

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 May 2012

Public Authority: Monmouthshire County Council

Address: County Hall
Cwmbran
NP44 2XH

Decision (including any steps ordered)

1. The complainant has requested whether there was any CCTV footage of an incident involving one of the Council's buses which occurred on 16 November 2010. Following the Commissioner's procedural decision notice (reference number FS50402885) instructing the Council to comply with section 1(1) of the Freedom of Information Act 2000 ('the Act') by either confirming whether the requested information was held or issuing a valid refusal notice under section 17 of the Act, the Council contacted the complainant to confirm that the information was not held.
2. The Commissioner's decision is that Monmouthshire County Council has now complied with its obligations under section 1(1) of the Act.

Request and response

3. On 16 February 2011, the complainant wrote to the Council and requested information in respect of an incident which occurred on 16 November 2010 involving one of the Council's buses. He specifically requested that the Council:

"...study and pass on all information to myself and [named solicitors], my solicitors, including copies of the CCTV, Motion sensor reading..."

4. The response from the Council is documented in decision notice FS50402885 dated 5 December 2011. The Commissioner instructed the Council to comply with section 1(1) of the Act by either confirming whether the requested information is held or issuing a valid refusal notice under section 17 of the Act

5. The Council responded to the steps in the decision notice on 9 January 2012. It informed the complainant that:

" ...it is now clear that the hard drive stopped recording prior to the alleged incident, and that no information concerning the alleged incident was recorded."

Scope of the case

6. The complainant contacted the Commissioner expressing concern at the Council's response as he was not satisfied that the information was not held. The complainant requested that the Council agree to a specialist computer company having access to the hard drive to establish beyond doubt that this was in fact the case.
7. The Council refused to do this therefore the Commissioner has considered whether the Council's response is compliant with section 1(1) of the Act.
8. The Commissioner considers that based on the balance of probabilities, the information is not held and that the Council's response is therefore compliant with section 1(1) of the Act.

Reasons for decision

9. Under section 1(1) of the Act, 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.
10. 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 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 requested information the normal standard of proof to apply is the civil standard of the balance of probabilities.
11. Following the Council's confirmation to the complainant that the hard drive in question stopped recording before the date (16 November 2010) that the alleged incident took place, the Commissioner contacted the Council on 19 January 2012 for details of how it had reached this conclusion.

12. On 23 January 2012 the Council confirmed that it had a screen print of the hard drive which shows that it stopped recording on 12 November 2010. The Council agreed to provide a copy of the screen print to the Commissioner to assist with his investigation.
13. On 25 January 2012 the Council forwarded a copy of two screen prints to the Commissioner. With regard to screen print one, it explained that in the bottom right hand corner of the screen dump there is a list of files captured on the CCTV device in question. It shows that no files later than 12 November 2010 are held on the drive.
14. The second screen print was provided as evidence of the message received when trying to access any part of the file thereafter. The message states:

"The file or directory is corrupted and unreadable."
15. The Commissioner asked for further clarification regarding the screen prints and on 1 February 2012 received two additional screen prints which the Council considered identified the complete contents of the drive in question. The two screen prints collectively covered the period from 2 November 2010 to 12 November 2010. The information at the bottom of the screen shows that the drive contains 268 files in total.
16. The first screen print shows four full columns of 26 files, plus a partially visible column of 26 files, totalling 130. The second screen shows 112 files making a combined total of 242 files. This appeared to leave 26 files unaccounted for.
17. The Commissioner contacted the Council on 24 February 2012 to query the 26 unaccounted for files and on 23 March 2012 the Council confirmed that the 26 files were only unaccounted for in the sense that they 'overflowed' the screen print. They were otherwise no different from the files which appeared on the print, and their dates followed the sequence displayed.
18. On 2 April 2012 the complainant forwarded an email from an employee of a specialist computer company he had contacted regarding the Council's conclusion that the information was not held. Having considered the screen prints and the Council's explanation provided above, the expert informed the complainant that:
19. *"This does tend to suggest that there are no [third party's emphasis] recordings for the relevant time, and this may well be the case...However, it is possible that the system did continue to record video after the period shown but was unable to add these recordings to its index...I would have to say that this is perhaps the less likely possibility..."*

20. On 2 April 2012, the Commissioner contacted the Council, asking it to provide an estimate of the cost of a specialist computer company interrogating the hard drive in question to establish beyond doubt whether it had continued to record after the date it appears to have stopped recording.
21. On 2 May 2012 the Council provided a copy of the estimate it had received from the specialist computer company. The estimate shows that it would cost a total of £1,645. This is broken down to £665 for work stage one (preparation) and £980 for work stage two (Evidence Acquisition & Reporting).
22. The Commissioner considers that the screen prints clearly indicate that is very unlikely that the hard drive contains any files after 12 November 2010. Additionally, the specialist computer company itself has acknowledged that there is only a remote possibility that the hard drive may have continued to record after that date. As already established, the outcome in cases where there is a dispute as to what information is held is based on the balance of probabilities as opposed to one of certainty. In this instance, for the reasons set out above, the Commissioner is not convinced that the balance lies with the information being held.
23. The Commissioner has therefore concluded that the Council's 'information not held' response is compliant with section 1(1) of the Act.

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF