

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 June 2016

Public Authority: Powys County Council
Address: County Hall
Spa Road East
Llandrindod Wells
Powys
LD1 5LG

Decision (including any steps ordered)

1. The complainant has requested a copy of minutes of a meeting held on 15 November 2014 at The Flash Leisure Centre and various information regarding taxi journeys from Welshpool High School to Llanidloes High School. Powys County Council informed the complainant that it did not hold the above information. The Commissioner's decision is that Powys County Council has complied with its obligations under section 1(1) of the FOIA. The Commissioner does not require the public authority to take any steps.

Request and response

2. On 17 August 2015 the complainant wrote to Powys County Council and requested the following information:

- *"I request a copy of the minutes of a meeting to be made available to me.*

Meeting date 5 November 2014

Meeting Venue The Flash Leisure Centre

Case Reference [referenced specified]

PCC officers attending [named individual A], [named individual B] Central Support Services, [named individual C] Clerk to the appeal.

- *In addition I request a copy of examples of Taxi journeys from Welshpool High School to Llanidloes High School.*

How many times a week these journeys take place

The time these journeys take

The cost of these journeys to the council"

3. The Council responded on 14 September 2015. In respect of the minutes, it informed the complainant that no formal minutes were taken as the decision was recorded in the letter sent to the applicant and the letter is confidential. With regard to the taxi journeys, the Council confirmed that it has no taxis operating between Welshpool and Llanidloes.
4. Following an internal review the Council wrote to the complainant on 4 November 2015. The Council upheld its original response that it does not hold relevant information in respect of either item of the complainant's request.

Scope of the case

5. The complainant contacted the Commissioner 10 November 2015 to complain about the way her request for information had been handled.
6. With regard to the minutes, the complainant presented various arguments in support of her complaint which have been discussed in detail in paragraphs 12 and 13 of this notice. In respect of her request concerning taxi journeys, the complainant stated that she had spoken to two local taxi firms, who both verbally acknowledged that they drive individuals from Welshpool to Llanidloes. For further arguments in support of her complaint see paragraph 19 of this notice.
7. The scope of the Commissioner's investigation is therefore to consider whether the Council does hold relevant information in respect of either or both items of the complainant's request and in so doing, whether it has complied with its obligations under section 1(1) of the FOIA.

Reasons for decision

Section 1(1) – General right of access to information held

8. Under section 1(1) of the FOIA, 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.

9. Where there is a dispute regarding whether relevant information is held, 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 relevant information therefore, the normal standard of proof to apply is the civil standard of the balance of probabilities.
10. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
11. In this particular case, the Council has stated that it does not hold information in respect of either item of the request. However, the complainant does not accept this.

Item 1 – Minutes of specified meeting

12. The complainant has informed the Commissioner that on the day of the meeting, she was introduced to [named individual C] as the Clerk to the appeal who was not an active member of the discussion, and took notes/minutes. She added that the Council had acknowledged that notes were taken, stating in its review that 'no official minutes' were taken. The complainant considers that it is irrelevant whether they are called 'official' or 'unofficial' minutes or whether they are called 'notes' as there clearly is a written record and therefore evidence of this meeting documenting what was said by whom.
13. The complainant has further informed the Commissioner that both herself and her witness were promised the minutes/notes at the end of the meeting and in response to the Council's confirmation that there was no obligation to produce minutes, the complainant has stated that she would like to know why the Council has no obligation to produce them.
14. The Commissioner therefore asked the Council to respond to the complainant's statement that [named individual C] was present at the meeting solely to take minutes/notes. He also asked the Council to clarify its comments in the internal review that due to the nature of the meeting, it was under no obligation to produce minutes and asked it to confirm the nature of the meeting itself and whether it is the Council's

standard procedure to produce minutes/notes official or otherwise in such circumstances.

15. The Council has informed the Commissioner that [named individual C] who acted as the Clerk to the Appeal has confirmed that the notes he took during the course of the hearing were for the purpose of assisting the appeal panel in coming to their decision, and to enable the panel to provide the Appeal Outcome letter. [Named individual C] does not recall indicating that minutes of the meeting would be provided, although he is certain that the complainant would have been informed that she would receive an outcome letter setting out the reasons for the panel's decision.
16. [Named individual C] has confirmed that his notes were subsequently destroyed, and the Council has provided the Commissioner with an email from him confirming that this was the case. [Named individual C] also confirmed that this was the first (and only) such appeal he has been involved with and recalls looking at the Civica file to see how they had been dealt with previously. He further stated that he presumes there are no minutes for previous appeals either, otherwise he would have produced minutes for this one. The Council further informed the Commissioner that it had checked its paper file regarding this appeal, and the handwritten notes had not been inserted into the file.
17. The Council has also informed the Commissioner that it is not uncommon for minutes not to be taken in appeals of this nature. It added that no minutes are taken for many judicial processes including Planning Appeals and Employment Tribunals. In the County Court of the High Court, transcripts are only available if arranged by the parties to the action.
18. The Commissioner has considered the arguments put forward by the complainant and the Council's explanation. The Commissioner would point out that it is not within his jurisdiction to comment on whether information should be recorded, but merely to consider whether, based on the balance of probabilities, relevant information is held at the time of the request. The Commissioner has concluded that it is unlikely that relevant information was held at the time of the request and therefore that the Council has complied with its obligations under section 1(1) of the FOIA.

Item two – taxi journeys

19. The complainant does not accept the Council's response in relation to this item of her request. In addition to her argument that two local taxi firms have verbally acknowledged they drive individuals from Welshpool to Llanidloes, she has further stated that one firm has acknowledged

that it drives for the Council and indeed between Welshpool High School and Llanidloes High School and vice versa. She is further concerned because the response from the Council stated '*no taxis operating between Welshpool and Llanidloes*' without reference to high schools.

20. The Commissioner therefore contacted the Council and asked it to provide a full response to the above concerns from the complainant. He further asked the Council to provide, in the event that its position remained unchanged, full details and evidence of its search.
21. The Council subsequently confirmed to the Commissioner that as part of its enquiries, both schools were contacted, and the aide to the Head Teacher of Welshpool High School and the Head Teacher of Llanidloes High School both confirmed that they have checked with the appropriate staff and advised that the schools were not aware of any taxis which take pupils between Welshpool High School and Llanidloes High School.
22. The Council further informed the Commissioner that it had contacted both the Schools service (as they pay for the provision of home to school transport), and with its Passenger Transport Manager (who arranges home to school transport on behalf of the Council), and there is no record of any taxis operating between the two specified schools.
23. The Commissioner has therefore considered the arguments presented by the complainant and the explanation, (including details of its search), provided by the Council and he has concluded on the balance of probabilities, that no information is held in respect of this item of the complainant's request. He is therefore satisfied that the Council has complied with its obligations under section 1(1) of the FOIA in respect of item two of this request.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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