

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 September 2017

Public Authority: Sianel Pedwar Cymru (S4C)
Address: Parc Tŷ Glas
Llanishen
Cardiff
CF14 5DU

Decision (including any steps ordered)

1. The complainant requested minutes of two meetings of the S4C authority. S4C provided some information but withheld other information under sections 36, 40(2), 41 and 43 of the FOIA. At the time of its internal review, S4C disclosed some additional information but continued to withhold other information. The Commissioner's decision is that S4C breached section 10(1) by failing to comply with section 1(1) within the time for compliance, and section 17(1) by failing to provide a refusal notice within the time for compliance. The Commissioner does not require any steps to be taken.

Request and response

2. On 20 December 2017 the complainant wrote to S4C and requested information in the following terms:
"Cofnodion y ddau gyfarfod diwethaf gan awdurdod S4C" (Minutes of the last two meetings of the S4C authority).
3. S4C responded on 3 March 2017 and provided some of the information requested, but withheld information under sections, 36, 40(2), 41 and of the FOIA.

4. On 16 March 2017, the complainant requested an internal review of the S4C's handling of the request.
5. The complainant chased a response to his internal review request on a number of occasions between April and May 2017.
6. Following correspondence from the Commissioner, S4C provided the outcome of its internal review on 16 August 2017. S4C disclosed some information that it originally withheld. It maintained that other information was exempt but provided a summary of the withheld information.

Scope of the case

7. The complainant contacted the Commissioner on 7 June 2017 to complain about the delay in receiving S4C's internal review response.
8. The Commissioner contacted the complainant on 30 August 2017 to ascertain whether he still wished to pursue his complaint following S4C's internal review response. The complainant indicated he was reasonably happy with the information which had now been disclosed. However, he asked the Commissioner to issue a decision notice in respect of the delays he had experienced in obtaining responses from S4C.

Reasons for decision

Section 10 – time for compliance

9. Section 1 of FOIA provides for a general right of access to information held by public authorities. Section 10(1) provides that a public authority must comply with section 1 promptly and in any event not later than the twentieth working day following the date of receipt of a request for information.
10. In this case the complainant made his request for information on 20 December 2017. S4C responded on 3 March 2017 and provided some information and withheld other information. On 10 August 2017 S4C disclosed some additional information that it had originally withheld. As it did not respond to the request within the required timescale and failed to comply fully with section 1(1)(b) within the required timescale, S4C breached section 10(1) of the FOIA.

Section 17(1) – time taken to issue a refuse notice

11. Section 17(1) states that:

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of part II relating to the duty to confirm or deny is relevant to the request, or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which-

(a) States that fact,

(b) Specifies the exemption in question, and

(c) States (if that would not otherwise be apparent) why the exemption applies.

12. S4C received the request on 20 December 2016 but did not respond until 3 March 2017. This is a total of 50 working days. As S4C did not issue a valid refusal notice within 20 working days following receipt of the request it breached section 17(1) of the FOIA. The Commissioner asks that S4C ensures such delays are avoided in future.

Other matters

Internal reviews

13. There is no explicit timescale laid down by the FOIA for completion of internal reviews. However, the Code of Practice issued under section 45 explains that such reviews should be completed within a reasonable timeframe. The Commissioner believes that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

14. In this case the complainant requested an internal review on 16 March 2017 and S4C did not respond until 16 August 2017, a period of 106 working days. S4C has apologised for the delay and explained that the internal review was considered by its complaints and compliance committee, who in turn sought external advice regarding this matter. Once the external advice was received, it was discussed at the next meeting of the committee. Whilst the Commissioner notes the explanations provided by S4C, she does not consider that any

exceptional circumstances existed to justify the significant delay in this case. The Commissioner would like to take this opportunity to remind S4C of the expected standards in this regard and recommends that it aims to complete its future reviews within her recommended timescale of 20 working days.

Right of appeal

15. 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

16. 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.
17. 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

David Teague
Regional Manager (Wales)
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Deddf Rhyddid Gwybodaeth 2000 (y Ddeddf)

Hysbysiad penderfynu

Dyddiad: 25 Medi 2017

Yr Awdurdod Cyhoeddus: Sianel Pedwar Cymru (S4C)

Cyfeiriad: Parc Tŷ Glas
Llanisien
Caerdydd
CF14 5DU

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

18. Gofynnodd yr achwynydd am gofnodion dau o gyfarfodydd awdurdod S4C. Rhoddodd S4C rywfaint o wybodaeth ond cadwodd wybodaeth arall yn ôl o dan adrannau 36, 40(2), 41 a 43 o'r Ddeddf. Adeg ei adolygiad mewnol, datgelodd S4C rywfaint o wybodaeth ychwanegol ond parhaodd i gadw gwybodaeth arall yn ôl. Penderfyniad y Comisiynydd yw bod S4C wedi torri adran 10(1) drwy fethu â chydymffurfio ag adran 1(1) yn yr amser a ganiateir ar gyfer cydymffurfio, ac wedi torri adran 17(1) drwy fethu â darparu hysbysiad gwrthod o fewn yr amser a ganiateir ar gyfer cydymffurfio. Nid yw'r Comisiynydd yn gofyn i unrhyw gamau gael eu cymryd.

Y cais a'r ymateb

19. Ar 20 Rhagfyr 2017 ysgrifennodd yr achwynydd at S4C gan ofyn am wybodaeth fel a ganlyn:

"Cofnodion y ddau gyfarfod diwethaf gan awdurdod S4C".

20. Ymatebodd S4C ar 3 Mawrth 2017 gan ddarparu rhywfaint o'r wybodaeth y gofynnwyd amdani, ond cadwodd wybodaeth yn ôl o dan adrannau, 36, 40(2), 41 a 43 o'r Ddeddf.

21. Ar 16 Mawrth 2017, gofynnodd yr achwynydd am adolygiad mewnol o'r modd yr ymdriniodd S4C â'r cais.

22. Gofynnodd yr achwynydd eto am ymateb i'w gais am adolygiad mewnol nifer o weithiau rhwng Ebrill a Mai 2017.
23. Yn dilyn gohebiaeth gan y Comisiynydd, rhoddodd S4C ganlyniad ei adolygiad mewnol ar 16 Awst 2017. Datgelodd S4C rywfaint o wybodaeth a gadwyd yn ôl yn wreiddiol. Daliai fod wybodaeth arall yn esempt ond rhoddodd grynodeb o'r wybodaeth a gadwyd yn ôl.

Rhychwant yr achos

24. Cysylltodd yr achwynydd â'r Comisiynydd ar 7 Mehefin 2017 i gwyno am yr oedi cyn cael ymateb S4C i'r adolygiad mewnol.
25. Cysylltodd y Comisiynydd â'r achwynydd ar 30 Awst 2017 i ganfod a oedd yn dal yn awyddus i fynd ar ôl ei gŵyn yn dilyn ymateb S4C i'w adolygiad mewnol. Nododd yr achwynydd ei fod yn weddol fodlon ar yr wybodaeth a oedd wedi'i datgelu bellach. Serch hynny, gofynnodd i'r Comisiynydd roi hysbysiad penderfynu mewn perthynas â'r oedi a brofodd cyn cael ymatebion gan S4C.

Y rhesymau dros y penderfyniad

Adran 10 – amser ar gyfer cydymffurfio

26. Mae adran 1 o'r Ddeddf yn darparu ar gyfer hawl gyffredinol i weld gwybodaeth sy'n cael ei dal gan awdurdodau cyhoeddus. Mae adran 10(1) yn darparu bod rhaid i awdurdod cyhoeddus gydymffurfio ag adran 1 yn brydlon a beth bynnag erbyn yr ugeinfed diwrnod gwaith ar ôl y dyddiad y daw cais am wybodaeth i law.
27. Yn yr achos hwn gwnaeth yr achwynydd ei gais am wybodaeth ar 20 Rhagfyr 2017. Ymatebodd S4C ar 3 Mawrth 2017 gan ddarparu rywfaint o wybodaeth a chadw gwybodaeth arall yn ôl. Ar 10 Awst 2017 datgelodd S4C rywfaint o wybodaeth ychwanegol a gadwyd yn ôl yn wreiddiol. Gan nad ymatebodd i'r cais o fewn y cyfnod amser angenrheidiol gan fethu â chydymffurfio'n llawn ag adran 1(1)(b) o fewn y cyfnod amser angenrheidiol, torrodd S4C adran 10(1) o'r Ddeddf.

Adran 17(1) – yr amser a gymerir i roi hysbysiad gwrthod

28. Mae adran 17(1) yn dweud:

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of part II relating to the duty to confirm or deny is relevant to the request, or on a claim that

information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which-

(a) States that fact,

(b) Specifies the exemption in question, and

(c) States (if that would not otherwise be apparent) why the exemption applies.

29. Cafodd S4C y cais ar 20 Rhagfyr 2016 ond nid ymatebodd tan 3 Mawrth 2017. Dyna gyfanswm o 50 diwrnod gwaith. Gan na roddodd S4C hysbysiad gwrthod dilys o fewn 20 diwrnod gwaith ar ôl i'r cais ddod i law, fe dorrodd adran 17(1) o'r Ddeddf. Mae'r Comisiynydd yn gofyn i S4C sicrhau bod oedi o'r fath yn cael ei osgoi yn y dyfodol.

Materion eraill

Adolygiadau mewnol

30. Does dim cyfnod amser pendant wedi'i nodi gan y Ddeddf ar gyfer cwblhau adolygiadau mewnol. Serch hynny, mae'r Cod Ymarfer a gyhoeddwyd o dan adran 45 yn esbonio y dylai'r adolygiadau hyn gael eu cwblhau fewn cyfnod amser rhesymol. Mae'r Comisiynydd yn credu bod 20 diwrnod gwaith o ddyddiad y cais am adolygiad yn amser rhesymol ar gyfer cwblhau adolygiad mewnol. O dan amgylchiadau eithriadol gall fod yn rhesymol cymryd mwy o amser ond ni ddylid cymryd mwy na 40 diwrnod mewn unrhyw achos.
31. Yn yr achos hwn gofynnodd yr achwynydd am adolygiad mewnol ar 16 Mawrth 2017 ac ymatebodd S4C ddim tan 16 Awst 2017, sef cyfnod o 106 o ddiwrnodau gwaith. Mae S4C wedi ymddiheuro am yr oedi ac wedi esbonio bod yr adolygiad mewnol wedi'i ystyried gan ei bwyllgor cwynion a chydymffurfio, a aeth ati yn ei dro i ofyn am gyngor allanol am y mater. Pan ddaeth y cyngor i law, cafodd ei drafod yng nghyfarfod nesaf y pwyllgor. Er bod y Comisiynydd yn nodi'r esboniadau a roddwyd gan S4C, nid yw'n credu bod unrhyw amgylchiadau eithriadol yn bodoli i gyfiawnhau'r oedi arwyddocaol yn yr achos hwn. Hoffai'r Comisiynydd achub ar y cyfle hwn i atgoffa S4C am y safonau a ddisgwylir yn hyn o beth ac mae'n argymhell y dylai S4C anelu at gwblhau ei adolygiadau mewnol yn y dyfodol o fewn y cyfnod amser a argymhellir, sef 20 diwrnod gwaith.

Yr hawl i apelio

32. 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:

First-tier Tribunal (Information Rights)
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

33. Os hoffech apelio yn erbyn hysbysiad penderfynu, gallwch gael gwybodaeth am sut i apelio ynghyd â'r ffurflenni perthnasol ar wefan y Tribiwnlys Gwybodaeth.
34. 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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Wycliffe House
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