

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 November 2019

Public Authority: Welsh Government

Address: freedom.ofinformation@gov.wales

Decision (including any steps ordered)

1. The complainant has requested various information in respect of the TrawsCymru bus network. The Welsh Government refused the request on the basis that it is vexatious citing section 14(1) of the FOIA. The Commissioner's decision is that the Welsh Government was entitled to rely on section 14(1) to refuse the request. The Commissioner does not require the public authority to take any steps.

Request and response

2. On 16 January 2019, the complainant wrote to the Welsh Government with a 28 part request for various information in respect of the TrawsCymru bus network. Due to the length of the request, it has been reproduced in an annex to this notice.
3. The Welsh Government responded on 7 February 2019. It stated that it was refusing the request on the basis that the request was vexatious citing section 14(1) of the FOIA. It further confirmed that should the complainant wish to appeal this decision directly to the Commissioner it would have no objection.

Scope of the case

4. The complainant contacted the Commissioner on 17 February 2019 to complain about the way his request for information had been handled.
5. The complainant informed the Commissioner that the questions in his request are serious and allegedly highlight that 1 million pounds of taxpayers money is being spent on a failed policy of Free Weekend Travel.

6. The Commissioner considers that the scope of her investigation is to determine whether the Welsh Government was entitled to rely on section 14(1) to refuse the request.

Reasons for decision

Section 14(1) - Vexatious requests

7. Section 14(1) of the 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.
8. The term 'vexatious' is not defined in the FOIA, however, the Upper Tribunal in the Information Commissioner vs Devon CC and Dransfield [2012] UKUT 440(AAC), (28 January 2013) took the view that the ordinary dictionary definition of the word 'vexatious' is only of limited use, because the question of whether a request is vexatious ultimately depends on the circumstances surrounding that request.
9. In further exploring the role played by circumstances and whether the request has adequate and proper justification, the Tribunal concluded that 'vexatious' could be defined as the "*...manifestly unjustified, inappropriate or improper use of a formal procedure.*" (paragraph 27)
10. Consistent with the Upper Tribunal's decision which established the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious, the Commissioner's guidance for section 14 confirms that the key question to ask when weighing up whether a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
11. Where this is not clear, the public authority should weigh the impact on the authority of complying with the request and balance this against the purpose and value of the request. In doing this, public authorities will inevitably need to take into account the wider factors such the background and history of the request.
12. When considering refusing a request on the basis that it is vexatious, the Commissioner's guidance in respect of section 14(1) refers to a number of indicators which a public authority may find helpful and notes that the Welsh Government considered the following indicators as relevant factors in respect of all three requests:
 - Abusive or aggressive language
 - Personal grudges

- Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
13. As part of her determination, the Commissioner has relied on evidence in respect of two previous decision notices referenced FS50734061¹ and FS50807259² she has issued in relation to requests from the same complainant and public authority containing various queries regarding the TrawsCymru bus network. The Commissioner does not intend to reproduce the arguments in this notice, but would refer the reader to the links below.
14. The Commissioner would also wish to highlight that the complainant has appealed both decision notices to the First-tier Tribunal (Information Rights). Whilst the Tribunal has yet to make a decision in respect of FS50807259 [EA/2019/0156], in its decision dated 2 July 2019, it upheld the Commissioner's decision notice stating:
- "however genuine [complainant's name] motives and beliefs, we are satisfied that the requests represent the continuation of an obsessive campaign which will involve further FOIA requests and further accusations against individuals, whatever responses are given this time."*³
15. In respect of the request which is the subject of this notice, the Welsh Government has confirmed that it would wish to challenge the complainant's calculation that the Free Weekend Travel policy has only generated a further 47 additional passengers. It believes the complainant's calculation did not take account of the fact that free weekend travel did not start until July 2017, and one of the key routes

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2614065/fs50734061.pdf>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2614556/fs50807259.pdf>

³

[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2464/McTighe,%20John%20EA.2019.0008%20\(08.07.19\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2464/McTighe,%20John%20EA.2019.0008%20(08.07.19).pdf)

suffered from an overall reduction in patronage over the winter months which has since recovered. It further considers that the impact on longer-term travel would not have been evident at the end of the financial year 2014-2018.

16. The Welsh Government is of the view that this latest statement is typical of other similar assertions made by the complainant when submitting his requests, and considers that at the core of this request is a further attempt to re-open issues about bus timetables.
17. The Welsh Government has further confirmed that whilst it has refused this request under section 14(1) of the FOIA, it continues to try to accommodate the complainant's requests to amend bus timetables

Other matters

18. Given the history of this case and the fact the Commissioner has now issued a third decision notice finding requests submitted by this complainant to the same public authority to have been vexatious, the Commissioner considers it reasonable to draw attention to the fact that section 50(2)(c) of the FOIA allows her to refuse complaints which she considers to be either vexatious or frivolous. She may consider applying that provision if further complaints about related matters are received from the complainant.

Right of appeal

19. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. 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.
21. 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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