interpretation of the refined request, and even if this is not the case, that it demonstrates that it holds more information centrally than originally suggested, otherwise it would not have been in a position to inform the Commissioner of these transactions.
39. Based on the above information in paragraphs 35 to 38 of this notice, the Commissioner is not therefore satisfied that the Welsh Government has demonstrated that it would need to follow the same processes outlined in respect of the original request for the refined request, and as such, cannot conclude that section 12 of the FOIA is engaged.
40. Furthermore, whilst the Welsh Government's position that it does not hold information (receipts) of the transactions referred to in paragraph 37 of this notice, it clearly holds some information in respect of them.

Other matters

41. The Commissioner is concerned at the Welsh Government's continued narrow interpretation of the complainant's requests and its failure to engage further with either the complainant or the ICO as to how it might satisfy her request within the cost limit.

Right of appeal

42. 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

43. 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.
44. 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

Catherine Dickenson
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