

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 July 2015

**Public Authority:** Wrexham County Borough Council

**Address:** Guildhall  
Wrexham  
LL11 1AY

### Decision (including any steps ordered)

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1. The complainant has requested minutes of specified team meetings between Community Mental Health and the Recovery Service for a defined period. Wrexham County Borough Council informed the complainant that no meetings during the relevant time period were held. The Commissioner's decision is that Wrexham County Borough Council has complied with its obligations under section 1(1) of the FOIA. The Commissioner does not require the public authority to take any steps.

### Request and response

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2. On 5 September 2014, the complainant wrote to Wrexham County Borough Council ('the Council') and requested the following information:

*"Please supply a copy of the Community Mental Health, Recovery Service, Management Team Meeting Minutes for the following week-commencing dates:*

*Week commencing:*

*31.12.12*

*07.01.13 (actual meeting possibly 10.01.13 this week)*

*14.01.13*

*21.01.13*

28.01.13

04.02.13

11.02.13"

3. The Council responded on 8 October 2014 and informed the complainant that it does not hold information relevant to the request. It also attached a response from its Adult Social Care Department stating that it no longer holds the information requested.
4. Following an internal review the Council wrote to the complainant on 18 November 2014. It stated that:

*"Having reviewed the request...I am satisfied that Adult Social Care has carried out the necessary search to locate any copies of the document. I can confirm that the department currently does not hold copies of the meeting.*

*Since the minutes relate to an integrated care agenda it is advised that you approach Betsi Cadwaladr University Health Board to check if they have any copies relating to your request."*

### **Scope of the case**

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5. The complainant contacted the Commissioner on 2 January 2015 to complain about the way his request for information had been handled. He asked the Commissioner to investigate what has happened to the minutes as the Recovery Service is an integrated care agenda with the staff employed by the Council and Betsi Cadwaladr Health Board.
6. He further stated that both authorities were claiming that they do not have the records and expressed concern with this stating that approximately eight copies from each meeting would have been supplied to the management team and a copy would have been kept on file.
7. The scope of the Commissioner's investigation is therefore to consider whether the Council has complied with its obligations under section 1(1) of the FOIA.

## **Reasons for decision**

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### **The appropriate legislation**

8. The Commissioner notes that although the focus of the complainant's concerns appears to be in respect of a radon gas exposure issue, his actual request for information asked for copies of minutes of the Community Mental Health, Recovery Service, Management Team Meeting.
9. Whilst information relating to the radon gas issue is likely to be considered under the Environmental Information Regulations 2004 ('the EIR'), he has considered the standing agenda for these meetings to determine whether the general subject matter would be likely to fall within the definition of environmental information as defined by regulation 2(1)(a) to (f) of the EIR. However, he has notes that the general content is likely to be in relation to matters that would not fall within this definition, and has therefore concluded that the appropriate legislation under which to consider this request is the FOIA.

### **Section 1(1)**

10. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
11. In his consideration of this case, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that additional information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any additional information therefore, the normal standard of proof to apply is the civil standard of the balance of probabilities.
12. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
13. In this particular case, the Council's Adult Social Care Department initially confirmed that it no longer holds information relevant to the request. However, having asked the Council to provide details of its search, the Council informed the Commissioner that whilst conducting the internal review, it came to light that in January 2013, the team

involved were relocating to a different building and to minimise disruption, the meetings referred to in the request were cancelled. The Council provided the following extract from the relevant team:

*"To my knowledge no meeting minutes were ever lost however we did move in January and it was chaotic here for a few weeks – we may have held brief informal meetings but nothing around the dates requested. At the time we were waiting on phone systems IT and unpacking crates which contained years of information as well as ensuring service users support was covered -*

14. The complainant however considers that the Council must hold relevant information, and has argued that the move to the new premises did not take place until February 2013. He has also informed the Commissioner that a health and safety issue had been declared by the Council on 23 December 2012 whereby staff had been exposed to levels of Radon gas above the Health and Safety Executive ('HSE') action level of 400BQ/m<sup>3</sup>.
15. The complainant has further stated that he raised a letter of concern with the Council's Recovery Service Manager over this issue which prompted a chain of emails between the Council and Betsi Cadwaladr University Health Board (BCUHB) managers into the latter part of January 2013. This included an email sent by an officer from the Council dated 9 January 2013 with the subject heading 'Radon' and stating:  
  
*"Radon guy is coming Tuesday at 10am ...Will discuss during meeting tomorrow."*
16. The Radon gas exposure also prompted a complaint from eight staff which resulted in a further measurement of Radon gas levels in their office, the results of which were announced in an email dated 22 January 2013.
17. Having raised these matters with the Council, it has confirmed to the Commissioner that a complete review of its handling of the request has been undertaken. Electronic diaries have been checked again, and no meetings of the Community Mental Health and Recovery Service, Management Team took place during the time period specified in the request.
18. The Council also interviewed, as well as corresponded with members of staff within both the Council and BCUHB, to eliminate any possibility of any information documented as part of an informal discussion. The Council has confirmed that any informal discussion identified during this phase was sensitive personal data about service users as opposed to information about the radon gas issue.

19. In respect of the date of the move, the Council has confirmed to the Commissioner that whilst the actual move took place on 29 January 2013, the move itself took place over a few weeks between packing up and unpacking. The decision had been made not to have formal meetings partly due to the office move and also due to staff leave over the Christmas and New Year period.
20. Additionally, the Council does not dispute the occurrence of the radon gas issue and has confirmed that it has provided the complainant with information in respect of this via his requests for information specifically about this matter, and as part of his complaint to the Council.
21. In terms of the meeting referred to in the email of 9 January 2013, the Council has informed the Commissioner that it was cancelled due to an urgent matter which took priority of the meeting.
22. Having addressed the complainant's contention that the meetings must have taken place with the Council, and considered its response, the Commissioner is satisfied that based on the balance of probabilities, that no meetings were held and that the Council does not hold information relevant to the request. He is therefore satisfied that the Council has complied with its obligations under section 1(1) of the FOIA.

## Right of appeal

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23. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

24. 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.
25. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**