

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 November 2022

Public Authority: Powys County Council
Address: County Hall
Spa Road East
Llandrindod Wells
LD3 5LG

Decision (including any steps ordered)

1. The complainant requested information about subjects taught in three particular schools. Powys County Council (the Council) provided some information and stated other information is not held. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any additional information falling within the scope of the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 18 October 2021 the complainant wrote to the Council and requested information in the following terms:

"The data I request is the detail of the English and Welsh medium subjects taught in 3 schools, Caereinion, Llanfyllin and Llanidloes year 7 to 11, i.e. key stages 3 and 4, for the academic years of 2015/16, 2017/18 and 2018/19.

As I mentioned I have previously received such detail from the authority for years 2014/15, 2016/17 and 2019/20. I have attached the format used previously each time and obviously receiving this additional requested data in the same format makes direct comparison possible.

As my request for 2019/20 was supplied in the same format it appears to me that the data for the years I have requested will also be available”.

3. The Council responded on 16 November 2021 and provided the information for the years 2015/16 and 2017/18. In respect of the information for the period 2018/19 the Council stated that it did not hold this information and suggested the complainant contact the individual schools direct to obtain it. The Council upheld this position at the internal review stage.

Scope of the case

4. The complainant contacted the Commissioner on 8 February 2022 to complain about the way their request for information had been handled.
5. The scope of the Commissioner’s investigation is to consider whether the Council holds any additional information falling within the scope of the request other than that which it has disclosed, and specifically:
 - detail of the English and Welsh medium subjects taught in 3 schools, Caereinion, Llanfyllin and Llanidloes year 7 to 11, i.e. key stages 3 and 4, for the academic year 2018/19

Reasons for decision

Section 1 – general right of access

6. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
7. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant’s evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.

The Council's position

8. As background information the Council explained that the complainant has made a number of previous requests for information about the provision of secondary school education through the medium of Welsh. The information which the Council has previously provided to the complainant was generated by collecting specific information from individual schools on an annual basis via the completion of an Excel spreadsheet sent to each school. The information the complainant requested was then extrapolated from these larger spreadsheets. The Council explained that officers recall this process being undertaken as far back as 2008.
9. Despite comprehensive searches which the Council has undertaken, details of which are referred to below, the Council has been unable to find any record of any spreadsheet being sent to schools for the academic year 2018-2019 or any record of any returns from schools for this period. In summary, there is no evidence that schools were ever asked to complete a Welsh-medium return for the year 2018-2019.
10. The Council advised that information around Welsh medium subjects was collected annually and used, in part, to inform school budgets. Since the introduction of the new funding formula in April 2019 it was determined that there was no business need to collect the information. As such, no information is held for the academic year 2018/2019. However, by the start of the following academic year, a decision was taken that the data served a purpose other than for budget allocation and as such, the Council re-commenced its normal practice of issuing a spreadsheet to schools on an annual basis. The Council pointed out that the data has only ever been collected for information purposes and not as part of any performance indicator, measurement or checking on school compliance.
11. The Council advised the Commissioner that its School Services went through a period of re-organisation in 2018, which included major staffing changes. Given the period of change of senior personnel in particular, the Council believes this also had an impact on the reason why no Welsh-medium spreadsheet was issued to schools for the academic year 2018-2019.
12. In terms of searches undertaken, the Council confirmed that any information relevant to the request would be held in electronic format only. Comprehensive searches were undertaken of all areas where information could be held including searches of all relevant officers in Schools Services and the Council's Finance Business Partners dealing with schools as these are the only departments where information would likely be held.

13. Searches were undertaken on all individual officer's Onedrive and all shared drives for each of the service areas. In addition, comprehensive searches have been undertaken on all folders relating to 'Welsh-medium'. The Council provided the Commissioner with significant detail of the folders and areas that searches were undertaken and the nature of those searches.
14. The Council advised that the search terms used including the names of each of the schools referred to in the request, language uplift, Welsh language provision, language choice, schools delegated funding, questionnaire, WESP (Welsh in Education Strategic Plan) and return. The Council also confirmed that the searches were undertaken using search terms in both English and Welsh.
15. The complainant has alleged that the Council is required by WESP guidelines to monitor Welsh medium provision, and by default English medium provision within dual stream schools. The complainant has been in touch with the Welsh Government who advised that there is a duty on schools and local authorities to provide parents with information about the language medium used to deliver the school curriculum.
16. The Commissioner asked the Council whether it was required to collect the information requested. The Council advised that:

"Section 84 of The School Standards and Organisation (Wales) Act 2013 includes a statutory requirement for Councils to prepare a Welsh in Education Strategic Plan (WESP). It requires that the plan be submitted and agreed by Welsh Government and the relevant 3 year cycle appropriate to this request is the 2017-2020 cycle"
17. The Council provided the Commissioner with a copy of its current WESP which has been signed off by the Welsh Government. This sign off indicates that the Council has met its obligations in relation to the relevant legislation.
18. The Council confirmed that there is no statutory requirement for it to collect detailed information about the provision of Welsh medium subjects on a subject by subject basis from year 7 onwards at every dual stream secondary school. Whilst there is no statutory requirement to collect this information the Council acknowledges that it is good practice to collect the information to better understand what schools can, and do offer, and to determine whether there are any concerns over subject provision.
19. The Council also explained that the guidance requires it "to be able to set targets for the percentage of Year 9 learners assessed in Welsh first language and plans for increasing the proportion of teaching through the medium of Welsh in individual schools and/or specific stages of

education within a school. This has been interpreted and agreed by Welsh Government as requiring an overview of what Powys County Council will do to increase Welsh medium provision and not the monitoring of that provision on a subject by subject basis that the requestor feels the local authority should be doing. It requires that Powys County Council report on the percentage of learners doing Welsh as a first language and being entered for 5 or more Level 1 or two qualifications. It does not require us to know which subjects. In short, the WESP requires that Powys County Council sets targets for each outcome but does not require us to set targets for subject provision”.

The Commissioner’s conclusion

20. The Commissioner understands why the complainant has reason to believe that the information was held as the Council holds the information requested for other years. The Commissioner also notes the complainant is of the view that the Council has a statutory obligation to collect the information requested.
21. It is not the Commissioner’s role to establish what information a public authority *should* hold, or whether it has a requirement, statutory or otherwise to hold certain information. The Commissioner’s role is to make a judgement on whether the information *is* held on the civil standard of the balance of probabilities.
22. Based on the evidence available to him, the Commissioner is satisfied that the Council has carried out adequate searches, which would have been likely to locate information falling within the scope of the request. Based on the searches undertaken and the other explanations provided, as referred to above, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any additional information falling within the scope of the request other than that which is has already disclosed.

Right of appeal

23. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

24. 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.
25. 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

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

Deddf Rhyddid Gwybodaeth 2000 (Deddf 2000)

Hysbysiad penderfynu

Dyddiad: 30 Tachwedd 2022

Awdurdod Cyhoeddus: Cyngor Sir Powys
Cyfeiriad: Neuadd y Sir
Spa Road East
Llandrindod
LD3 5LG

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

1. Gofynnodd yr achwynydd am wybodaeth am bynciau a oedd yn cael eu dysgu mewn tair ysgol benodol. Fe roddodd Cyngor Sir Powys (y Cyngor) rywfaint o wybodaeth gan ddweud nad oes gwybodaeth arall yn cael ei chadw. Penderfyniad y Comisiynydd, yn ôl pwysau tebygolrwydd, yw nad yw'r Cyngor yn cadw unrhyw wybodaeth ychwanegol sy'n dod o fewn rhychwant y cais. Nid yw'r Comisiynydd yn ei gwneud yn ofynnol i unrhyw gamau gael eu cymryd.

Y cais a'r ymateb

2. Ar 18 Hydref 2021 ysgrifennodd yr achwynydd at y Cyngor gan ofyn am wybodaeth fel a ganlyn:

"The data I request is the detail of the English and Welsh medium subjects taught in 3 schools, Caereinion, Llanfyllin and Llanidloes year 7 to 11, i.e. key stages 3 and 4, for the academic years of 2015/16, 2017/18 and 2018/19.

As I mentioned I have previously received such detail from the authority for years 2014/15, 2016/17 and 2019/20. I have attached the format used previously each time and obviously receiving this additional requested data in the same format makes direct comparison possible.

As my request for 2019/20 was supplied in the same format it appears to me that the data for the years I have requested will also be available".

3. Ymatebodd y Cyngor ar 16 Tachwedd 2021 gan ddarparu'r wybodaeth ar gyfer y blynyddoedd 2015/16 a 2017/18. O ran yr wybodaeth am y cyfnod 2018/19 dywedodd y Cyngor nad oedd yr wybodaeth honno ganddo ac awgrymu y dylai'r achwynydd gysylltu â'r ysgolion unigol yn uniongyrchol i'w chael. Cadarnhaodd y Cyngor y safbwynt hwn adeg yr adolygiad mewnol.

Rhychwant yr achos

4. Cysylltodd yr achwynydd â'r Comisiynydd ar 8 Chwefror 2022 i gwyno am y ffordd yr oedd ei gais am wybodaeth wedi'i drin.
5. Rhychwant ymchwiliad y Comisiynydd yw ystyried a oes gan y Cyngor unrhyw wybodaeth ychwanegol sy'n dod o fewn rhychwant y cais heblaw'r hyn y mae wedi'i ddatgelu, ac yn benodol:
 - manylion y pynciau cyfrwng Cymraeg a Saesneg a oedd yn cael eu dysgu mewn 3 ysgol sef Caereinion, Llanfyllin a Llanidloes ym mlwyddyn 7 i 11, h.y. cyfnodau allweddol 3 a 4, ar gyfer blwyddyn academiaidd 2018/19

Y rhesymau dros y penderfyniad

Adran 1 – hawl gyffredinol i weld gwybodaeth

6. Mae adran 1 o Ddeddf 2000 yn dweud bod gan unrhyw berson sy'n gwneud cais am wybodaeth hawl i gael gwybod mewn ysgrifen gan yr awdurdod cyhoeddus a oes gan yr awdurdod wybodaeth o'r disgrifiad a bennwyd yn y cais ac, os oes, hawl i gael yr wybodaeth honno wedi'i chyfleu iddo.
7. Mewn achosion lle mae anghydfod yn codi ynghylch faint o wybodaeth wedi'i chofnodi a oedd gan awdurdod cyhoeddus adeg cais, bydd y Comisiynydd yn ystyried tystiolaeth a dadleuon yr achwynydd. Bydd hefyd yn ystyried y camau a gymerwyd gan yr awdurdod i wirio nad yw'r wybodaeth ganddo ac yn ystyried unrhyw resymau eraill sydd wedi'u cynnig gan yr awdurdod cyhoeddus i egluro pam nad yw'r wybodaeth ganddo. Bydd y Comisiynydd hefyd yn ystyried unrhyw reswm pam mae'n debygol neu'n annhebygol yn y bôn nad yw gwybodaeth yn cael ei chadw.

Safbwynt y Cyngor

8. O ran gwybodaeth gefndir esboniodd y Cyngor fod yr achwynydd wedi gwneud nifer o geisiadau blaenorol am wybodaeth am ddarpariaeth addysg ysgolion uwchradd drwy gyfrwng y Gymraeg. Cafodd yr wybodaeth y mae'r Cyngor wedi'i rhoi i'r achwynydd yn y gorffennol ei chreu drwy gasglu gwybodaeth benodol oddi wrth yr ysgolion unigol yn flynyddol drwy lenwi taenlen Excel a anfonid i bob ysgol. Yna, cafodd yr wybodaeth y gofynnodd yr achwynydd amdani ei hallosod o'r taenlenni ehangach hyn. Esboniodd y Cyngor fod swyddogion yn cofio'r broses hon yn cael ei chynnal mor bell yn ôl â 2008.
9. Er gwaethaf chwiliadau cynhwysfawr gan y Cyngor, y manylir arnyn nhw isod, nid yw'r Cyngor wedi llwyddo i ddod o hyd i unrhyw gofnod bod unrhyw daenlen wedi'i hanfon i'r ysgolion ar gyfer blwyddyn academaidd 2018-2019 nac unrhyw gofnod o unrhyw ymatebion gan yr ysgolion am y cyfnod hwn. I grynhoi, does dim tystiolaeth bod yr ysgolion erioed wedi llenwi ffurflen cyfrwng Cymraeg am y flwyddyn 2018-2019.
10. Dywedodd y Cyngor fod gwybodaeth am bynciau cyfrwng Cymraeg yn cael ei chasglu yn flynyddol a'i defnyddio, yn rhannol, i lywio cyllidebau ysgolion. Ers cyflwyno'r fformiwla ariannu newydd ym mis Ebrill 2019 penderfynwyd nad oedd angen busnes i gasglu'r wybodaeth. Gan hynny, does dim gwybodaeth yn cael ei chadw ar gyfer blwyddyn academaidd 2018/2019. Er hynny, erbyn dechrau'r flwyddyn academaidd ganlynol, penderfynwyd bod y data'n ateb diben ar wahân i ddyrannu cyllidebau ac oherwydd hynny fe ailddechreuodd y Cyngor ei arfer o anfon taenlen i'r ysgolion yn flynyddol. Tynnodd y Cyngor sylw at y ffaith mai dim ond at ddibenion gwybodaeth y mae'r data wedi'i chasglu erioed ac nid fel rhan o unrhyw ddangosydd perfformiad, gwaith mesur neu i wirio cydymffurfiaeth yr ysgolion.
11. Dywedodd y Cyngor wrth y Comisiynydd fod ei adran Gwasanaethau Ysgolion wedi mynd trwy gyfnod o ad-drefnu yn 2018, a oedd yn cynnwys newidiadau staffio mawr. O gofio'r cyfnod o newid ymysg y personél uwch yn benodol, mae'r Cyngor yn credu bod hyn hefyd wedi cael effaith ar y rheswm pam na chafodd taenlen cyfrwng Cymraeg ei hanfon i'r ysgolion ar gyfer blwyddyn academaidd 2018-2019.
12. O ran y gwaith chwilio a wnaed, cadarnhaodd y Cyngor y byddai unrhyw wybodaeth sy'n berthnasol i'r cais yn cael ei chadw ar ffurf electronig yn unig. Cynhaliwyd chwiliadau cynhwysfawr o bob man lle y gallai'r wybodaeth gael ei chadw gan gynnwys chwilio'r holl swyddogion perthnasol yn y Gwasanaeth Ysgolion ac ymysg Partneriaid Busnes Cyllid y Cyngor sy'n delio ag ysgolion gan mai dyma'r unig adrannau lle byddai gwybodaeth yn debygol o gael ei chadw.

13. Cafwyd chwiliadau ar OneDrive yr holl swyddogion unigol ac ar bob gyriant a rennir ym mhob un o'r meysydd gwasanaeth. Yn ychwanegol, gwnaed chwiliadau cynhwysfawr ar bob ffolder sy'n ymwneud â 'chyfrwng-Cymraeg'. Rhoddodd y Cyngor fanylion arwyddocaol i'r Comisiynydd am y ffolderi a'r manau a chwiliwyd a natur y chwiliadau hynny.
14. Dywedodd y Cyngor fod y termau chwilio a ddefnyddiwyd yn cynnwys enwau pob un o'r ysgolion y cyfeirir atynt yn y cais, cynnydd iaith, darpariaeth Gymraeg, dewis iaith, cyllid dirprwyedig ysgolion, holiadur, CSCA (Cynllun Strategol y Gymraeg mewn Addysg) a ffurflen. Cadarnhaodd y Cyngor hefyd fod y chwiliadau wedi'u gwneud gan ddefnyddio termau chwilio Cymraeg a Saesneg.
15. Mae'r achwynydd wedi honni bod canllawiau CSCA yn ei gwneud yn ofynnol i'r Cyngor fonitro'r ddarpariaeth cyfrwng Cymraeg, ac yn ddiodyfyn felly unrhyw ddarpariaeth cyfrwng Saesneg mewn ysgolion dwy-ffrwd. Mae'r achwynydd wedi bod mewn cysylltiad â Llywodraeth Cymru a ddywedodd fod ysgolion ac awdurdodau lleol o dan ddyletswydd i roi gwybodaeth i rieni am y cyfrwng iaith sy'n cael ei ddefnyddio i gyflwyno cwricwlwm yr ysgol.
16. Gofynnodd y Comisiynydd i'r Cyngor a oedd yn ofynnol iddo gasglu'r wybodaeth y gofynnwyd amdani. Dywedodd y Cyngor:

“Section 84 of The School Standards and Organisation (Wales) Act 2013 includes a statutory requirement for Councils to prepare a Welsh in Education Strategic Plan (WESP). It requires that the plan be submitted and agreed by Welsh Government and the relevant 3 year cycle appropriate to this request is the 2017-2020 cycle”
17. Rhoddodd y Cyngor gopi o'i CSCA presennol i'r Comisiynydd, a hwnnw wedi'i gymeradwyo gan Lywodraeth Cymru. Mae'r gymeradwyaeth hon yn dangos bod y Cyngor wedi bodloni ei rwymedigaethau mewn perthynas â'r ddeddfwriaeth berthnasol.
18. Cadarnhaodd y Cyngor nad oes gofyniad statudol iddo gasglu gwybodaeth fanwl am ddarpariaeth pynciau cyfrwng Cymraeg fesul pwnc o flwyddyn 7 ymlaen ym mhob ysgol uwchradd ddwy-ffrwd. Er nad oes gofyniad statudol i gasglu'r wybodaeth hon, mae'r Cyngor yn cydnabod ei bod yn arfer da casglu'r wybodaeth er mwyn deall yn well yr hyn y gall ysgolion ei gynnig, a'r hyn y maen nhw'n ei gynnig, ac er mwyn penderfynu a oes unrhyw bryderon ynghylch y ddarpariaeth pynciau.
19. Esboniodd y Cyngor hefyd fod y canllawiau yn ei gwneud yn ofynnol i'r Cyngor “to be able to set targets for the percentage of Year 9 learners assessed in Welsh first language and plans for increasing the proportion of teaching through the medium of Welsh in individual schools and/or

specific stages of education within a school. This has been interpreted and agreed by Welsh Government as requiring an overview of what Powys County Council will do to increase Welsh medium provision and not the monitoring of that provision on a subject by subject basis that the requestor feels the local authority should be doing. It requires that Powys County Council report on the percentage of learners doing Welsh as a first language and being entered for 5 or more Level 1 or two qualifications. It does not require us to know which subjects. In short, the WESP requires that Powys County Council sets targets for each outcome but does not require us to set targets for subject provision”.

Casgliad y Comisiynydd

20. Mae'r Comisiynydd yn deall pam mae gan yr achwynydd reswm i gredu bod yr wybodaeth yn cael ei chadw gan fod yr wybodaeth y gofynnwyd amdani gan y Cyngor am flynyddoedd eraill. Mae'r Comisiynydd hefyd yn nodi bod yr achwynydd o'r farn bod y Cyngor o dan rwymedigaeth statudol i gasglu'r wybodaeth y gofynnwyd amdani.
21. Nid sefydlu pa wybodaeth y *dylai* awdurdod cyhoeddus ei chadw yw rôl y Comisiynydd, neu a ydy hi'n ofynnol, yn statudol neu fel arall, i'r Cyngor gadw gwybodaeth benodol. Rôl y Comisiynydd yw llunio dyfarniad ynghylch *a ydy'r* wybodaeth yn cael ei chadw, a hynny ar sail safon sifil pwysau tebygolrwydd.
22. Ar sail y dystiolaeth sydd ar gael iddo, mae'r Comisiynydd yn fodlon bod y Cyngor wedi cynnal chwiliadau digonol, a fyddai wedi bod yn debygol o ddod o hyd i wybodaeth sy'n dod o fewn rhychwant y cais. Ar sail y chwiliadau a wnaed a'r esboniadau eraill a ddarparwyd, y cyfeirir atynt uchod, mae'r Comisiynydd yn fodlon nad oes gan y Cyngor, yn ôl pwysau tebygolrwydd, unrhyw wybodaeth ychwanegol sy'n dod o fewn rhychwant y cais heblaw'r hyn sydd eisoes wedi'i ddatgelu.

Yr hawl i apelio

23. 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

24. Os hoffech apelio yn erbyn hysbysiad penderfynu, gallwch gael gwybodaeth am sut i apelio ynghyd â'r ffurflenni perthnasol ar wefan y Tribiwnlys Gwybodaeth.
25. Dylai unrhyw Hysbysiad Apelio gael ei gyflwyno i'r Tribiwnlys o fewn 28 diwrnod (calendr) ar ôl dyddiad anfon yr hysbysiad penderfynu hwn.

Llofnod

Joanne Edwards
Uwch-swyddog Achosion
Swyddfa'r Comisiynydd Gwybodaeth
Wycliffe House
Water Lane
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SK9 5AF