



## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Dated 24 July 2006**

**Public Authority: Carmarthenshire County Council**  
**Address: County Hall**  
**Carmarthen**  
**Carmarthenshire**  
**SA31 1JP**

### **Summary Decision and Action Required**

**The Commissioner's decision in this matter is that the public authority has not dealt with the complainant's request in accordance with Part I of the Act, in that it has failed to provide a response to the request within the statutory timescale.**

**The key issue in this case is whether the public authority holds information the complainant claims it holds. The Commissioner is unable to conclude, on the evidence obtained that the public authority does hold the information.**

**In view of the fact that a proper response was given to the request, albeit slightly late, no remedial action is required.**

### **The Commissioner's Role**

- 1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner**
  - 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').
  - 1.2 Where a complainant has made an application for a decision, unless:
    - a complainant has failed to exhaust a local complaints procedure, or
    - the application is frivolous or vexatious, or
    - the application has been subject to undue delay, or
    - the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.



- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

## **2. The Complaint**

### First request

- 2.1 The complainant advised that on 1 April 2005 he requested from the public authority, in accordance with section 1 of the Act, information relating to the proposed development of Llanelli town centre.
- 2.2 The public authority responded on 3 May 2005, refusing the request by virtue of section 12 of the Act, in that the cost of complying would exceed the £450 appropriate limit as defined by the Freedom of Information and Data Protection (Appropriate Limits and Fees) Regulations 2004. The public authority suggested that the complainant refine his request so that it would fall below the appropriate limit.
- 2.3 The complainant requested an internal review of this decision. On 20 June 2005 the public authority wrote to the complainant, upholding its decision to refuse the request under section 12 of the Act. The complainant remained dissatisfied and, on 4 August 2005, made a complaint to the Commissioner.
- 2.4 Having considered the arguments put forward by the public authority and in particular the volume and age of the information requested, the Commissioner's staff advised the complainant to consider narrowing down his request. The complainant agreed to do so, and on 6 January 2006 made a second request to the public authority.

### Second request

- 2.5 The complainant's refined request, dated 6 January 2006, was for:
- “(1) Copy of the report relating to the acquisition schedule of the Llanelli Stepney Centre dated 2<sup>nd</sup> August, 1989 Llanelli.
  - (2) Copies of letter or documents sent to Exchange Building from 1986 to 1993 Queen Victoria Road, Llanelli.
  - (3) Copy of letters and documents sent from Planning to the Chief Executive and also to the late Howard Griffiths and Falcon Estates, from 1986 to 1993 Llanelli.
  - (4) Copies of letters and documents sent from Fred Hughes Planning Department to Chief Executive and other Governing Bodies.



- (5) Also a copy from the Planning Department of the measurements of Exchange Buildings interior and structure table in 1986 to 1993 Market Street, Llanelli.
  - (15) Copy from Borough Estates of measurements taken of Exchange Building, business namely Fitness World, first floor taken approximately 1986 to 1989, taken by Fred Hughes.”
- 2.6 On 10 February 2006 the public authority replied stating that it did not hold any recorded information with reference to the items numbered (1), (5) and (15). However the public authority did provide the complainant with a number of documents related to parts (2), (3) and (4) of the complainant’s request.
- 2.8 On 16 February 2006 the complainant made a second complaint to the Commissioner. The complainant expressed concern at the length of time it took the public authority to respond to his second request and also advised that he believed the public authority did hold the information requested (numbered (1), (2), (5) and (15) in his 6 January request).
- 2.9 The complainant provided the Commissioner with evidence to support his assertion that the public authority did hold additional information in relation to his request. This evidence consisted of a series of letters written by Delyth Evans AM and County Councillor William George Thomas (“the Councillor”) addressed to District Judge P. Llewelyn of Swansea County Court, dated between August 2001 and June 2002.
- 2.10 The letter from Delyth Evans AM gives brief details of her visit of 13 December 2001 to the public authority where she inspected files relating to the proposed development. The letters by the Councillor give details of his inspection of similar files.

### **3. Relevant Statutory Obligations under the Act**

#### **3.1 Section 1(1)** provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

#### **3.2 Section 10(1)** provides that –

“...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt”.



## **4. Review of the case**

### The public authority

- 4.1 The Commissioner put the arguments advanced by the complainant to the public authority and also asked the following additional questions:
- Was the information requested ever held?
  - If so, when was this information deleted and for what reason?
  - Do you have a formal records management policy and, if so, what does it say about the retention and deletion of records of this sort?
  - Was there ever a deletion date for this file or any of its content? If so why and when were these dates?
  - Were any of the contents of the file in question destroyed? If so when and for what reason?
  - Please describe any steps taken to locate the information requested.
  - What was the date of creation of the file that holds all the information the complainant has requested?
  - Is there a contents page or index of what should be in this file?
  - Are records held in an electronic or manual form?
- 4.2 The public authority responded by providing the Commissioner with a copy of its Records Management Policy and Document Retention Schedules. It advised that the information sought by the complainant would most appropriately fall under sections 8.4 to 8.6 of the Document Retention Schedule, which deals with Property Development and Renovation.
- 4.3 The public authority informed the Commissioner that its Retention Schedules have only been used for the past few years and records from a previous authority (i.e. before Local Government re-organisation in 1996) would not necessarily have been retained and/or disposed of in such a structured fashion.
- 4.4 The public authority explained that the information the complainant was seeking would be part of a series of files that are held in hard copy only. These files (some 20 in number) vary considerably in size from 100 pages to several thousand, and are distributed across several storage sites across the County. The contents of the files cover the specific proposed development of Llanelli town centre as well as a later development which did not proceed, other general files on Llanelli town centre and legal files on the same area. The contents of the files in some cases date from the mid-1970s to the present.
- 4.5 The public authority explained that it is not possible to identify a single creation date for the file which may have contained the information requested by the complainant. Some files did contain basic contents pages, but they are not specific



enough to identify the individual documents in each file. To identify an individual document requires a manual search through the file. The public authority explained that there was no specific deletion date for the files in question.

- 4.6 The public authority explained that a considerable amount of the information contained within the various files dates back to before Local Government re-organisation in 1996. At the time large volumes of records from previous authorities and across all areas were not retained and accurate records of what was disposed of were not always kept.
- 4.7 In response to the question about steps taken by the public authority to locate the information requested by the complainant, the public authority explained that the volume of work required to search through all of the files which may have contained the information exceeded the £450 cost limit. A total of 20 individual files, containing in excess of 8,000 pages, have had to be manually searched. In addition, a storeroom which was identified by the Councillor as being the repository of the information has been comprehensively searched to ensure no records had been misfiled.
- 4.8 In response to the evidence submitted by the complainant the public authority explained that it held copies of some of the documents referred to in the letters to Judge Llewelyn from the Councillor and Delyth Evans AM. However, these documents did not fall within the scope of the complainant's 6 January request. The public authority advised that it did not hold a copy of the acquisition schedule referred to by the complainant.
- 4.9 The public authority also explained that it had written to the Councillor asking if he still has in his possession the documents to which he refers. He had replied stating that he had held the documents as part of an audit, but they were disposed of some time ago. He could not recall the exact date.

#### The Councillor

- 4.10 The complainant informed the Commissioner that the Councillor had seen some of the information requested and had transferred these documents from Llanelli Town Hall to Carmarthenshire County Council's Legal department in 1999. The Commissioner decided to pursue this with the Councillor directly.
- 4.11 The Commissioner listed the outstanding information the complainant still required and put a series of questions to the Councillor, in order to ascertain exactly what information he had seen and whether he was able to provide any further information to assist in the Commissioner's investigation.
- 4.12 The Councillor responded by explaining his involvement in this matter and stating that he had sent all the files he had found in the Archives at Llanelli Town Hall on



the Aurora Development and the Ford Sellar Morris development to a senior solicitor at Carmarthenshire County Council in 1999. The Councillor confirmed that the information included a schedule for acquisition with monetary figures set against properties or businesses in a key building.

- 4.13 The Councillor also spoke at length with a member of the Commissioner's staff about the files he had encountered. He believed the public authority did hold a large amount of information on the proposed development, although he was unable to confirm that any of the specific documents requested by the complainant were held by the public authority at present.

#### The senior solicitor

- 4.14 The final line of enquiry pursued by the Commissioner was to approach the senior solicitor at the public authority. The list of information in question was put to the solicitor as well as a series of questions about the information he received in 1999.
- 4.15 The solicitor responded by stating that his involvement in relation to the former Llanelli Borough Council's files related solely to his dealings with an on-going Lands Tribunal case concerning a former property in Llanelli. He stated that he had no direct or indirect involvement in respect of issues raised by the complainant.
- 4.16 The solicitor stated that he did recall the Councillor identifying certain files that he considered relevant to the Lands Tribunal proceedings. At that time those files were located at the Town Hall in Llanelli and they were part of a larger batch of files relating to a variety of planning issues arising out of the redevelopment of Llanelli town centre. That larger batch of files (including the files identified by the Councillor) was then transferred in its entirety to the public authority's Legal Department, where it remained until the conclusion of the Lands Tribunal case. Subsequently, all the files were then returned to the public authority's Modern Records Department.

#### Section 10 breach

- 4.17 The complainant's refined request for information was dated 6 January 2006. The public authority's response is dated 10 February 2006. Assuming that the request took two working days to arrive, this means that public authority's response was twenty-three working days following the date of receipt, three days over the statutory limit.

### **5. The Commissioner's Decision**

- 5.1 The key issue in this case is whether or not the public authority holds the information specified in paragraphs (1), (2), (5) and (15) of the request. The public authority has made it clear to the Commissioner that it has searched the files it





does hold on this subject matter and it has been unable to locate this information. Accordingly, the public authority maintains that the information in question is not held.

- 5.2 The Commissioner cannot be certain that the information requested by the complainant is not, in fact, held by the public authority. However, in the absence of any clear evidence to the contrary, the Commissioner is unable to conclude that there has been a failure to comply with the requirement of section 1.
- 5.3 In reaching this decision, the Commissioner has considered the views of the complainant, the public authority and those of the Councillor and senior solicitor. He notes that the information in question dates back to the 1980s – indeed all the information predates Local Government re-organisation in Wales. Whilst the public authority's (and its predecessor's) records management in relation to the information requested could have been more efficient, the Commissioner notes that the public authority has now put in place stronger records management policies and procedures to ensure similar information is adequately stored and managed.
- 5.4 Finally, the Commissioner decides that, in failing to respond to the complainant's request for information within twenty working days, the public authority has breached section 10(1) of the Act.

## **6. Action Required**

- 6.1 In the light of the matters set out above, the Commissioner requires no remedial steps to be taken by the public authority but has written to the public authority emphasising the importance of timely compliance with the provisions of the Act, and making particular reference to the Commissioner's Awareness Guidance on the time limits for compliance with requests.



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**7. Right of Appeal**

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

**Dated the 24 day of July 2006**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**