

**Freedom of Information Act 2000 (FOIA)
Re-use of Public Sector Information Regulations 2015
(RPSI)**

Decision notice

Date: 18 May 2021

Public Authority: Conwy County Borough Council

Address: PO Box 1
Conwy
LL30 9GN

Decision (including any steps ordered)

1. The complainant made a request to Conwy County Borough Council (the Council) under the Re-use of Public Sector Information Regulations 2015 (RPSI) to re-use information provided to him in response to a previous request under the Freedom of Information Act (FOIA).
2. The Council refused to comply on the basis that the request for re-use was not a valid request.
3. The Commissioner's decision is that the request for re-use was valid under regulation 6 (Request for re-use) of the RPSI.
4. The Commissioner requires the Council to take the following step to ensure compliance with the legislation:
 - issue a fresh response to the request for re-use.
5. The Council must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

6. It is not in dispute that, prior to the request for re-use under consideration in this case, the complainant requested information, under the FOIA, in the following terms:

"1. Does the council have any templated letters, templated wording or templated paragraphs that can be used by council officials, when composing letters to either accept or reject representations made in respect of Penalty Charge Notices for parking, bus lane or moving traffic contraventions?"

2. If the answer to question 1 is yes, I ask for a copy of all such templated letters or paragraphs.

For the avoidance of doubt, this request covers both PCNs the authority issues in its own right, and PCNs which the authority deals with on behalf of any other public authority".

7. From the evidence provided to the Commissioner, that request was made on 20 December 2019. The Council responded on 16 January 2020, under the FOIA, and provided information to the complainant. Following an internal review it was acknowledged that some information was omitted in the original response. As a result, the Council disclosed further information to the complainant on 3 April 2020.

Request and response

8. On 3 April 2020, the same day that he received the Council's internal review of his FOIA request, the complainant wrote to the Council and requested re-use of information in the following terms:

"This is a request under regulation 6 of The Re-use of Public Sector Information Regulations 2015, this request covers all the documents released under FOI reference [redacted] that are owned [sic] by the council, but not the forms owned by the Ministry of Justice that were released under that reference. The documents are to be used for the purpose of non-commercial publication on the internet.

In accordance with regulation 11, would the council please make the documents available in the format in which they are originally held (i.e. individual word files)".

9. The Council requested clarification of the request for re-use (with respect to section 6(d) of the RPSI), on 7 April 2020, which the complainant provided, also on 7 April 2020.
10. In the absence of a response, on 6 May 2020 the complainant requested a review of the timeliness of the Council's handling of his request for re-use.

11. The Council responded on 7 May 2020. It stated that the request was not a valid request for re-use. It advised the complainant that, should he wish to request the documents in the original format that they are used and held, he should submit a formal request to that effect.
12. The complainant requested an internal review on 7 May 2020.
13. The Council responded on 11 May 2020, advising that it would not conduct a second internal review, a review having already been conducted of the timeliness of its handling of the request for re-use. It confirmed, however, that it would consider the request for re-use as a request for disclosure and, depending on the outcome, as a request for re-use.

Scope of the case

14. The complainant contacted the Commissioner on 11 May 2020 to complain about the way his request for re-use of information had been handled.
15. He disputed the Council's view that his request was not a valid request under RPSI.
16. He asked the Commissioner to determine whether his request was a valid request under RPSI regulation 6 and whether the Council's response is in accordance with the law.
17. He told the Commissioner:

"In particular I ask that the Information Commissioner determine whether the council is correct in asserting that asking for the information already in my possession to be provided in its original format amounts to a request for new information and if it does not, I ask the Information Commissioner to confirm that the council is wrong to log such a request as a new FOI request".
18. As noted above, prior to the request for re-use in this case, the Council had responded to an FOIA request from the complainant. That FOIA request related to templated letters, wording or paragraphs used by Council officials when composing letters in relation to representations about penalty charge notices.
19. During the course of her investigation, the Council provided the Commissioner with details of the information that had been disclosed under the FOIA in response to the original request for information.
20. The majority of that information comprised what the Council described as *"relevant paragraph text components"*.

21. The analysis below considers whether the Council dealt with the request for re-use in accordance with the requirements of RPSI.
22. Specifically, the Commissioner has considered:
 - whether the request was a valid request for re-use under RPSI, and
 - whether the Council had previously disclosed the information requested for re-use.

Reasons for decision

23. The Commissioner has first considered whether the request was a valid request for re-use.

Was the request a valid request for re-use

24. Regulation 6 of RPSI states:

"A person who wishes to make a request for re-use must ensure that the request—

(a) is in writing;

(b) states the name of the applicant and an address for correspondence;

(c) specifies the document requested; and

(d) states the purpose for which the document is to be re-used".

25. Likewise, in her guidance¹, under the heading 'Dealing with requests for re-use' the Commissioner states:

"People who want to make a request for re-use must submit the request in writing, with their name and address for correspondence, and specify the information they want to re-use and the purpose they intend to use it for".

26. Having considered the request in this case, the Commissioner is satisfied that it was in writing, and that the requester provided their name and an

¹ <https://ico.org.uk/for-organisations/guide-to-rpsi/obligations/>

address for correspondence. The criteria at regulation 6(a) and (b) are therefore met.

27. Regulation 6(c) requires that the request for re-use specifies the document requested.
28. Regulation 2 explains how the terms used in the Regulations should be interpreted. Of relevance in this case:

"document' means any information recorded in any form, including any part of such information, whether in writing or stored in electronic form or as a sound, visual or audio-visual recording, other than a computer program;"
29. Having considered the wording of the request, the Commissioner is satisfied that it specified the information the complainant wanted to re-use, namely all the documents that are owned by the Council that were released in relation to his earlier FOIA case. The criterion at regulation 6(c) is therefore met.
30. The Commissioner next considered whether, in accordance with regulation 6(d), the complainant ensured that the request for re-use stated the purpose for which the document is to be re-used.
31. In that respect, the Commissioner acknowledges that the request for re-use stated that the documents *"are to be used for the purpose of non-commercial publication on the internet"*.
32. She accepts that the Council sought clarification in that regard and that the complainant advised that he intended to publish the documents on the internet *"but not on a commercial or for-profit basis"*.
33. The Commissioner is satisfied that the request for re-use met the criterion in regulation 6(d).
34. Having determined that the request was a valid request for re-use, the Commissioner has next considered whether the Council had previously disclosed the information requested for re-use or whether it was entitled to handle the request under information access legislation before considering it as a re-use request.

Had the Council previously disclosed the information requested for re-use?

35. In this case, the complainant and the Council disagree about whether the information requested for re-use had previously been disclosed.

The complainant's view

36. The complainant told the Council:

"The council seems to be confusing "documents" with "information", if the council's stance were correct then regulation 11 (Format of documents) would serve no purpose and would be entirely redundant, as it would serve no purpose. As such I do not accept that the documents requested under my RPSI request contain any information that has not already been provided to me".

37. Similarly, he told the Commissioner:

"... there is no dispute in this case that the documents have been provided to me. The only issues are that I want the documents in the format in which they were originally held, and further that I want the right to re-use the documents".

38. The complainant recognised that there are different provisions in FOIA and RPSI with regard to how information is provided. He argued that there will be instances where regulation 11(1)(a) of RPSI applies to documents where a copy of the document has been supplied under the FOIA in a format other than the format in which the document was held.

The Council's view

39. In correspondence with the complainant, the Council acknowledged that it had responded to his previous FOI request. In that respect it told him:

"The information that was provided to you on the 3/4/2020 was a copy of the content of the template or paragraphs, and not a copy of the actual documents as held.

The response was also caveated as follows:

There are documents that have been provided to you under this Freedom of Information Act request that are bound by Crown copyright...".

40. With regard to his request for re-use, the Council said:

"Your request for re-use cannot be considered a valid request primarily because you are requesting to re-use information that has not been provided to you. In your re-use request dated 3/4/2020 you state '...please make the documents available in the format in which they are originally held (i.e. individual word files). This was not part of your original request on the 20/12/2019 and therefore the information previously provided is/was not provided in the format in which they are originally held".

41. Similarly, in its submission to the Commissioner, the Council argued that the complainant was requesting to re-use information that had not been provided.

42. By way of explanation, the Council referred to the wording of the request for re-use, specifically where it stated:

"...please make the documents available in the format in which they are originally held (i.e. individual word files)."

43. The Council reiterated what it had told the complainant, namely that the information previously provided was not provided in the format in which they were originally held.

The Commissioner's view

44. The Commissioner recognises that there is a distinction between access to, and re-use of, public sector information.

45. In her guidance², under the heading 'What is re-use' the Commissioner explains:

"RPSI is about permitting re-use of information and how it is made available. It is not about accessing information, which is dealt with under information access legislation".

46. With regard to how information is made available, she acknowledges that section 11 of the FOIA imposes certain duties on a public authority if a requester expresses a preference for a particular means of communication.

47. However, regulation 11(1) (Format of documents) of RPSI requires that a public sector body makes the information for re-use available in the format and language in which they hold it. Furthermore, if they don't already hold it in an open and machine readable format with metadata, but it is possible and appropriate to make it available in this way, then they should do so.

48. Regulation 11(1) states:

"A public sector body must make a document available to an applicant under regulation 8(4)(b) or (c)—

(a) in the format and language in which it is held on the date of the request for re-use; and

² <https://ico.org.uk/for-organisations/guide-to-rpsi/what-is-rpsi/>

(b) where possible and appropriate, in open format and machine-readable format together with its metadata”.

49. In her guidance, under the heading ‘*Dealing with requests for re-use*’, the Commissioner addresses the scenario in which a request for re-use is received for information that has not previously been disclosed:

“If you have not previously disclosed the information requested, then you should also deal with this as an access request under the appropriate legislation eg FOIA, EIR, the Freedom of Information (Scotland) Act or the Environmental Information (Scotland) Regulations in order to decide whether the information is exempt. This will be the first stage of dealing with the request and you must go on to deal with the re-use request”.

50. In this case, the issue for the Commissioner to consider is not whether, when the Council provided information to the complainant under the information access regime, it was provided in the format in which it was held. Rather, the issue for her to determine in this case is simply whether the Council has previously disclosed the information requested for re-use.
51. The Commissioner recognises that, in making his request for re-use, the complainant cited the FOI reference that his request for re-use relates to.
52. From the evidence she has seen, the Commissioner is satisfied that Council has previously disclosed, under the FOIA, the information within the scope of the request for re-use.

Right of appeal

53. 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

54. 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.
55. 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

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