

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 November 2016

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

Decision (including any steps ordered)

1. The complainant has requested email correspondence to and from the Project Director of its transport policy regarding the delivery of a road scheme for a specific section of the M4 motorway. It also contained a request for all correspondence between the Minister for Economy, Science and Transport and the same Project Director for a specified period in 2015. The Welsh Assembly Government refused to comply with the request, relying on section 12(1) of the FOIA on the basis that the compliance would exceed the appropriate limit. The Commissioner's decision is that the Welsh Assembly Government has complied with its obligations under section 12(1) of the FOIA. The Commissioner does not require the public authority to take any steps.

Request and response

2. On 19 October 2015, the complainant wrote to Welsh Assembly Government (Welsh Government) and requested the following information:

"I would be grateful if you would inform me of the following information:

- All correspondence from Martin Bates, or to Martin Bates
- In May, June, July and September 2015
- Mentioning the words "statistic(s)", "figure(s)", "employment" and/or "job(s)"

3. The Welsh Government responded on 29 October 2015 informing the complainant that the broad nature of the request meant that it was likely to refuse it by virtue of section 12(1) on the basis that the cost of compliance would exceed the appropriate limit. It asked the complainant if he could refine his request.
4. The Complainant responded on the same day, refining his request to just emails, but also adding the following to this request:

"...all correspondence between the Minister and Martin Bates which mentions these terms (whether email or not)."
5. The Welsh Government responded on 13 November 2016, confirming that it was relying on section 12(1) of the FOIA to refuse the request. It also suggested that the complainant further refine his request in an attempt to bring it within the appropriate limit, and the Commissioner notes that some information was released following the complainant's further refined request.
6. Following an internal review the Welsh Government wrote to the complainant on 22 December 2016. It informed the complainant that it was upholding its original response.

Scope of the case

7. The complainant contacted the Commissioner 6 January 2016 to complain about the way his request for information had been handled. He was not satisfied with the Welsh Government's reliance on section 12(1) of the FOIA. He also expressed concern regarding the Welsh Government's records management system, stating that if the system does not allow someone to secure access to emails under the FOIA, the system is not fit for purpose.
8. The Commissioner notes that the complainant also asked if he could add the month of August to his request.
9. The Commissioner observes that adjudicating on the records management of the Welsh Government is beyond the scope of a section 50 consideration. She would also confirm that she has informed the complainant that it is not her role to amend a request for information on behalf of a requestor; and that he must request this directly with the public authority. Additionally, once the public authority has exhausted its processes for dealing with a request for information under the FOIA, any addition or expansion of the request will need to be looked at as a separate request.

10. The scope of the Commissioner's investigation is therefore to consider whether the Welsh Government has correctly relied on section 12(1) of the FOIA to refuse the request.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

11. 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."

12. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 'Regulations') sets the appropriate limit at £450 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.
13. 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.
14. The Welsh Government confirmed that information on the delivery of road schemes is stored online on its iShare system, by project name and divided into multiple sub-folders. It has further confirmed that whilst some of the email correspondence may be stored within some of these folders, there may be other folders which also contain relevant information.
15. The Welsh Government informed the Commissioner that it would be difficult to determine which folders may contain relevant information as the criteria is broad, and any relevant information would take a considerable time to locate, particularly as the M4 is a significant project which has resulted in a large volume of information. It has further stated that information may also be stored in its MS Outlook folders, requiring an additional search.

16. In order for the Commissioner to be satisfied that the Welsh Government was correct to rely on section 12 of the FOIA, she asked the Welsh Government to conduct a sample search, and following this, the Welsh Government confirmed that in terms of its iShare system, within each of the sub-folders there could be numerous documents and files, and it would be necessary to open each document to determine if relevant information was held.
17. It provided screen shots to show that general iShare searches containing the words 'M4', the name of the Project Director, 'statistic' 'figure' 'employment' and 'job', yielded a total of 1404 results. It estimated that it would take 60 seconds to open and check each electronic document to determine whether it was captured by the request, calculating that it would take almost 24 hours to conduct this element of the search alone.
18. As this part of the estimate was only just on the border of the appropriate limit, the Commissioner queried whether its sample had a cut-off point, beyond which it was not required to search which might have reduced the estimate. The Welsh Government confirmed that there was no cut off point as emails can be saved on its iShare system at any time, potentially even several months after they were received. When the emails are received, there is no facility to record the actual date of the correspondence itself on the iShare system, therefore to ensure that all emails were captured by the search, it could not include a cut-off point.
19. The Welsh Government further informed the Commissioner that its filing system is in line with its records management policy to enable the effective delivery of its processes, but does not necessarily lend itself to generic requests such as this. It also confirmed that it was not possible to say if some folders were more likely than others to contain relevant information.
20. In relation to the Outlook search, the Welsh Government confirmed that its search yielded over 280 results. Again, it allowed 60 seconds to open and check each email to determine whether or not it was relevant to the request. The total estimate for this element was over four hours. The Commissioner asked the Welsh Government to provide a sample of these emails to ensure that its estimate appeared reasonable.
21. Having considered the sample emails provided by the Welsh Government, the Commissioner is not convinced that it would take 60 seconds per email, and considers a more reasonable estimate to be in the region of 30 seconds. However, the Commissioner does accept that the estimate undertaken in respect of the iShare system is reasonable. Therefore the total estimate for the iShare search and the Outlook search would be in excess of the appropriate limit of 24 hours. The

Commissioner further acknowledges that the Welsh Government would need additional time to extract the information increasing the estimate further.

22. Additionally, the Welsh Government has confirmed that the time to conduct a search for the information relating to all Ministerial correspondence would only serve to increase the total figure, as the Welsh Government would need to undertake a search of the same information but with much broader parameters, with its sample yielding 11,000 results. The 60 second search per record would therefore equate to in excess of 183 hours.
23. The Commissioner is therefore satisfied that compliance with the request would be in excess of the appropriate limit and that the Welsh Government was correct to rely on section 12(1) to refuse the request.

Right of appeal

24. 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

25. 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.
26. 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

Deddf Rhyddid Gwybodaeth 2000 (y Ddeddf)

Hysbysiad penderfynu

Dyddiad: 14 Tachwedd 2016

Yr Awdurdod Cyhoeddus: Llywodraeth Cynulliad Cymru
Cyfeiriad: Parc Cathays
Caerdydd
CF10 3NQ

Y penderfyniad (gan gynnwys unrhyw gamau y gorchmynnir eu cymryd)

1. Mae'r achwynydd wedi gofyn am ohebiaeth ebost yn ôl ac ymlaen at Gyfarwyddwr Prosiect polisi trafndiaeth ynghylch cyflawni cynllun ffyrdd ar gyfer darn penodol o draffordd yr M4. Roedd y cais yn cynnwys hefyd gais am yr holl ohebiaeth rhwng y Gweinidog dros yr Economi, Gwyddoniaeth a Thrafnidiaeth a'r un Cyfarwyddwr Prosiect ar gyfer cyfnod penodol yn 2015. Gwrthododd Llywodraeth Cynulliad Cymru (Llywodraeth Cymru) gydymffurfio â'r cais, gan ddibynnu ar adran 12(1) o'r Ddeddf ar y sail y byddai cydymffurfio yn mynd y tu hwnt i'r terfyn priodol. Penderfyniad y Comisiynydd yw bod Llywodraeth Cymru wedi cydymffurfio â'i rhwymedigaethau o dan adran 12(1) o'r Ddeddf. Gan hynny, nid yw'r Comisiynydd yn gofyn i'r awdurdod cyhoeddus gymryd unrhyw gamau.

Y cais a'r ymateb

2. Ar 19 Hydref 2015, ysgrifennodd yr achwynydd at Lywodraeth Cymru gan ofyn am yr wybodaeth a ganlyn:

Baswn yn ddiolchgar petaech yn fy hysbysu o'r gwybodaeth canlynol:

- *Pob gohebiaeth gan Martin Bates, neu at Martin Bates*
- *Ym misoedd Mai, Mehefin, Gorffennaf a Medi 2015*
- *Sy'n crybwyll y geiriau "statistic(s)", "figure(s)", "employment" a/neu "job(s)"*

3. Ymatebodd Llywodraeth Cymru ar 29 Hydref 2015 gan roi gwybod i'r achwynydd fod natur eang y cais yn golygu y byddai'n debyg o wrthod y

cais yn rhinwedd adran 12(1) ar y sail y byddai cost cydymffurfio yn mynd y tu hwnt i'r terfyn priodol. Gofynnodd a allai'r achwynydd fireinio'i gais.

4. Ymatebodd yr achwynydd yr un diwrnod, gan fireinio'i gais i negeseuon ebost yn unig, ond gan ychwanegu'r canlynol at ei gais hefyd:

"...pob gohebiaeth rhwng y Gweinidog a Martin Bates sy'n crybwyll y termau hynny (boed yn ebost ai beidio)."

5. Ymatebodd Llywodraeth Cymru ar 13 Tachwedd 2015, gan gadarnhau ei bod yn dibynnu ar adran 12(1) o'r Ddeddf i wrthod y cais. Awgrymodd hefyd y dylai'r achwynydd fireinio'i gais eto i geisio dod ag ef o fewn y terfyn priodol, ac mae'r Comisiynydd yn nodi bod rhywfaint o wybodaeth wedi'i rhyddhau yn sgil ail gais mireiniedig yr achwynydd.
6. Yn sgil adolygiad mewnol, ysgrifennodd Llywodraeth Cymru at yr achwynydd ar 22 Rhagfyr 2015. Dywedodd wrth yr achwynydd ei bod yn cynnal ei hymateb gwreiddiol.

Rhychwant yr achos

7. Cysylltodd yr achwynydd â'r Comisiynydd ar 6 Ionawr 2016 i gwyno am y modd yr ymdriniwyd â'i gais am wybodaeth. Nid oedd yn fodlon ar ddibyniaeth Llywodraeth Cymru ar adran 12(1) o'r Ddeddf. Mynegodd bryder hefyd ynghylch system rheoli cofnodion Llywodraeth Cymru, gan ddweud nad yw'r system yn addas at ei diben os nad yw'n caniatáu i rywun sicrhau mynediad i negeseuon ebost o dan y Ddeddf.
8. Mae'r Comisiynydd yn nodi bod yr achwynydd wedi gofyn hefyd a gâi ychwanegu mis Awst at ei gais.
9. Mae'r Comisiynydd yn sylwi bod dyfarnu ar reolaeth cofnodion Llywodraeth Cymru y tu hwnt i ystyriaethau o dan adran 50. Hoffai gadarnhau hefyd ei bod wedi rhoi gwybod i'r achwynydd nad rôl y Comisiynydd yw diwygio cais am wybodaeth ar ran ceisydd; a bod rhaid iddo wneud cais yn uniongyrchol am hyn i'r awdurdod cyhoeddus. Hefyd, ar ôl i'r awdurdod cyhoeddus ddiyhysbyddu ei broses ar gyfer ymdrin â chais am wybodaeth o dan y Ddeddf, bydd angen edrych ar unrhyw ychwanegiad neu ehangiad ar y cais fel cais ar wahân.
10. Gan hynny, rhychwant ymchwiliad y Comisiynydd yw ystyried a yw Llywodraeth Cymru wedi dibynnu ar adran 12(1) o'r Ddeddf yn gywir er mwyn gwrthod y cais.

Y rhesymau dros y penderfyniad

Adran 12 – cost cydymffurfio yn uwch na'r terfyn priodol

11. Mae adran 12 o'r Ddeddf yn dweud:

"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."

12. Mae Rheoliadau Rhyddid Gwybodaeth a Diogelu Data (Terfyn Priodol a Ffioedd) 2004 ('y Rheoliadau') yn gosod y terfyn priodol yn £450 i'r awdurdod cyhoeddus o dan sylw. O dan y Rheoliadau hyn, caiff awdurdod cyhoeddus godi uchafswm o £25 yr awr am waith a wneir i gydymffurfio â chais. Mae hynny'n cyfateb i 18 awr o waith yn unol â'r terfyn priodol sydd wedi'i nodi uchod.

13. Amcangyfrif neu ddadansoddiad costau rhesymol yn unig y mae'n rhaid i awdurdod cyhoeddus ei ddarparu, ac wrth lunio'i amcangyfrif caiff gymryd y prosesau a ganlyn i ystyriaeth:

- (a) canfod a yw'r wybodaeth yn cael ei dal ganddo,
- (b) dod o hyd i'r wybodaeth, neu ddogfen a allai gynnwys yr wybodaeth,
- (c) adfer yr wybodaeth, neu ddogfen a allai gynnwys yr wybodaeth, a
- (d) tynnu'r wybodaeth o ddogfen sy'n ei chynnwys.

14. Cadarnhaodd Llywodraeth Cymru fod gwybodaeth am gyflawni cynlluniau ffyrdd yn cael ei storio yn ei system iShare, yn ôl enw'r prosiect ac wedi'i rhannu mewn nifer o is-ffolderi. Er y gall rhywfaint o'r ohebiaeth ebost fod wedi'i storio mewn rhai o'r ffolderi hyn, mae wedi cadarnhau hefyd y gall fod ffolderi eraill sydd hefyd yn cynnwys gwybodaeth berthnasol.

15. Dywedodd Llywodraeth Cymru wrth y Comisiynydd y byddai'n anodd canfod pa ffolderi a allai gynnwys gwybodaeth berthnasol gan fod y meini prawf yn fras, ac y cymerai gryn dipyn o amser i ddod o hyd i unrhyw wybodaeth berthnasol, yn enwedig am fod yr M4 yn brosiect arwyddocaol sydd wedi arwain at swm mawr o wybodaeth. Dywedodd hefyd y gall gwybodaeth fod wedi'i storio yn ei ffolderi MS Outlook, a fyddai'n gofyn chwiliad ychwanegol.

16. Er mwyn i'r Comisiynydd fod yn fodlon bod Llywodraeth Cymru'n gywir wrth ddibynnu ar adran 12 o'r Ddeddf, gofynnodd i Lywodraeth Cymru gyflawni chwiliad enghreifftiol, ac yn sgil hynny, cadarnhaodd Llywodraeth Cymru y gallai fod nifer o ddogfennau a ffeiliau ym mhob

un o'r ffolderi yn ei system iShare, ac y byddai angen agor pob dogfen er mwyn canfod a oedd gwybodaeth berthnasol ynddi.

17. Darparodd sgrinluniau i ddangos bod chwiliadau iShare yn cynnwys y geiriau 'M4', enw'r Cyfarwyddwr Prosiect, 'statistic', 'figure', 'employment' a 'job' wedi codi cyfanswm o 1404 o ganlyniadau. Amcangyfrifodd y cymerai 60 eiliad i agor a gwirio pob dogfen electronig i ganfod a oedd yn dod o fewn y cais, gan gyfrifo y cymerai bron 24 awr i gyflawni'r elfen honno o'r chwiliad yn unig.
18. Gan fod y rhan hon o'r amcangyfrif ar ymylon y terfyn priodol, gofynnodd y Comisiynydd a oedd i'r sampl ryw ddyddiad terfyn, nad oedd yn ofynnol chwilio y tu hwnt iddo, ond allai fod wedi lleihau'r amcangyfrif. Cadarnhaodd Llywodraeth Cymru nad oedd yna ddyddiad terfyn gan fod modd arbed negeseuon ebost ar ei system iShare unrhyw bryd, o bosibl sawl mis ar ôl iddynt ddod i law. Pan ddaw'r negeseuon ebost i law, does dim cyfleuster ar gyfer cofnodi union ddyddiad yr ohebiaeth ei hun ar y system iShare, ac felly er mwyn sicrhau bod y chwiliad yn cynnwys pob neges ni allai gynnwys dyddiad terfyn.
19. Dywedodd Llywodraeth Cymru wrth y Comisiynydd hefyd fod ei system ffeilio yn cyd-fynd â'i pholisi rheoli cofnodion er mwyn cyflawni ei phrosesau'n effeithiol, ond nad yw o reidrwydd yn addas ar gyfer ceisiadau cyffredinol fel hyn. Cadarnhaodd hefyd nad oedd modd dweud a oedd rhai ffolderi'n debycach nag eraill o fod â gwybodaeth berthnasol ynddynt.
20. O ran y chwiliad Outlook, cadarnhaodd Llywodraeth Cymru fod ei chwiliad wedi codi dros 280 o ganlyniadau. Unwaith eto, roedd yn caniatáu 60 eiliad ar gyfer agor a gwirio pob neges ebost i ganfod a oedd yn berthnasol i'r cais ai peidio. Roedd cyfanswm yr amcangyfrif ar gyfer yr elfen hon yn fwy na phedair awr. Gofynnodd y Comisiynydd i Lywodraeth Cymru ddarparu sampl o'r negeseuon ebost hyn er mwyn sicrhau bod ei hamcangyfrif yn ymddangos yn rhesymol.
21. Wedi ystyried y negeseuon enghreifftiol a roddwyd gan Lywodraeth Cymru, nid yw'r Comisiynydd wedi' darbwylo y cymerai 60 eiliad am bob neges, ac mae hi o'r farn y byddai oddeutu 30 eiliad yn amcangyfrif mwy rhesymol. Serch hynny, mae'r Comisiynydd yn derbyn bod yr amcangyfrif ynglŷn â'r system iShare yn rhesymol. Gan hynny, byddai cyfanswm yr amcangyfrif ar gyfer chwilio iShare a chwilio Outlook yn fwy na'r terfyn priodol o 24 awr. Mae'r Comisiynydd yn cydnabod hefyd y byddai ar Lywodraeth Cymru agen rhagor o amser i dynnu'r wybodaeth, gan godi'r amcangyfrif eto.
22. Yn ychwanegol, mae Llywodraeth Cymru wedi cadarnhau y byddai'r amser a gymerai i gyflawni chwiliad am yr wybodaeth yn ymwneud â

holl ohebiaeth y Gweinidog yn cynyddu'r cyfanswm, gan y byddai angen i Lywodraeth Cymru chwilio am yr un wybodaeth ond â pharmedrau llawer ehangach, gyda'i sampl yn codi 11,000 o ganlyniadau. Byddai 60 eiliad o chwilio am bob cofnod yn cyfateb felly i fwy na 183 o oriau.

23. Gan hynny, mae'r Comisiynydd yn fodlon y byddai cydymffurfio â'r cais yn mynd y tu hwnt i'r terfyn priodol a bod Llywodraeth Cymru'n gywir wrth ddibynnu ar adran 12(1) i wrthod y cais.

Yr hawl i apelio

24. Mae gan y naill barti a'r llall hawl i apelio yn erbyn yr hysbysiad penderfynu hwn i Dribiwnlys yr Haen Gyntaf (Hawliau Gwybodaeth). Mae gwybodaeth am y broses apelio ar gael oddi wrth:

Tribiwnlys yr Haen Gyntaf (Hawliau Gwybodaeth)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Ffôn: 0300 1234504

Ffacs: 0870 739 5836

Ebost: GRC@hmcts.gsi.gov.uk

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

25. Os hoffech apelio yn erbyn hysbysiad penderfynu, gallwch gael gwybodaeth am sut i apelio ynghyd â'r ffurflenni perthnasol ar wefan y Tribiwnlys Gwybodaeth.
26. Dylai unrhyw Hysbysiad Apelio gael ei gyflwyno i'r Tribiwnlys o fewn 28 diwrnod (calendr) ar ôl dyddiad anfon yr hysbysiad penderfynu hwn.

Llofnod

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