

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 May 2012

Public Authority: Cardiff City Council
Address: County Hall
Atlantic Wharf
Cardiff
CF10 4UW

Decision (including any steps ordered)

1. The complainant requested information regarding Cardiff City Transport Services Limited, a private limited company which is wholly owned by Cardiff Council ('the Council') and 2 Travel Group PLC. The complainant has not received a substantive response to this request. The Commissioner's decision is that the Council failed to respond to the request and therefore breached its obligations under section 10 of the FOIA. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - state what information it holds within the scope of the complainant's request; and
 - communicate the information it holds to the complainant and/or issue a refusal notice in respect of all or the parts of the information it intends to withhold in accordance with section 17 of the FOIA.
2. 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

3. On 24 January 2012, the complainant wrote to the Council and requested information in the following terms:

"We are seeking information held by Cardiff Council ("Council") in relation to Cardiff City Transport Services Limited trading as Cardiff Bus ("Cardiff Bus") and in relation to 2 Travel Group PLC ("2 Travel". The information we are seeking is a response to the sub-questions posed against each of the 3 issues below:

- 1 In relation to the Welsh Audit annual letter for 2007/2008, published in December 2008 with particular reference to paragraph 25 which states:

"in November 2008 the OFT published a decision that Cardiff City Transport Services Limited, a private limited company which is wholly owned by the Council, had engaged in predatory conduct intended to eliminate a competitor between April 2004 and February 2005. The Council needs to carefully consider the OFT judgment and to consider what action it can take to ensure that no repeat of these circumstances is possible. We (Welsh Audit Office) are currently considering the judgment made by the OFT and what action, if any, we are required to take";
- 1.1 Details of the Council's response to the above letter;
- 1.2 Details of all correspondence between Council and Cardiff Bus on this issue.
- 2 In relation to the ownership of Cardiff bus by the Council:
 - 2.1 Details of any policy(ies) the Council has in place to ensure that Cardiff Bus is run at arm's length to the Council in accordance with the Transport Act 1985.
 - 2.2 Details of any proposal/ business case the Council has to sell Cardiff Bus (including as to timetable and process by which it would be sold) and what value is placed on Cardiff Bus.
- 3 In relation to the White bus services and/or the competition policy by Cardiff Bus against 2 Travel, that Cardiff Bus had in place between 19 April 2004 and 18 February 2005, that the Office of Fair Trading found in its decision dated 18 November 2008 to be an abuse by Cardiff Bus of its dominant market position:
 - 3.1 Who (or which department) within the Council would have informed by Cardiff Bus of the White bus services and/or its competition policy:
 - 3.2 Details of what reports, documents, advice and or information regarding the White Bus services and/or the competition policy

by Cardiff Bus against 2 Travel, and the subsequent OFT investigation, did Cardiff Bus and/or its Council appointed Chairman and non-executives give to:

- (a) The Council Chief Executive; and
- (b) The person (or department) identified in answer to the question posed at 3.1 above"

The complainant requested information for the period 1 November 2003 to 23 January 2012 and asked for it to be provided in electronic format if possible.

- 4. The complainant wrote to the Council on 24 February 2012 regarding the fact he had not received a response to the request.

Scope of the case

- 5. The complainant contacted the Commissioner on 28 February 2012 to complain about the Council's failure to respond to his request for information.
- 6. The Commissioner wrote to the Council on 2 April 2012 reminding it of its obligations under the FOIA to respond to requests within 20 working days of receipt. The Commissioner asked the Council to respond within 10 working days.
- 7. On 2 April 2012 the complainant asked the Commissioner to issue a decision notice to compel the Council to issue an appropriate response.
- 8. On 18 April 2012 the complainant confirmed to the Commissioner that he had still not received a response from the Council.

Reasons for decision

- 9. Sections 1 and 10 of the FOIA provide a general right of access to recorded information held by public authorities. These sections provide that when a written request for information is made, the public authority must state whether it holds that recorded information within 20 working days. If it does, it must provide that information within 20 working days unless a valid reason for not doing so exists under the FOIA. If such a reason does exist, a refusal notice should be issued in accordance with section 17 of the FOIA, again within 20 working days.

10. By failing to respond to the request at all, the Council breached section 10 of the FOIA.

Other matters

11. The Commissioner is particularly concerned at the delay experienced in this case. The request was submitted on 24 January 2012 and no response or acknowledgment has been issued. It also appears that the Council made no proactive attempts to keep the complainant informed in relation to the ongoing delays. This is clearly not within the spirit or the letter of the FOIA and may be indicative of underlying issues that the Council needs to address such as inadequate resources or staff training. The Commissioner trusts that the Council will carefully consider this and ensure that it makes appropriate improvements in the future.

Right of appeal

12. 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

13. 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.
14. 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