

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 October 2019

Public Authority: Wrexham County Borough Council

Address: foi@wrexham.gov.uk

Decision (including any steps ordered)

1. The complainant has requested various correspondence between officers from Wrexham County Borough Council and officers from the Welsh Language Commissioner. Wrexham County Borough Council refused the request on the basis of section 14(1) of the FOIA.
2. The Commissioner's decision is that Wrexham County Borough Council was not entitled to rely on section 14(1) of the FOIA to refuse to provide the requested information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant which does not rely on section 14(1) of the FOIA.
4. 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

5. On 10 May 2018, the complainant wrote to Wrexham County Borough Council ('the Council') and requested the following information:

"Hoffwn ddrbyn copi o bob ohebiaeth rhwng swyddogion Cyngor Wreccsam (unrhyw gyfeiriad ebost @wrexham.gov.uk) a swyddogion Comisiynydd y Gymraeg (unrhyw gyfeiriad ebost@cyg-wlc.cymru)"

neu@comisiynyddygydraeg.cymru) ers 1af o Ebrill 2016, os gwelwch yn dda."

Translation of request

I would like to receive a copy of all correspondence between officers of Wrexham Council (any email address @wrexham.gov.uk) and officers of the Welsh Language Commissioner (any email address @cyg-wlc.cymru or @comisiynyddygydraeg.cymru) since 1 April 2016.

6. The Council responded on 8 June 2018. It stated that it was refusing the request in reliance on section 14(1) as the complainant's numerous previous requests have placed a considerable strain on its resources contributing to a cumulative burden.
7. The complainant reduced the scope of his request via a telephone call to the council on 12 June 2018 to the period from 1 January 2017 as opposed to 1 April 2016.
8. The Council responded to the refined request on 15 June 2018, refusing it on the same basis as his original request.
9. Following an internal review of both requests, the Council wrote to the complainant on 18 July 2018. It stated that it was upholding its original decision to refuse the requests on the basis of section 14(1) of the FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 30 October 2018 to complain about the way his request for information had been handled. The complainant considers that his requests have been on a wide range of different types of information, on different subjects for different reasons and on behalf of different people. He also confirmed that he is a member and representative of several different groups and institutions in the local community and when a meeting or committee decides that further information is needed on something from the Council, he is given the task of submitting the request.
11. The complainant added that he did not think it reasonable if requests he makes on behalf of one institution result in restriction on his ability to ask for information on behalf of another group.
12. The complainant further added that he had offered to adapt his request to reduce the time period in order to reduce the time and work the Council would need to spend gathering and preparing the information.

13. The Commissioner considers that the scope of her investigation is to determine whether the Council was entitled to rely on section 14(1) of the FOIA to refuse the complainant's request.

Reasons for decision

Section 14(1) - Vexatious requests

14. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
15. The term 'vexatious' is not defined in the FOIA, however, the Upper Tribunal in the Information Commissioner vs Devon CC and Dransfield [2012] UKUT 440(AAC), (28 January 2013) took the view that the ordinary dictionary definition of the word 'vexatious' is only of limited use, because the question of whether a request is vexatious ultimately depends on the circumstances surrounding that request.
16. In further exploring the role played by circumstances and whether the request has adequate and proper justification, the Tribunal concluded that 'vexatious' could be defined as the "*...manifestly unjustified, inappropriate or improper use of a formal procedure.*" (paragraph 27)
17. Consistent with the Upper Tribunal's decision which established the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious, the Commissioner's guidance for section 14 confirms that the key question to ask when weighing up whether a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
18. Where this is not clear, the public authority should weigh the impact on the authority of complying with the request and balance this against the purpose and value of the request. In doing this, public authorities will inevitably need to take into account the wider factors such as the background and history of the request.
19. The Commissioner notes that the Council informed the complainant that his request, together with previous requests, had placed a considerable strain on resources, and that while it was not obviously vexatious in itself, it contributed to that cumulative burden.

Burden on resources

20. In this particular case, the Council informed the Commissioner that although the request is not vexatious in isolation, when the background

and history is taken into consideration, the number of requests specifically in relation to the Welsh language are detracting officers from their duties promoting the Welsh language and ensuring the Welsh language standards are met.

21. The Commissioner was further informed that in the period from 1 April 2017 to 30 May 2018, the complainant submitted 20 FOIA requests and 67 emails to various teams, which although varied in topic, all specifically related to the Welsh language, and in particular, its compliance with the Welsh Language Standards (WLS).
22. The complainant has however stated that many of his requests are submitted on behalf of a number of different organisations he represents.
23. By way of background, the Council explained that the Welsh Language (Wales) Measure 2011 established a legal framework which requires the Council to comply with standards of conduct with regards to the Welsh language and means that the Council must not treat the Welsh language less favourably than the English language, together with promoting and facilitating the use of the Welsh language.
24. The Commissioner has considered the supporting evidence provided by the Council in terms of previous requests, and whilst she can confirm, that the topics are varied, she acknowledges that they share the common theme in respect of the Council's alleged failure to meet the WLS.
25. The Council has also argued that in addition to the requests, the complainant has submitted voluminous correspondence. Whilst the Council has provided a sample of some of this correspondence, it has not confirmed the actual volumes and the Commissioner notes that a significant proportion of the correspondence is either the complainant asking for responses to his previous correspondence or informing the Council that its response has not covered every aspect of his query.
26. The Council further informed the Commissioner that in addition to the FOIA requests and general correspondence, the complainant has submitted various internal and external complaints all relating to the Councils alleged non-compliance with the WLS.

Informal complaints

27. The Council provided details of two informal complaints submitted by the complainant, dated 20 May 2016 and 30 October 2018, both of which have been upheld by the Council. However, the latter complaint post-dates the request to which this notice relates and cannot therefore

be used as supporting evidence. Additionally, as both complaints were upheld, they would do little to support the Council's position.

Formal complaints

28. The Council has also provided details of formal complaints submitted by the complainant in the period from 31 March 2015 to 28 February 2019. The Commissioner notes that there is a total of 6 formal complaints, the last two of which post-date the request and cannot be taken into consideration. Out of the four which can be considered, the Commissioner would wish to highlight that although on varied topics, they are all in relation to Welsh language errors. The Commissioner also notes that three of the four complaints have either been partially, or fully upheld, which again does little to support the Council's position.

Ombudsman complaints

29. The Commissioner notes that the complainant has also submitted four complaints to the Public Services Ombudsman for Wales (PSOW). Of these four, one post-dates the request and has not therefore been taken into consideration, and even it were, it would detract from the Council's position as it appears to have been upheld. Of the three the Commissioner can consider, she notes that the PSOW refused to investigate two, but appears to have upheld the third.

Complaints to the Welsh Language Commissioner

30. The Council further informed the Commissioner that since the introduction of the WLS on 30 March 2016, it has been the subject of 75 investigations by the Welsh Language Commissioner (the body responsible for investigating alleged issues of non-compliance with the standards), all but two being the result of a complaint to the Welsh Language Commissioner ('the WLC') by the complainant.

31. The Council confirmed that the WLC is legally bound to investigate a complaint received from a member of the public and the resulting correspondence between the WLC and the Council takes a huge amount of time and resources. It has added that even where the WLC decides not to conduct a full investigation, it is necessary to spend time and resources to gather and verify evidence to send to the WLC.

32. The Commissioner would however point out that although the Council has confirmed numbers of complaints referred to the WLC, she also asked the Council to provide details of the outcome of the complaints. As these were not provided, the Commissioner has no way of determining their relevance to the burden on the authority.

33. The Council has however, referred to six complaints which the WLC refused to investigate, and subsequently escalated by the complainant to the Welsh Language Tribunal (an independent body responsible for considering appeals against decisions made by the WLC, including a decision not to investigate a complaint).
34. It appears that two of these were upheld by the Tribunal with a third struck out, and a fourth not upheld. The outcome of the remaining two is not clear.

The complainant's past pattern of behaviour

35. The Council has also considered the complainant's past pattern of behaviour which it believes suggests that he would not be satisfied with any response and will submit numerous follow up enquiries no matter what information is supplied. The Commissioner would however note that out of the 20 FOIA requests referred to in paragraph 21 of this notice, there were 4 which resulted in requests for an internal review.
36. The Council has further stated that the complainant has submitted subsequent requests following its refusal of this particular request which it believes supports its decision to refuse this request on the basis that it is vexatious. However, as the Commissioner must consider the circumstances at the time of the request to which this notice relates, she cannot take these into consideration.
37. The Council also informed the Commissioner that the complainant had met with the Head of Education Services to discuss the nature of his requests and how they were impacting on staff and the service. The Commissioner notes that this appears to be in relation to a specific matter regarding a particular nursery.
38. The Council considers that its Welsh Language team has also attempted on a number of occasions to work with the complainant in a conciliatory way and has cited the following examples as evidence:
 - The Council has provided an email chain from October 2018 addressed to/from the Chief Executive where the complainant requested a meeting with the Chief Executive to discuss concerns about a series of failures by the Council in recent years. The Chief Executive refused to meet directly with the complainant but offered a meeting with the Council's Head of Customer and Corporate Services/Monitoring Officer. The complainant did not however pursue this option.
 - In April 2019 there were a chain of emails between the complainant and the Council in respect of a Twitter account which the complainant considered the Council was responsible. The

Council investigated and concluded that there was no evidence to support the complainant's allegations that it had any responsibility for the account in question, confirming that if the complainant had any evidence to the contrary, that it would reconsider its decision.

- An email chain between the complainant and the Council dated June 2019 which contained a request to the leader of the Council to implement a resolution to take responsibility for the Welsh language away from the named Councillor on the basis that he provided misleading evidence and has caused harm to the Welsh language. The Council offered to meet with the complainant and there was some discussion about a meeting but it appears that the complainant did not pursue it further to find a mutually convenient date, but issued a press release.
 - Further correspondence between the complainant and the Council in June 2019 where the complainant expressed concerns that the Council's annual Welsh language report contained multiple inaccuracies and requested a meeting preferably before the document was approved. The Council confirmed that this would not be possible before the document was approved but invited the complainant to forward his comments which would be passed to the relevant officers to consider. The complainant declined to do so stating that he would address his concerns as a complaint, but did not provide any further communication on the matter. The Council did however confirm that the complainant challenged two reports.
39. The Commissioner would point out that she cannot take any of the above bullet points from paragraph 38 into account as they all post-date the request.
40. The Council considers that the complainant has unjustly made accusations against a number of its officers and considers the following examples provide appropriate evidence.
- During a meeting on 11 April 2019 where the complainant turned his back on two of the Council's officers for the whole meeting and a few days later informed the Chair of the meeting that he would not be attending any future meetings where these two officers were in attendance on the basis that he considers they don't carry out their duties with regard to the Welsh language within the Council.
 - A press release from Cymdeithas yr Iaith of which the complainant is Chair, dated 11 June 2019 calling for a named Councillor's

dismissal over alleged Council failings in respect of the Welsh language.

- Correspondence dated 2 January 2019 between Cllr Hughes and the complainant in which the complainant confirmed that he was quite happy to, and often reports failures directly to the officers responsible for Welsh when he considered they were ready to acknowledge their mistakes, apologise and take corrective action.

41. The Commissioner would point out that all of the above examples provided by the Council post-date the request to which this notice relates and cannot therefore be taken into consideration.

Evidence of how the Council responds to emails from the complainant

42. The Council has provided a number of emails which it considers are representative of how it responds to emails from the complainant, all of which are polite, and appear to address his concerns. Whilst the Commissioner notes that one of these post-dates the request and cannot therefore be used as evidence, the Commissioner is not really clear how they support the Council's reliance on section 14(1) in respect of this complaint.

The request itself

43. The Council further informed the Commissioner that the request itself covers a large amount of correspondence, not all of which the Council considers has relevance to the wider public interest. It has received confirmation from its ICT department that the search yielded a total of 225 emails to and from the WLC since 1 April 2016.

44. The Commissioner notes that this covers the timeframe outlined in the original request, as opposed to the period covering the refined request. She also notes that the Council has not specified what would be involved in complying with the request.

Conclusion

45. The Commissioner has considered the arguments and supporting evidence provided by the Council in terms of burden on the authority, the complainant's past pattern of behaviour, and compliance with this particular request.

46. There is no doubt that there is multiple correspondence from the complainant in respect of his concerns regarding the Council's compliance with the WLS, including FOI requests, and internal and external complaints which will inevitably place a burden on the Council's

resources. However, much of the supporting evidence either post-dates the request, is inconclusive or does not support the Council's position.

47. There is also evidence to indicate that the complainant's past pattern of behaviour may be indicative of intransigence on occasions. However, as with the supporting evidence in terms of burden on the authority, much of this post-dates the request.
48. In terms of the evidence in relation to how the Council responds to emails from the complainant, as stated in paragraph 42 of this notice, the Commissioner is not clear what point the Council is making and would point out that it is reasonable to expect an organisation to respond professionally and with courtesy.
49. The Commissioner has also considered the request itself and whilst the Council has referred to 225 emails since 1 April 2016, there is no indication of the volume in terms of the refined request, nor is it clear what would be required to provide the information.
50. Taking all the above into consideration, the Commissioner considers her decision is finely balance but has ultimately concluded that there is insufficient evidence to support the Council's reliance on section 14(1) in this case. She would however point out that if all of the evidence had actually pre-dated the request and there was evidence that a significant proportion of the complaints to the WLC had not been upheld, her decision would have had to have taken those into account.

Right of appeal

51. 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

52. 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.
53. 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

Catherine Dickenson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Deddf Rhyddid Gwybodaeth 2000 ("y Ddeddf")

Hysbysiad penderfynu

Dyddiad: 25 Hydref 2019

Awdurdod Cyhoeddus: Cyngor Bwrdeistref Sirol Wrecsam

Cyfeiriad: foi@wrexham.gov.uk

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

1. Mae'r achwynydd wedi gofyn am ohebiaeth amrywiol rhwng swyddogion Cyngor Bwrdeistref Sirol Wrecsam a swyddogion Comisiynydd y Gymraeg. Gwrthododd Cyngor Bwrdeistref Sirol Wrecsam y cais ar sail adran 14(1) o'r Ddeddf.
2. Penderfyniad y Comisiynydd yw nad oedd gan Gyngor Bwrdeistref Sirol Wrecsam hawl i ddibynnu ar adran 14(1) o'r Ddeddf i wrthod darparu'r wybodaeth y gofynnwyd amdani.
3. Mae'r Comisiynydd yn ei gwneud yn ofynnol i'r awdurdod cyhoeddus gymryd y camau a ganlyn er mwyn sicrhau ei fod yn cydymffurfio â'r ddeddfwriaeth.
 - Rhoi ymateb newydd i'r achwynydd nad yw'n dibynnu ar adran 14(1) o'r Ddeddf.
4. Rhaid i'r awdurdod cyhoeddus gymryd y camau hyn o fewn 35 diwrnod calendr ar ôl dyddiad yr hysbysiad penderfynu hwn. Gall methu â chydymffurfio olygu y bydd y Comisiynydd yn rhoi tystysgrif ysgrifenedig ynglŷn â'r ffaith honno i'r Uchel Lys yn unol ag adran 54 o'r Ddeddf a gellir ymdrin â methiant fel dirmyg llys.

Y cais a'r ymateb

5. Ar 10 Mai 2018, ysgrifennodd yr achwynydd at Gyngor Bwrdeistref Sirol Wrecsam ('y Cyngor') gan ofyn am yr wybodaeth a ganlyn:

"Hoffwn dderbyn copi o bob ohebiaeth rhwng swyddogion Cyngor Wrecsam (unrhyw gyfeiriad ebost @wrexham.gov.uk) a swyddogion Comisiynydd y Gymraeg (unrhyw gyfeiriad ebost@cyg-wlc.cymru)

neu@comisiynyddygyymraeg.cymru) ers 1af o Ebrill 2016, os gwelwch yn dda.”

6. Ymatebodd y Cyngor ar 8 Mehefin 2018. Dywedodd ei fod yn gwrthod y cais gan ddibynnu ar adran 14(1) gan fod ceisiadau blaenorol niferus yr achwynydd wedi rhoi straen sylweddol ar ei adnoddau gan gyfrannu at faich cronol.
7. Lleihaodd yr achwynydd rychwant ei gais drwy alwad ffôn i'r Cyngor ar 12 Mehefin 2018, sef i'r cyfnod o 1 Ionawr 2017 ymlaen o'i gymharu ag 1 Ebrill 2016.
8. Ymatebodd y Cyngor i'r cais mireiniedig ar 15 Mehefin 2018, gan ei wrthod ar yr un sail â chais gwreiddiol yr achwynydd.
9. Yn dilyn adolygiad mewnol o'r ddau gais, ysgrifennodd y Cyngor at yr achwynydd ar 18 Gorffennaf 2018. Dywedodd ei fod yn cynnal ei benderfyniad gwreiddiol i wrthod y ceisiadau ar sail adran 14(1) o'r Ddeddf.

Rychwant yr achos

10. Cysylltodd yr achwynydd â'r Comisiynydd ar 30 Hydref 2018 i gwyno am y ffordd yr ymdriniwyd â'i gais am wybodaeth. Mae'r achwynydd o'r farn bod ei geisiadau wedi ymdrin ag ystod eang o wahanol fathau o wybodaeth, ar wahanol bynciau am wahanol resymau ac ar ran gwahanol bobl. Cadarnhaodd hefyd ei fod yn aelod ac yn gynrychiolydd i sawl grŵp a sefydliad gwahanol yn y gymuned leol a phan fydd cyfarfod neu bwyllgor yn penderfynu bod angen gwybodaeth bellach ar rywbeth oddi wrth y Cyngor, mai ef sy'n cael y dasg o gyflwyno'r cais.
11. Ychwanegodd yr achwynydd nad oedd yn credu ei bod yn rhesymol bod ceisiadau y mae'n eu gwneud ar ran un sefydliad yn arwain at gyfyngiad ar ei allu i ofyn am wybodaeth ar ran grŵp arall.
12. Ychwanegodd yr achwynydd hefyd ei fod wedi cynnig addasu ei gais i leihau'r cyfnod amser er mwyn lleihau'r amser a'r gwaith y byddai angen i'r Cyngor ei dreulio yn casglu a pharatoi'r wybodaeth.
13. Mae'r Comisiynydd o'r farn mai rychwant ei hymchwiliad yw penderfynu a oedd gan y Cyngor hawl i ddibynnu ar adran 14(1) o'r Ddeddf i wrthod cais yr achwynydd.

Y rhesymau dros y penderfyniad

Adran 14(1) – Ceisiadau blinderus

14. Mae adran 14(1) o'r Ddeddf yn dweud nad yw adran 1(1) yn gorfodi awdurdod cyhoeddus i gydymffurfio â chais am wybodaeth os yw'r cais yn flinderus. Does dim prawf budd cyhoeddus.
15. Nid yw'r term 'vexatious' wedi'i ddiffinio yn y Ddeddf. Er hynny, yn Information Commissioner vs Devon CC and Dransfield [2012] UKUT 440(AAC), (28 Ionawr 2013) roedd y Tribiwnlys Uchaf o'r farn mai cyfyngedig yn unig oedd defnydd diffiniad cyffredinol y geiriadur o'r gair 'vexatious', a hynny am fod y cwestiwn a yw cais yn un blinderus ai peidio yn dibynnu yn y pen draw ar amgylchiadau'r cais hwnnw.
16. Wrth edrych ymhellach ar y rôl a chwaraeir gan amgylchiadau ac a oes cyfiawnhad digonol a phriodol i'r cais, daeth y Tribiwnlys i'r casgliad y gellid diffinio 'vexatious' fel "...manifestly unjustified, inappropriate or improper use of a formal procedure." (paragraff 27)
17. Yn gyson â phenderfyniad y Tribiwnlys Uchaf a sefydlodd fod cysyniadau 'cymesuredd' a 'chyfiawnhad' yn ganolog i unrhyw ystyriaeth ynghylch a yw cais yn flinderus, mae canllawiau'r Comisiynydd ar gyfer adran 14 yn cadarnhau mai'r cwestiwn allweddol i'w ofyn wrth bwysu a mesur a yw cais yn flinderus ai peidio yw a yw'r cais yn debygol o achosi lefel o aflonyddwch, poendod neu ofid sy'n anghymesur neu'n amhosibl ei chyfiawnhau.
18. Pan nad yw hyn yn glir, dylai'r awdurdod cyhoeddus bwysu a mesur yr effaith ar yr awdurdod yn sgil cydymffurfio â'r cais a chydbwysu hyn yn erbyn diben a gwerth y cais. Wrth wneud hyn, mae'n anorfod y bydd angen i awdurdodau cyhoeddus ystyried y ffactorau ehangach megis cefndir a hanes y cais.
19. Mae'r Comisiynydd yn nodi bod y Cyngor wedi dweud wrth yr achwynydd fod ei gais, ynghyd â'i geisiadau blaenorol, wedi rhoi straen sylweddol ar adnoddau, ac er nad oedd yn amlwg yn flinderus ynddo ei hun, ei fod wedi cyfrannu at y baich cronol hwnnw.

Baich ar adnoddau

20. Yn yr achos penodol hwn, dywedodd y Cyngor wrth y Comisiynydd er nad oedd y cais yn flinderus ar ei ben ei hun, o ystyried y cefndir a'r hanes, fod nifer y ceisiadau sy'n ymwneud yn benodol â'r Gymraeg yn tynnu swyddogion oddi wrth eu dyletswyddau i hybu'r Gymraeg a sicrhau bod Safonau'r Gymraeg yn cael eu bodloni.
21. Dywedwyd wrth y Comisiynydd hefyd fod yr achwynydd, yn y cyfnod rhwng 1 Ebrill 2017 a 30 Mai 2018, wedi cyflwyno 20 o geisiadau rhyddid gwybodaeth a 67 o negeseuon ebost i wahanol dimau, a'r

rheiny, er eu bod yn amrywio o ran pwnc, i gyd yn ymwneud yn benodol â'r Gymraeg, ac yn arbennig, â chydymffurfio â Safonau'r Gymraeg

22. Er hynny, mae'r achwynydd wedi dweud bod llawer o'i geisiadau'n cael eu cyflwyno ar ran nifer o sefydliadau gwahanol y mae'n eu cynrychioli.
23. O ran cefndir, esboniodd y Cyngor fod Mesur y Gymraeg (Cymru) 2011 wedi sefydlu fframwaith cyfreithiol sy'n ei gwneud yn ofynnol i'r Cyngor gydymffurfio â safonau ymddygiad o ran y Gymraeg ac sy'n golygu bod rhaid i'r Cyngor beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg, ynghyd â hybu a hwyluso defnyddio'r Gymraeg.
24. Mae'r Comisiynydd wedi ystyried y dystiolaeth ategol a ddarparwyd gan y Cyngor o ran ceisiadau blaenorol, ac er ei bod yn gallu cadarnhau bod y pynciau'n amrywiol, mae'n cydnabod eu bod yn rhannu'r thema gyffredin o ran methiant honedig y Cyngor i fodloni Safonau'r Gymraeg.
25. Mae'r Cyngor hefyd wedi dadlau bod yr achwynydd, yn ychwanegol at y ceisiadau, wedi cyflwyno llawer iawn o ohebiaeth. Er bod y Cyngor wedi darparu sampl o rywfaint o'r ohebiaeth hon, nid yw wedi cadarnhau'r maint gwirioneddol ac mae'r Comisiynydd yn nodi bod cyfran sylweddol o'r ohebiaeth naill ai'n geisiadau gan yr achwynydd am ymatebion i'w ohebiaeth flaenorol neu'n hysbysu'r Cyngor nad yw ymateb y Cyngor wedi ymdrin â phob agwedd ar ymholiad yr achwynydd.
26. Dywedodd y Cyngor wrth y Comisiynydd hefyd fod yr achwynydd, yn ychwanegol at y ceisiadau rhyddid gwybodaeth a gohebiaeth gyffredinol, wedi cyflwyno amryw o gwynion mewnol ac allanol a oedd yn ymwneud â methiant honedig y Cyngor i gydymffurfio â Safonau'r Gymraeg.

Cwynion anffurfiol

27. Rhoddodd y Cyngor fanylion am ddwy gŵyn anffurfiol a gyflwynwyd gan yr achwynydd, dyddiedig 20 Mai 2016 a 30 Hydref 2018, ill dwy wedi'u cadarnhau gan y Cyngor. Er hynny, mae'r ail gŵyn yn hwyrach na'r cais y mae'r hysbysiad hwn yn cyfeirio ato ac felly ni ellir defnyddio honno fel dystiolaeth ategol. Yn ychwanegol, gan fod y ddwy gŵyn wedi'u cadarnhau, ni fyddent yn gwneud llawer i ategu safbwynt y Cyngor.

Cwynion ffurfiol

28. Mae'r Cyngor hefyd wedi rhoi manylion cwynion ffurfiol a gyflwynwyd gan yr achwynydd yn y cyfnod o 31 Mawrth 2015 i 28 Chwefror 2019. Mae'r Comisiynydd yn nodi bod cyfanswm o chwe chŵyn ffurfiol, a'r ddwy olaf yn hwyrach na dyddiad y cais ac yn methu cael eu hystyried. O'r pedair y gellir eu hystyried, er bod y rhain ar bynciau amrywiol, hoffai'r Comisiynydd danlinellu bod y cyfan yn ymwneud â gwallau yn y Gymraeg. Mae'r Comisiynydd hefyd yn nodi bod tair o'r pedair cwyn

wedi'u cynnal naill ai'n rhannol, neu'n llwyr, sydd eto'n gwneud fawr ddim i ategu safbwynt y Cyngor.

Cwynion i'r Ombwdsmon

29. Mae'r Comisiynydd yn nodi bod yr achwynydd hefyd wedi cyflwyno pedair cwyn i Ombwdsmon Gwasanaethau Cyhoeddus Cymru ('yr Ombwdsmon'). O'r pedair hyn, mae un yn hwyrach na dyddiad y cais ac nid yw felly wedi'i hystyried, a hyd yn oed pe bai wedi'i hystyried, fe fuasai'n gwanhau sefyllfa'r Cyngor gan ei bod yn ymddangos ei bod wedi'i chadarnhau. O'r tair cwyn y gall y Comisiynydd eu hystyried, mae'n nodi bod yr Ombwdsmon wedi gwrthod ymchwilio i ddwy, ond mae'n ymddangos ei fod wedi cadarnhau'r drydedd.

Cwynion i Gomisiynydd y Gymraeg

30. Dywedodd y Cyngor wrth y Comisiynydd hefyd ei fod, ers i Safonau'r Gymraeg gael eu cyflwyno ar 30 Mawrth 2016, wedi bod yn destun 75 o ymchwiliadau gan Gomisiynydd y Gymraeg (sef y corff sy'n gyfrifol am ymchwilio i honiadau o beidio â chydymffurfio â'r Safonau), bob un ond dau yn deillio o gŵyn i Gomisiynydd y Gymraeg gan yr achwynydd.
31. Cadarnhaodd y Cyngor fod Comisiynydd y Gymraeg wedi'i rwymo'n gyfreithiol i ymchwilio i gŵyn sy'n dod i law oddi wrth aelod o'r cyhoedd a bod yr ohebiaeth sy'n deillio o hynny rhwng y Comisiynydd a'r Cyngor yn cymryd llawer iawn o amser ac adnoddau. Hyd yn oed pan fo Comisiynydd y Gymraeg yn penderfynu peidio â chynnal ymchwiliad llawn, mae'r Cyngor yn ychwanegu bod angen treulio amser ac adnoddau yn casglu ac yn gwirio tystiolaeth i'w hanfon at Gomisiynydd y Gymraeg.
32. Er hynny, er bod y Cyngor wedi cadarnhau niferoedd y cwynion a gyfeiriwyd at Gomisiynydd y Gymraeg, hoffai'r Comisiynydd nodi ei bod hefyd wedi gofyn i'r Cyngor roi manylion canlyniadau'r cwynion. Gan na roddwyd y rhain, does gan y Comisiynydd ddim ffordd o bennu a ydyn nhw'n berthnasol i'r baich ar yr awdurdod.
33. Er hynny, mae'r Cyngor wedi cyfeirio at chwe chŵyn y gwrthododd Comisiynydd y Gymraeg ymchwilio iddynt, ac a gafodd eu codi wedyn gan yr achwynydd i Dribiwnlys y Gymraeg (sef corff annibynnol sy'n gyfrifol am ystyried apelau yn erbyn penderfyniadau a wnaed gan Gomisiynydd y Gymraeg gan gynnwys penderfyniad i beidio ag ymchwilio i gŵyn).
34. Mae'n ymddangos bod dwy o'r rhain wedi'u cadarnhau gan y Tribiwnlys, bod y drydedd wedi'i diddymu, a bod y bedwaredd heb gael ei chadarnhau. Nid yw canlyniad y ddwy arall yn glir.

Patrwm ymddygiad yr achwynydd yn y gorffennol

35. Roedd y Cyngor hefyd wedi ystyried patrwm ymddygiad blaenorol yr achwynydd sy'n awgrymu, ym marn y Cyngor, na fyddai'n fodlon ar unrhyw ymateb ac y byddai'n cyflwyno nifer o ymholiadau dilynol, ni waeth pa wybodaeth a gâi ei darparu. Er hynny, o'r 20 o geisiadau rhyddid gwybodaeth y cyfeirir atynt ym mharagraff 21 o'r hysbysiad hwn, hoffai'r Comisiynydd nodi bod pedwar wedi arwain at geisiadau am adolygiad mewnol.
36. Mae'r Cyngor wedi datgan hefyd fod yr achwynydd wedi cyflwyno ceisiadau dilynol ar ôl i'r Cyngor wrthod y cais penodol hwn ac mae'n credu bod hynny'n ategu ei benderfyniad i wrthod y cais hwn ar y sail ei fod yn flinderus. Er hynny, gan fod rhaid i'r Comisiynydd ystyried yr amgylchiadau adeg y cais y mae'r hysbysiad hwn yn ymwneud ag ef, ni all gymryd y rhain i ystyriaeth.
37. Dywedodd y Cyngor wrth y Comisiynydd hefyd fod yr achwynydd wedi cyfarfod â Phennaeth y Gwasanaethau Addysg i drafod natur ei geisiadau a sut yr oeddent yn effeithio ar y staff a'r gwasanaeth. Mae'r Comisiynydd yn nodi ei bod yn ymddangos bod hyn yn ymwneud â mater penodol yn ymwneud â meithrinfa benodol.
38. Mae'r Cyngor o'r farn bod ei dîm Cymraeg hefyd wedi ymdrechu ar sawl achlysur i weithio gyda'r achwynydd mewn modd cymodlon ac wedi cyfeirio at yr enghreifftiau a ganlyn fel tystiolaeth:
 - Mae'r Cyngor wedi darparu cadwyn ebost o Hydref 2018 wedi'i gyfeirio at/oddi wrth y Prif Weithredwr lle gofynnodd yr achwynydd am gyfarfod â'r Prif Weithredwr i drafod pryderon am gyfres o fethiannau gan y Cyngor yn y blynyddoedd diwethaf. Gwrthododd y Prif Weithredwr gyfarfod yn uniongyrchol â'r achwynydd ond cynigiodd drefnu cyfarfod â Phennaeth Gwasanaethau Cwsmeriaid a Gwasanaethau Corfforaethol/Swyddog Monitro y Cyngor. Ond aeth yr achwynydd ddim ar drywydd yr opsiwn hwn
 - Ym mis Ebrill 2019 cafwyd cadwyn o negeseuon ebost rhwng yr achwynydd a'r Cyngor mewn perthynas â chyfrif Twitter yr oedd yr achwynydd yn credu mai'r Cyngor oedd yn gyfrifol amdano. Ymchwiliodd y Cyngor a daeth i'r casgliad nad oedd tystiolaeth i ategu honiadau'r achwynydd bod gan y Cyngor unrhyw gyfrifoldeb dros y cyfrif o dan sylw, gan gadarnhau y byddai'n ailystyried ei benderfyniad pe bai gan yr achwynydd unrhyw dystiolaeth i'r gwrthwyneb.
 - Cadwyn negeseuon ebost rhwng yr achwynydd a'r Cyngor dyddiedig Mehefin 2019 yn cynnwys cais i arweinydd y Cyngor roi

cynnig ar waith i gymryd y cyfrifoldeb dros y Gymraeg oddi wrth y cynghorydd a enwyd ar y sail ei fod wedi rhoi tystiolaeth gamarweiniol ac wedi gwneud niwed i'r Gymraeg. Cynigiodd y Cyngor gyfarfod â'r achwynydd a chafwyd peth trafodaeth am gyfarfod ond mae'n ymddangos na wnaeth yr achwynydd fynd ar drywydd hyn ymhellach er mwyn dod o hyd i ddyddiad a oedd yn gyfleus i'r ddwy ochr, ond ei fod wedi cyhoeddi datganiad i'r wasg.

- Rhagor o ohebiaeth rhwng yr achwynydd a'r Cyngor ym mis Mehefin 2019 lle mae'r achwynydd yn mynegi pryderon bod adroddiad blynyddol y Cyngor ar y Gymraeg yn cynnwys nifer o wallau, gan ofyn am gyfarfod yn ddelfrydol cyn i'r ddogfen gael ei chymeradwyo. Cadarnhaodd y Cyngor na fyddai hynny'n bosibl cyn i'r ddogfen gael ei chymeradwyo ond estynnodd wahoddiad i'r achwynydd anfon ei sylwadau a fyddai'n cael eu trosglwyddo i'r swyddogion perthnasol i'w hystyried. Gwrthododd yr achwynydd wneud hynny gan ddweud y byddai'n rhoi sylw i'w bryderon fel cwyn, ond ni roddodd unrhyw ohebiaeth bellach ar y mater. Er hynny, fe wnaeth y Cyngor gadarnhau bod yr achwynydd wedi herio dau adroddiad.
39. Mae'r Comisiynydd yn nodi na all gymryd unrhyw un o'r pwyntiau bwled uchod ym mharagraff 38 i ystyriaeth gan eu bod i gyd yn hwyrach na dyddiad y cais.
40. Mae'r Cyngor o'r farn bod yr achwynydd wedi gwneud cyhuddiadau yn annheg yn erbyn nifer o'i swyddogion ac mae o'r farn bod yr enghreifftiau canlynol yn darparu tystiolaeth briodol.
- Yn ystod cyfarfod ar 11 Ebrill 2019 pan drodd yr achwynydd ei gefn ar ddau o swyddogion y Cyngor drwy gydol y cyfarfod a hysbysu Cadeirydd y cyfarfod ychydig ddyddiau wedyn na fyddai'n dod i unrhyw gyfarfodydd yn y dyfodol lle bydda'r ddau swyddog hyn yn bresennol ar y sail ei fod o'r farn nad ydynt yn cyflawni eu dyletswyddau o ran y Gymraeg o fewn y Cyngor.
 - Datganiad i'r wasg gan Gymdeithas yr Iaith, y mae'r achwynydd yn gadeirydd arni, dyddiedig 11 Mehefin 2019 yn galw am ddiswyddo cynghorydd a enwyd oherwydd methiannau honedig y Cyngor mewn perthynas â'r Gymraeg.
 - Gohebiaeth ddyddiedig 2 Ionawr 2019 rhwng y Cynghorydd Hughes a'r achwynydd lle cadarnhaodd yr achwynydd ei fod yn ddigon bodlon rhoi gwybod ac yn aml yn rhoi gwybod am fethiannau yn uniongyrchol i'r swyddogion sy'n gyfrifol am y Gymraeg ac yntau'n creu eu bod yn fodlon cydnabod eu camgymeriadau, ymddiheuro a chymryd camau i'w cywiro.

41. Mae'r Comisiynydd yn nodi bod yr holl enghreifftiau uchod a ddarparwyd gan y Cyngor wedi'u dyddio ar ôl y cais y mae'r hysbysiad hwn yn ymwneud ag ef, ac felly ni ellir eu hystyried.

Tystiolaeth o sut mae'r Cyngor yn ymateb i negeseuon ebost gan yr achwynydd

42. Mae'r Cyngor wedi darparu nifer o negeseuon ebost y mae'n credu eu bod yn gynrychioliadol o'r modd y mae'n ymateb i negeseuon ebost gan yr achwynydd, sydd i gyd yn gwrtais, ac yn ymddangos fel pe baent yn ymdrin â'i bryderon. Er bod y Comisiynydd yn nodi bod un o'r rhain yn hwyrach na dyddiad y cais ac na ellir felly ei ddefnyddio fel tystiolaeth, nid yw'r Comisiynydd yn glir mewn gwirionedd sut y mae'r rhain yn ategu dibyniaeth y Cyngor ar adran 14(1) mewn perthynas â'r gŵyn hon.

Y cais ei hun

43. Dywedodd y Cyngor wrth y Comisiynydd hefyd fod y cais ei hun yn cwmpasu llawer iawn o ohebiaeth, nad yw'r Cyngor yn credu ei bod i gyd yn berthnasol i fudd ehangach y cyhoedd. Mae wedi cael cadarnhad gan ei adran TGCh fod y chwiliad wedi medi cyfanswm o 225 o negeseuon ebost yn ôl ac ymlaen i Gomisiynydd y Gymraeg ers 1 Ebrill 2016.
44. Mae'r Comisiynydd yn nodi bod hyn yn cwmpasu'r amserlen a amlinellwyd yn y cais gwreiddiol, yn hytrach na'r cyfnod a geir yn y cais mireiniedig. Mae'n nodi hefyd nad yw'r Cyngor wedi nodi'r hyn y byddai cydymffurfio â'r cais yn ei olygu.

Casgliad

45. Mae'r Comisiynydd wedi ystyried y dadleuon a'r dystiolaeth ategol a ddarparwyd gan y Cyngor o ran y baich ar yr awdurdod, patrwm ymddygiad yr achwynydd yn y gorffennol, a chydymffurfio â'r cais penodol hwn.
46. Does dim amheuaeth nad oes llawer o ohebiaeth oddi wrth yr achwynydd ynglŷn â'i bryderon ynghylch cydymffurfiaeth y Cyngor â Safonau'r Gymraeg, gan gynnwys ceisiadau rhyddid gwybodaeth, a chwynion mewnol ac allanol a fydd yn anochel yn rhoi baich ar adnoddau'r Cyngor. Er hynny, mae llawer o'r dystiolaeth ategol naill ai'n hwyrach na dyddiad y cais, yn amhendiant neu heb fod yn ategu safbwynt y Cyngor.
47. Mae yna dystiolaeth hefyd i ddangos y gall patrwm ymddygiad blaenorol yr achwynydd fod yn arwydd o ddiffyg hyblygrwydd ar adegau. Er

hynny, fel yn achos y dystiolaeth ategol o ran baich ar yr awdurdod, mae llawer o hyn yn fwy diweddar na dyddiad y cais.

48. O ran y dystiolaeth ynglŷn â sut mae'r Cyngor yn ymateb i negeseuon ebost gan yr achwynydd, fel y nodwyd ym mharagraff 42 o'r hysbysiad hwn, nid yw'r Comisiynydd yn glir pa bwynt y mae'r Cyngor yn ei wneud ac mae'n nodi ei bod yn rhesymol disgwyl i sefydliad ymateb yn broffesiynol ac yn gwrtais.
49. Mae'r Comisiynydd hefyd wedi ystyried y cais ei hun ac er bod y Cyngor wedi cyfeirio at 225 o negeseuon ebost ers 1 Ebrill 2016, does dim arwydd o'r swm o ran y cais mireiniedig, ac nid yw'n glir beth fyddai ei angen er mwyn darparu'r wybodaeth.
50. Gan gymryd y cyfan uchod i ystyriaeth, mae'r Comisiynydd o'r farn bod y cydbwysedd yn ei phenderfyniad yn agos iawn ond, yn y pen draw, mae wedi dod i'r casgliad nad oes digon o dystiolaeth i ategu dibyniaeth y Cyngor ar adran 14(1) yn yr achos hwn. Serch hynny, pe bai'r holl dystiolaeth wedi rhagflaenu'r cais a phe bai yna dystiolaeth nad oedd cyfran sylweddol o'r cwynion i Gomisiynydd y Gymraeg wedi'u cynnal, mae'n nodi y buasai'n rhaid i'w phenderfyniad fod wedi cymryd y rheiny i ystyriaeth.

Yr hawl i apelio

51. 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:

Tribiwnlys yr Haen Gyntaf (Hawliau Gwybodaeth)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Ffôn: 0300 1234504

Ffacs: 0870 739 5836

Ebost: grc@justice.gov.uk

Gwefan: www.justice.gov.uk/tribunals/general-regulatory-chamber

52. Os hoffech apelio yn erbyn hysbysiad penderfynu, gallwch gael gwybodaeth am sut i apelio ynghyd â'r ffurflenni perthnasol ar wefan y Tribiwnlys Gwybodaeth.
53. 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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