

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 July 2013

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

#### **Decision (including any steps ordered)**

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1. The complainant requested information about education reviews and reports commissioned by the Welsh Government between 1 December 2009 and 23 January 2013. The Welsh Government refused to provide the requested information as it considered to do so would exceed the appropriate cost limit under the FOIA. The Commissioner's decision is that the Welsh Government has provided a reasonable estimate of the costs associated with complying with the request and has therefore correctly applied section 12 of the FOIA to the request. However, the Commissioner finds that the Welsh Government breached section 16(1) of the FOIA in that it did not provide advice and assistance to the complainant as to how his request could have been refined to bring it within the cost limit.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Contact the complainant with advice as to how the request could be refined so that it may be possible to comply with it without exceeding the cost limit.
3. The public authority must take these steps 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.

## Request and response

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4. On 23 January 2013, the complainant wrote to the Welsh Government and requested information in the following terms:

"Under the freedom of information act can I please request a list of all education reviews and reports, externally and internally run, commissioned by the Welsh Government between 1<sup>st</sup> December 2009 – 23<sup>rd</sup> January 2013 and the details of the cost of these reviews.

If there have been any review/reports commissioned in past weeks without a firm cost i [sic] would appreciate an estimate of the cost, or a declaration that no evaluation of cost has yet to be attributed to that review/report".

5. Following exchanges with the complainant he confirmed that his request was for "all the reviews the Department has undertaken regardless of its purpose". He also clarified that he was requesting a list of titles of the reviews and the cost associated with them, within the original timescale specified (1 December 2009 – 23 January 2013).
6. The Welsh Government responded on 18 February 2013 and confirmed that it held information which fell within the scope of the request. The Welsh Government stated that, in order to comply with the request, it would take in excess of the appropriate limit of 24 hours as provided by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
7. On 18 February 2013 the complainant requested an internal review of the Welsh Government's handling of the request. He expressed the view that, as he had only requested the details of the reviews (titles of reviews and costs/estimated costs), he did not think it would take in excess of 24 hours to compile.
8. The Welsh Government provided the outcome of its internal review on 11 March 2013. It explained that it had already spent 20 hours searching its records, and given that further searches were required to identify information relevant to the request, it upheld its decision that compliance with the request would exceed the appropriate limit.

## Scope of the case

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9. The complainant contacted the Commissioner 13 March 2013 to complain about the way his request for information had been handled.

10. The Commissioner considers the scope of his investigation to be to determine whether the Welsh Government has correctly applied section 12 of the FOIA and that the cost of complying with the request would exceed the appropriate cost limit.

## **Reasons for decision**

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### **Section 12 – cost of compliance**

11. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying would exceed the appropriate cost limit. This limit is set in the Freedom of Information and the Fees Regulations at £600 for central government bodies. The Fees Regulations also state that the cost of a request must be calculated at the rate of £25 per hour, meaning that section 12 effectively provides a time limit of 24 hours.
12. Regulation 4(3) of the Fees Regulations states that an authority, when estimating whether complying with a request would exceed the appropriate limit, can only take into account the costs it reasonably expects to incur in:
  - determining whether it holds the information;
  - locating the information, or documents containing it;
  - retrieving the information, or documents containing it; and
  - extracting the information from any documents containing it.
13. The Commissioner asked the Welsh Government to provide a detailed reasonable estimate of the time taken and cost that would be incurred by providing the information falling within the scope of the request. The Commissioner asked that, when the Welsh Government provided these calculations, a description of the nature of the type of work involved was also included.
14. The Welsh Government explained that following clarification received from the complainant, it interpreted the request as meaning all education reviews undertaken or commissioned by its Department for Education and Skills ('DfES') in the required time frame. This covered a wide range and encompassed:
  - independent reviews commissioned by Ministers;
  - informal reviews undertaken within the Welsh Government;

- evaluations;
  - social research;
  - gateway reviews; and
  - Estyn remit reviews.
15. The Welsh Government clarified what whilst some of these were relatively self-contained 'one-off' reviews, others extended over a period of time, making confirming the timescales and costs involved more complex. It interpreted the 'cost' element of the request to include all final costs where available, but noted that the complainant had indicated he would accept an 'estimate' if the final costs were not available. The Welsh Government explained that obtaining the requested information was hampered by the fact that reviews, evaluations and research are funded through numerous different budget lines across DfES. Therefore, the provision of even estimated costs required in some cases collation of information across several financial years of invoices and contracts.
16. The Welsh Government confirmed that information relevant to the request was held in various forms, including hard copy, archived hard copy and electronically. Information in relation to each review is held in a variety of different places and sometimes in multiple files. The time it would take to gather relevant information is dependent on the age of the information, the type of review and the location of the information. In the timescale covered by the request, the Welsh Government moved to a new electronic filing system (iShare) which will improve collation of such information in future. However, for the period covered (2009-2013) information relevant to the request is held on separate electronic drives, in hard copy within its offices and archived off site, or within iShare for more recent information. In addition, as officers responsible for leading or servicing the reviews have changed during the period covered by the request, and the department has been restructured, in some cases staff had to access archived information and old drives to ensure a comprehensive response.
17. In its internal review, the Welsh Government advised that, at the time the decision was taken to refuse the request under section 12 of the FOIA, officials had spent over 20 hours to conduct some of the required searches and as further searches were required of current and historical records, it had estimated that the time limit of 24 hours would be exceeded. In terms of the searches which were required in order complying with the request, the Welsh Government explained that within the DfES, there are 13 Divisions and within these Divisions there are a total of 722 staff. There is no central record of such reviews and individual teams maintain their own records, as required.

18. In terms of determining whether the information is held, the Welsh Government confirmed that this involved the following tasks:
- (i) Lead official for the request emailing the Deputy Directors to ask for the information requested – estimate 2 minutes.
  - (ii) Deputy Director emailing each Head of Branch to ask them to collate the information requested – estimate 2 minutes.
  - (iii) The Head of each Branch allocated the task to a specific individual to co-ordinate ('the task lead') – estimate 2 minutes.
19. Following completion of steps (i) to (iii) the Welsh Government explained that each task lead for each of the 53 branches would then need to carry out the following activities:
- (iv) *Hard copy archived files* - check the archive files lists for 2009 to 2011 and email the Records Department to retrieve relevant files. Review each file, identify if it contained a review falling within the scope of the request and record its title on a separate list. Identify whether the file contained any information on the cost of the review, such as a purchase order. Each team has different record-keeping arrangements – and in some cases reviews could take place across different financial years and several purchase orders, so it may be necessary to collate costing information from a number of different documents. Estimate 10 minutes for each task lead/branch.
  - (v) *"Old" electronic filing system* - carry out electronic searches through Windows Explorer for all electronic records up to 2011. Separate searches would need to be undertaken for reviews, evaluations, research, Gateway reviews and remit reviews. Review each result identified through the electronic searches by reading through the document titles to identify if they contained a review. Record the title of the file on a separate list along with other relevant information, such as the purchase order number. Estimate 10 minutes for each task lead/branch.
  - (vi) *"New" electronic filing system iShare* - carry out electronic searches of the iShare system for all electronic records from 2012 onwards. Again, separate searches would need to be carried out for reviews, evaluations, research, Gateway reviews and remit reviews. Review each result identified through the electronic searches by reading through the document titles to identify if they contained a review. Record the title of the file on a separate list along with other relevant information, such as the purchase order number. Estimate 10 minutes for each task lead/branch.

- (vii) *Finance system* - if the actual cost of a review is not recorded in the same file as the review itself is contained within (archive, hard copy of electronic records), the task lead would need to identify the relevant costs from separate financial records. Estimate 5 minutes for each task lead/branch.
- (viii) *Compiling results* - task lead to send a list of results of searches for their branch to the lead official who would in turn collate results from each of the 53 branches into one list in order to prepare a response for the applicant – estimate 60 minutes for whole exercise.

20. Taking into account the activities above, the Welsh Government's total estimate for the time to comply with the request in full is 32 hours, as detailed below:

Steps (i) to (iii) – for whole exercise	6 minutes
Step (iv) – 53 branches X 10 minutes	530 minutes
Step (v) – 53 branches X 10 minutes	530 minutes
Step (vi) – 53 branches X 10 minutes	530 minutes
Step (vii) – 53 branches X 5 minutes	265 minutes
Step (viii) – for whole exercise	60 minutes
<b>Total minutes</b>	<b>1921 minutes</b>
<b>1921/60 = 32.02</b>	<b>32 hours</b>

21. The Welsh Government advised that, at the time it engaged with the complainant to clarify the information being sought, it did not anticipate that compliance with the request would exceed the appropriate limit. However, following clarification from the complainant that he was seeking access to the titles and costs of "all the reviews the Department had undertaken regardless of its purpose", on starting to collate the information, the Welsh Government realised that, due to the number of reviews, it would take longer than 24 hours to locate and retrieve the information requested. The Welsh Government confirmed that steps (i) to (iii) had been undertaken and 39 branches had completed steps (iv) to (vii) and returned the results to the lead official. At the time the decision was made to apply section 12 to the request, over 22 hours had already been spent dealing with the request, as detailed below, with further searches being required by 14 branches.

**Time spent to date on dealing with the request**

Steps (i) to (iii) – for whole exercise	6 minutes
Step (iv) – 39 branches X 10 minutes	390 minutes
Step (v) – 39 branches X 10 minutes	390 minutes
Step (vi) – 39 branches X 10 minutes	390 minutes
Step (vii) – 39 branches X 5 minutes	195 minutes
<b>Total minutes</b>	<b>1371 minutes</b>

**1371/60 = 22.85****22 hours and 52 minutes**

22. The Welsh Government advised that whilst no specific sampling exercise had been carried out in order to calculate the estimate provided, based on the searches already undertaken and the further searches required to comply with the request, it was determined that compliance with the request would exceed the appropriate limit. The Welsh Government also confirmed it did not hold a central log or list of reviews, and as such the only way to respond to the request would be to conduct the searches identified across all branches of DfES.
23. The complainant has argued that as he has only requested the titles of reviews undertaken, and the associated costs, compliance with the request should not exceed the appropriate limit.
24. In the Information Tribunal case of *Quinn v the Information Commissioner and the Home Office (EA/2006/0010)* the Tribunal found that, "there is no time bar within the statute that prevents an estimate of costs being provided after significant time has already been spent searching for information. Indeed it may be that in many cases some searching will be required to provide the foundation of a subsequent estimate." This means that public authorities can search up to the cost limit and then refuse to conduct further searches under section 12 of the FOIA.
25. Given that the Welsh Government has already completed some of the necessary searches, the Commissioner considers it is reasonable to assume that it would have some understanding of the processes involved and the time that would be needed to undertake any additional searches in order to compile a full response to the request. The Commissioner accepts the representations made by the Welsh Government in respect of the time it has already spent in locating, retrieving and extracting information relevant to the request prior to it applying section 12 (around 23 hours). The Commissioner also accepts that further searches would be necessary in order to comply with the request and these further searches would result in the appropriate limit being exceeded.
26. Due to the nature of the information requested by the complainant and the way in which it is recorded and held within the Welsh Government, it is the Commissioner's view that adequate explanations have been provided – as referred to above – to demonstrate that it would exceed the appropriate limit of 24 hours to locate, retrieve and extract the requested information. His conclusion is, therefore, that section 12(1) was appropriately applied and that the Welsh Government was not obliged to comply with the request.

## **Section 16 – advice and assistance**

27. Section 16(1) imposes an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the section 45 Code of Practice<sup>1</sup> in relation to the provision of advice and assistance in that case.
28. The Code advises that, where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the appropriate limit, it should provide the requester with reasonable advice and assistance to enable the complainant to obtain information without attracting the costs limit in accordance with paragraph 14 of the Code.
29. The Commissioner notes that whilst the Welsh Government initially engaged with the complainant to clarify the nature of the information being sought, following the application of section 12, it did not explain to the complainant, either in the refusal notice or the internal review how he might refine his request in order for it to be dealt with within the appropriate limit.
30. In this case, whilst the Commissioner has accepted the cost estimate provided by the Welsh Government, this is not so far in excess of the limit that it would be unlikely to be possible to provide meaningful advice on refining the request. The Welsh Government did not, however, provide the complainant with any advice on refining the request. As a result the Commissioner finds that the Welsh Government breached section 16(1) of the FOIA and at paragraph 2 above it is now required to take remedial action.

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<sup>1</sup> <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>



## Right of appeal

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31. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

32. 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.
33. 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**