

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 April 2022

Public Authority: Welsh Office
Address: Gwydyr House
London SW1A 2NP

Decision (including any steps ordered)

1. The complainant requested from the Welsh Office copies of correspondence between Peter Hain (the former Welsh Secretary) and the Prince of Wales about complementary health/complementary medicine during the period of 24 October 2002 to 24 October 2003. The Welsh Office refused to confirm or deny whether it held information within the scope of the request, citing section 12(2) (cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner's decision is that the Welsh Office was entitled to apply section 12(2) of FOIA and is satisfied that the Welsh Office met its obligation under section 16 to offer advice and assistance. The Commissioner does not require the Welsh Office to take any steps.

Request and response

3. On 27 February 2021 the complainant requested copies of correspondence between Peter Hain (the former Welsh Secretary) and the Prince of Wales about complementary health/complementary medicine during the period of 24 October 2002 to 24 October 2003. This request was an identical request to one made by the complainant on 26 November 2020 for the longer period of October 2002 to October 2004 which was refused by the Welsh Office on the grounds of section 12(2) of FOIA.
4. On 26 March 2021 the Welsh Office replied stating it was unable to confirm or deny whether it held the information requested as, due to the

age of the information requested, it was held in an off-site storage facility in the form of archived paper records. The Welsh Office applied section 12(2) of FOIA to the request.

5. This decision was upheld on internal review dated 24 August 2021 when the Welsh Office further explained that, due to the pandemic, for health and safety reasons, staff were unable to travel to the off-site storage facility to search the records manually.

Scope of the case

6. The complainant contacted the Commissioner on 25 August 2021 to complain about the way their request for information had been handled. The complainant disagrees with the Welsh Office's application of section 12(2) of FOIA.
7. The Commissioner considers the scope of this case is to determine if the public authority has correctly applied section 12(2) of FOIA in response to this request. The Commissioner has also considered whether the public authority met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12(2)

8. Section 12(2) provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
9. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.
10. The "appropriate limit" is set in the Fees Regulations at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. Therefore, the "appropriate limit" for the Welsh Office is £600.
11. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, effectively

imposing a time limit of 24 hours for the Welsh Office to deal with this request.

12. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
13. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of "Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004", the Commissioner considers that any estimate must be "**sensible, realistic and supported by cogent evidence**".
14. The task for the Commissioner here is to determine whether the cost estimate by the Welsh Office was reasonable. If it was, then section 12(2) was engaged and the Welsh Office was not obliged to confirm or deny whether the requested information was held.
15. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

Would confirmation or denial exceed the appropriate limit?

16. The Welsh Office explained to the complainant that to determine whether any of the information requested was held, manual searches of archived paper records stored off-site would be required and estimated that this process would take more than three and a half days to carry out and would therefore exceed the cost limit of £600 set out in the Fees Regulations.
17. As is the practice in a case in which the public authority has cited the cost limit under section 12(2) of FOIA, the Commissioner asked the

Welsh Office to provide a more detailed estimate of the time and cost of determining whether the requested information was held.

18. In its response to the Information Commissioner dated 21 March 2022 the Welsh Office provided further details on the process which would be involved in determining whether the information requested was held.
19. The Welsh Office explained to the Information Commissioner that the paper records covering the period 24 October 2002 to 24 October 2003 were held in long term, off-site storage. The Welsh Office explained that to review the potentially relevant records would necessitate recalling around 14 or more boxes of documents each of which would require a full manual check to identify whether any material relating to the complainant's request was held.
20. The Welsh Office explained to the Commissioner that it was not able to be more precise about the number of boxes which would need to be retrieved and searched as the boxes are labelled only as to the broad content of each box. The Welsh Office further explained that whilst they have an electronic list that shows the titles of the boxes held in the off-site storage facility, the contents of the boxes are not indexed and the labels on the boxes do not contain dates and so cannot be searched chronologically.
21. Due to the way the potentially relevant information is stored, the Welsh Office estimated that it would take approximately two hours to properly and fully review each box to determine whether any relevant information was held. Based on 14 boxes being reviewed, this would mean at least 28 hours of activity to initially identify any relevant information. In addition, the Welsh Office explained that it would have to validate any information that was deemed relevant and, in the interest of accuracy, would need to undertake a proportional crosscheck following the initial check to ensure as best it could that no relevant material was omitted. The Welsh Office estimated an approximate 20% validation check would be required resulting in around a further six hours of activity based on the review of 14 boxes.
22. The Welsh Office has therefore estimated that, based on 14 boxes being reviewed, the initial check of approximately 28 hours' work at £25 per hour would cost £700 and the crosscheck of approximately six hours at £25 per hour would cost £150. In addition to these staff costs, the delivery of 14 archive boxes from remote storage and subsequent return would cost an estimated £100-£200. The Welsh Office have therefore provided an estimate of approximately £950 to confirm or deny whether it holds any information within the scope of the complainant's request.

23. The Commissioner accepts the explanation that it would be necessary for the Welsh Office to review each box of information manually in order to locate and extract any information it held within the scope of the request. The Commissioner also accepts that a validation crosscheck would be required and that there are costs involved in retrieving and returning boxes which are held in off-site storage.
24. The Commissioner's overall conclusion is that the Welsh Office has estimated reasonably that to confirm or deny whether it holds any information within the scope of the complainant's request would exceed the appropriate cost limit. The Welsh Office was therefore correct to apply section 12(2) of FOIA to the complainant's request.

Section 16(1) – duty to provide advice and assistance

25. Section 16(1) of FOIA provides that a public authority should give reasonable advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1). The FOIA code of practice states that, where public authorities have relied on section 12 to refuse a request, they should:

"provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the cost limit".
26. In its internal review, the Welsh Office addressed its obligations under section 16 of FOIA by stating that, due to the way the potentially relevant information was stored, it was unable to advise the complainant on whether his request could be refined to lower the cost of complying. Furthermore, the Welsh Office explained that due to the pandemic restrictions in place at that time, its staff were unable to travel to the off-site storage facility to do an initial review of the archived material.
27. The Commissioner notes that the Welsh Office outlined to the complainant that it was not possible to offer advice about how to reduce the scope of the request, due to the way the information was stored. The Commissioner considers this was an appropriate response in the

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

circumstances given the number of boxes that would have to be searched to determine whether any of the requested information was held. He is therefore satisfied that the Welsh Office met its obligation under section 16 of FOIA.

Right of appeal

28. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

29. 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.
30. 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

Michael Lea
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