

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 March 2021

Public Authority: Llywodraeth Cymru
Welsh Government

Address: Cathays Park
Cardiff
CF10 3NQ

Complainant:

Address:

Decision (including any steps ordered)

1. The complainant requested information from the Welsh Government about the 2016 Exercise Cygnus pandemic drill and connected matters relating to: widespread infection and disease; PPE equipment; care homes; coronavirus assistance offered by the EU; testing and quarantine at Welsh ports and airports; and, border control.
2. The Commissioner decided that the cost to the Welsh Government of providing the requested information would exceed the appropriate cost limit and that its refusal had therefore complied with the section 12(1) (cost of compliance) FOIA exemption.
3. The Commissioner also decided that, in the actions taken to provide advice and assistance, the Welsh Government had complied with its duties under section 16(1) FOIA.
4. The Commissioner does not require the Welsh Government to take any steps to comply with the legislation.

Request and response

5. On 20 April 2020, the complainant wrote to the Welsh Government (WG) with six separate information requests asking for information about the 2016 Exercise Cygnus pandemic drill and connected matters relating to widespread infection and disease, PPE equipment, care homes, coronavirus assistance offered by the EU, testing and quarantine at Welsh ports and airports and border control. The requests are set out in full in the annex to this Notice. Each of the six requests comprised sub-divisions; there were 33 of these in total.
6. WG responded on 22 April 2020 and refused to provide the requested information citing the section 12(1) (cost of compliance) FOIA exemption.
7. On 9 May 2020 the complainant asked for a review of the WG refusal of 22 April 2020. In the alternative he submitted an amended FOI request which took the form of specific 'closed' questions to which he wanted answers. The questions were:

"Was the Welsh government consulted by the UK government regarding the conclusions reached regarding Exercise Cygnus relating to the 2016 Pandemic Drill relating to widespread infection and disease from 2016 until the present date?

Was the Welsh government consulted by the UK government regarding the contents of the email or emails sent to the UK Government by the European Union in 2020 regarding assistance with and supplies of Personal Protective Equipment such as masks, ventilators etc. to assist with the fight against the Coronavirus outbreak?

Are the border controls at ports, and airports in Wales devolved to the Welsh Government or under the control of the UK Border Agency?"
8. On 19 May 2020 the complainant further reduced the scope of his request, saying that he did not want WG to review the PPE and care home topics but only the conclusions in: the Exercise Cygnus 2016 Pandemic Drill, coronavirus assistance offered by EU, and Border Control. He then added that he was minded not to pursue the Border Control issue, believing it not to be a devolved matter.
9. Following an internal review, WG wrote again to the complainant on 1 June 2020 maintaining its reliance on the section 12(1) FOIA exemption. Also in its 1 June 2020 letter to the complainant WG answered the 9 May 2020 'closed' questions.

Scope of the case

10. The complainant contacted the Commissioner on 15 June 2020 to complain about the way his request for information had been handled. He said that WG had been wrong to apply the fees cap and had not provided sufficient evidence to merit reliance on it.
11. The Commissioner considered the application by WG of the section 12(1) FOIA exemption. She has had regard for the representations received from the parties and has examined the supporting evidence that WG relied on.
12. She also considered the advice and assistance offered, something which WG is required to provide by section 16(1) FOIA.

Reasons for decision

Section 12(1) FOIA – Cost of compliance

13. Section 12(1) FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
14. The Freedom of Information and Data Protection (Appropriate Limit and Fees) regulations 2004 SI 2004 No 3244 (“the fees regulations”) sets out the appropriate limits.
15. The fees regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The cost limit in this case is £600, which, charged at £25 per hour, is equivalent to 24 hours of officer time.
16. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider time taken in:
 - a) Determining whether or not it holds relevant 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.
17. Section 12(1) FOIA makes clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation. The issue for the

Commissioner to decide is whether or not the cost estimate made by WG was reasonable. That is, whether it had estimated reasonably that the cost of compliance with the request would exceed the limit of £600, so that section 12(1) FOIA applied, and WG was not obliged to comply with the request.

18. The complainant told the Commissioner, but did not provide supporting reasons, that he did not consider WG had provided sufficient evidence to merit applying the fees cap in this case. He said that his requests had been quite straight forward and the claim that there would have to be a search of 26,945 documents appeared to him to be completely unwarranted.
19. WG told the Commissioner that, on 20 April 2020, it had received six requests from the complainant, each request containing between 2 and 10 separate questions. As they were all related, WG had followed its usual practice of amalgamating the six separate requests into one.
20. Where requests relate to the same overarching theme, a public authority may aggregate two or more separate requests in accordance with the conditions laid out in the Fees Regulations. In the Commissioner's guidance^[1] on exceeding the cost limits, she explains that:

"Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate "to any extent" to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement.

A public authority needs to consider each case on its own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested".
21. The Fees Regulations wording of "relate, to any extent, to the same or similar information" makes clear that the requested information does not need to be closely linked to be aggregated, only that the requests can be linked.

^[1] https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

22. Having reviewed the wording of the complainant's requests, the Commissioner is satisfied that there is an overarching theme. This is because the individual questions in all of the requests all refer to information about control of the coronavirus outbreak and connected matters. Therefore, the Commissioner decided that WG was entitled to aggregate the costs of dealing with each question.
23. WG said it had conducted some preliminary searches to establish how many documents would need to be retrieved for all parts of the requests. WG added that the search of the WG electronic database alone (using keywords for each of the requests) had returned over 26,945 documents. Based on an average check of each document taking 20 seconds, WG estimated that a full search would take at least 149 hours.
24. WG added that at a flat rate of £25 per hour, the likely cost was over £3,700 and significantly in excess of the £600 limit for central government departments. Moreover, this estimate did not take account of the need for Outlook mailbox searches to be undertaken also. WG confirmed to the Commissioner that the searches it had conducted were not a sampling exercise. They were full searches of all the records in its electronic document management system but did not extend to searching Outlook mailboxes.
25. WG said that, for technical reasons, some of the searches conducted were limited to a maximum of 5,000 results. WG recognised that the selection of particular keywords to conduct the search had been subjective but had been made by a very experienced member of staff. Key words searched included: 'Exercise Cygnus', 'Personal Protective Equipment', 'care homes', and 'Coronavirus'.
26. WG explained that it had not extended the search to Outlook mailboxes, as it expected that most of the relevant emails and attachments in the mailboxes would have been stored separately in its electronic document management system in line with WG policies for document storage and retention. The Commissioner accepted that the WG searches had been comprehensive and that the choice of the keywords used in its searches had been reasonable.
27. WG told the Commissioner that the outcome of its searches had been:

Total number of 'hits' for each search:

Requests 1 & 2	2,842
Request 3	10,000+
Request 4	10,000+
Requests 5 & 6	4,103
Total	26,945+

28. In the light of her investigation, and having considered the evidence provided by WG, the Commissioner found that the WG estimates had been realistic and reasonable. She therefore decided that the cost to WG of providing the requested information would far exceed the appropriate cost limit.

Section 16 – advice and assistance

29. Section 16(1) FOIA requires a public authority to provide advice and assistance to a person making an information request. In general, where the section 12(1) FOIA exemption has been cited, in order to comply with this duty a public authority should advise the requester how to refine their request to bring it within the cost limit.
30. The Commissioner recognises that, where the cost of providing the requested information is far in excess of the cost limit, it may not be practical to provide any useful advice.
31. WG explained that, when the complainant had requested an internal review on 9 May 2020, he also set out an alternative approach in the form of three specific 'closed' questions, set out at paragraph 7 above to which he wanted answers. WG said that these questions had not been requests for recorded information. However, in keeping with its section 16(1) FOIA duty to provide advice and assistance, WG had answered the three questions in its 1 June 2020 response letter following its internal review.
32. The Commissioner agreed that the three closed questions were not requests for recorded information. However, she accepted that WG's approach in answering the three questions had been a way of providing assistance. She was satisfied WG had no other feasible approach open to it. She therefore decided that WG had complied with its duties under section 16(1) FOIA.

Right of appeal

33. 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

34. 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.
35. 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

Dr R Wernham
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

Information Requests

On 20 April 2020 the complainant put six information requests to WG . They were:

Request 1 – Pandemic Drill

- 1. Was the Welsh Government consulted by the UK Government regarding the conclusions reached regarding Exercise Cygnus relating to the 2016 Pandemic Drill relating to widespread infection and disease?*
- 2. Was the Welsh government sent copies by the UK government of the conclusions reached regarding Exercise Cygnus relating to the 2016 Pandemic Drill relating to widespread infection and disease?*
- 3. If so, what were the conclusions and what is the text of the conclusions?*

Request 2 – Pandemic Drill

- 1. Does the Welsh Government have any information supplied by the UK Government to the Welsh Government on the implementation of any or all of the conclusions reached regarding Exercise Cygnus relating to the 2016 Pandemic Drill relating to widespread infection and disease?*
- 2. If so, what information does the Welsh Government have on which conclusions were implemented and how they were implemented regarding Exercise Cygnus relating to the 2016 Pandemic Drill relating to widespread infection and disease?*

Request 3 - Information regarding Personal Protective Equipment in the Welsh NHS and Care Homes.

- 1. Does the Welsh Government and the Welsh Department of Health and Social Services have a central database regarding the obtaining and distribution of PPE to Welsh NHS hospitals and Welsh NHS and private Care Homes?*
- 2. If not, how does the Welsh Government and the Welsh Department of Health and Social Services keep track regarding the obtaining and distribution of PPE to Welsh NHS hospitals and Welsh NHS and private Care Homes?*
- 3. If not, is the control of PPE to Welsh NHS hospitals and Welsh NHS and private Care Homes left to each individual Welsh NHS Trust or Welsh NHS Area?*

4. How much PPE has so far been supplied to Welsh NHS hospitals and Welsh NHS and private Care Homes and what has been the total cost so far?

5. What individual items of PPE have so far been supplied to Welsh NHS hospitals and Welsh NHS and private Care Homes?

6. How much of PPE has been supplied from domestic manufacturers in Wales and the rest of the UK and how much from abroad and from which countries?

7. How are items of PPE distributed to Welsh NHS hospitals and Welsh NHS and private Care Homes and what has been the total cost so far?

8. How much more PPE does the Welsh Government and the Department of Health and Social Services propose to be supplied to Welsh NHS hospitals and Welsh NHS and private Care Homes?

9. How much more individual items of PPE are proposed to be supplied to Welsh NHS hospitals and Welsh NHS and private Care Homes?

10. What records does the Welsh Government and the Welsh Department of Health and Social Services have regarding how much PPE and individual items of PPE have so far been received from Welsh and UK domestic manufacturers and manufacturers from abroad and supplied and distributed to Welsh NHS hospitals and Welsh NHS and private Care Homes?

Request 4 Information regarding joint procurement from the European Union regarding the Coronavirus outbreak.

1. Was the Welsh Government consulted by the UK Government regarding the contents of the email or emails sent to the UK Government by the European Union regarding assistance with and supplies of Personal Protective Equipment such as masks, ventilators etc. to assist with the fight against the Coronavirus outbreak?

2. Was the Welsh Government sent copies by the UK Government of the email or emails sent to the UK Government by the European Union regarding assistance with and supplies of Personal Protective Equipment such as masks, ventilators etc. to assist with the fight against the Coronavirus outbreak?

3. If so, what are the contents of the email or emails sent to the Welsh Government that were sent to the UK Government by the European Union regarding assistance with and supplies of Personal Protective Equipment such as masks, ventilators etc. to assist with the fight against the Coronavirus outbreak?

4. *If so, which UK Government or departmental email address was used by the European Union to send the email or emails?*

5. *Where there any previous email addresses used by the UK Government or department responsible prior to the email or emails being sent by the European Union that were sent by the UK government to the Welsh Government concerning communications generally from the European Union?*

Request 5 Information regarding Welsh Ports, Airports and Border Controls regarding the Coronavirus outbreak.

1. *Does the Welsh Government and the Welsh Department of Health and Social Services have any information as to why both UK nationals and non UK nationals entering the UK at UK ports, airports and border controls were not tested for the Coronavirus immediately after the Coronavirus outbreak?*

2. *Does the Welsh Government and the Welsh Department of Health and Social Services have any information as to why were both UK nationals and non UK nationals entering Wales at Welsh ports, airports and border controls not required to be in quarantine isolation centres for 14 days immediately after the Coronavirus outbreak?*

3. *Does the Welsh Government and the Welsh Department of Health and Social Services have any information as to why were both UK nationals and non UK nationals entering Wales at Welsh ports, airports and border controls not tested for the Coronavirus later on after the Coronavirus outbreak?*

4. *Does the Welsh Government and the Welsh Department of Health and Social Services have any information as to why were both UK nationals and non UK nationals entering Wales at Welsh ports, airports and border controls not required to be in quarantine isolation centres for 14 days later on after the Coronavirus outbreak?*

5. *Does the Welsh Government and the Welsh Department of Health and Social Services have any information as to why are both UK nationals and non UK nationals entering Wales at Welsh ports, airports and border controls not tested for the Coronavirus at the present time after the Coronavirus outbreak?*

6. *Does the Welsh Government and the Welsh Department of Health and Social Services have any information as to why are both UK nationals and non UK nationals entering Wales at Welsh ports, airports and border controls not required to be in quarantine isolation centres for 14 days at the present time after the Coronavirus outbreak?*

Request 6 - Information regarding Welsh Ports, Airports and Border Controls regarding the Coronavirus outbreak.

- 1. Are the border controls at ports, and airports in Wales devolved to the Welsh Government?*
- 2. If so, does the Welsh Government have any information as to why were Welsh ports, airports and border controls not closed to non UK residents immediately after the Coronavirus outbreak?*
- 3. If so, does the Welsh Government have any information as to why were Welsh ports, airports and border controls allowing flights and entries to continue from high risk countries affected by the Coronavirus such as China, Iran, Italy and Spain immediately after the Coronavirus outbreak?*
- 4. If so does the Welsh Government have any information as to why were Welsh ports, airports and border controls not closed to non UK residents later on after the Coronavirus outbreak?*
- 5. If so, does the Welsh Government have any information as to why were Welsh ports, airports and border controls allowing flights and entries to continue from high risk countries affected by the Coronavirus such as China, Iran, Italy and Spain later on after the Coronavirus outbreak?*
- 6. If so, does the Welsh Government have any information as to why are Welsh ports, airports and border controls not closed to non UK residents at the present time after the coronavirus outbreak?*
- 7. If so does the Welsh Government have any information as to why are Welsh ports, airports and border controls allowing flights and entries to continue from high risk countries affected by the Coronavirus such as China, Iran, Italy and Spain at the present time after the Coronavirus outbreak?*