

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 October 2022

**Public Authority:** Swansea Council  
**Address:** Civic Centre  
Oystermouth Road  
Swansea  
SA1 3SN

### Decision (including any steps ordered)

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1. The complainant has requested information from Swansea Council ("the Council") regarding personal data breaches since the UK General Data Protection Regulation (UK GDPR) came into force. The Council provided the information that it holds, however, the complainant was not satisfied with some of the information, as they felt it was incorrect. The Council failed to complete an internal review response until the Commissioner explained it needed to be carried out.
2. The Commissioner's decision is that, on the balance of probabilities, the Council has provided the complainant with the information it holds in relation to the request. The Commissioner cannot consider the accuracy of the information provided.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

### Request and response

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4. On 3 December 2021, the complainant wrote to the Council and requested information in the following terms:

"From 25 May 2018 to present, please provide:

1) The total number of personal data breaches reported to the Council for each month.

For all personal data breaches since 25 May 2018, please provide:

- a) Date the breach was reported to the Council (ie SII A29WG 'become aware' of a breach)
  - b) Section/department of the Council responsible
  - c) General description of each personal data breach (eg. Oracle database deleted requiring all pupil/parent/guardian records to be re-captured and re-entered, diary left on bus containing vulnerable service users, P45 sent to wrong household etc.)
  - d) the number of individuals affected by each personal data breach."
5. The complainant contacted the Commissioner on 6 January 2022, advising that they had not received a response to the request. The Commissioner contacted the Council on 19 January 2022, advising it to respond to the request.
  6. The Council responded on 20 January 2022. It provided a spreadsheet detailing the information that the complainant had requested.
  7. The complainant requested an internal review on 21 January 2022.
  8. The Commissioner asked the Council to carry out an internal review on 4 March 2022, and the Council responded to the Commissioner, advising that the request for an internal review had been logged.
  9. On 24 March, the complainant contacted the Commissioner again to advise that they had still not received an internal review response.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 6 January 2022 to complain about the way their request for information had been handled. This was originally due to no response to their FOIA request.
11. The complainant had to contact the Commissioner again on 3 March 2022, as the Council had failed to provide an internal review response.
12. During the Commissioner's investigation, he asked the Council to carry out an internal review response. The Council originally advised it had not received the request for an internal review, however after the Commissioner provided evidence that it had and further confirmed that the complainant wanted an internal review, it went on to then carry out an internal review dated 6 October 2022.

13. The Commissioner considers that the scope of this case is to determine if, on the balance of probabilities, any further recorded information within the scope of the request is held by the Council.

## **Reasons for decision**

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### **Section 1 – general right of access**

14. Section 1 of FOIA states:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him”.

15. In scenarios such as this, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
16. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

### **The complainant’s view**

17. The complainant has explained that they believe the public authority has not provided the correct information in relation to their response. They say that from other evidence that they have, the details of the information provided, does not match the other information available to them.
18. The complainant says that they are not contesting the accuracy of the recorded information, but that the Council has provided the wrong information in relation to their request.
19. The complainant has also raised several other concerns regarding the practices of the Council and how it handles FOIA/EIR requests.

### **The Council’s view**

20. The Council considers that it has provided the recorded information which it holds to the complainant.

21. Within the Council's internal review, it added a monthly total number of data breaches onto the spreadsheet that was provided in response to the original request.
22. The Council explained in the internal review response that it is satisfied that all the information relevant to the request has been provided to the complainant.

### **The Commissioner's View**

23. The Commissioner's role is not to consider whether a public authority should hold information that has been requested but whether, on the balance of probabilities, it does or does not hold it.
24. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that the public authority holds no further relevant information.
25. In his guidance, the Commissioner recognises that FOIA only applies to information that a public authority already holds in recorded form at the time of a request.
26. The Commissioner has carefully considered the points made by the complainant and the Council. The complainant has made reasonable arguments, however, some of these arguments are outside the scope of FOIA and are beyond what the Commissioner can investigate as part of his remit.
27. In the circumstances of this case, the Commissioner acknowledges why the complainant would consider that the Council's response was not accurate/the correct information had not been provided. However, whilst the Commissioner can see the delay that was caused in reporting a data breach, this decision notice is not the correct place for a determination to be made as it relates only to the FOIA request.
28. The Commissioner acknowledges that the complainant does not consider that they are disputing the accuracy of the information, however, he must stress that he cannot assess the accuracy of the information given, as it does appear that the complainant is questioning the accuracy of the information. While he notes why the complainant has done this, it is not within his remit to make any determinations on it.
29. The Commissioner notes that the Council's delayed responses throughout this complaint have not helped, however, he is satisfied that all of the information it holds, in relation to this request, has been provided to the complainant.

30. In light of the above, the Commissioner is satisfied that, on the balance of probabilities, the Council has provided the complainant with all the information held, in relation to their request.

### **Section 10 – time for compliance**

31. Section 10 of FOIA requires a public authority to confirm whether or not it holds the requested information and to communicate any non-exempt information within 20 working days of receiving an information request.
32. In this case, the complainant made their request for information on 3 December 2021 and the Council did not respond until 20 January 2022. Therefore, it breached section 10 of FOIA in responding to the request.

### **Other matters**

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33. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather they are matters of good practice which are addressed in the Code of Practice issued under section 45 of FOIA.
34. 23. Part 5 of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The approach of the Commissioner is that internal reviews should be completed within a maximum of 40 working days. Clearly, the Council failed to keep to this timescale.
35. The Commissioner also reminds the Council that when he advises that an internal review has been requested by a complainant, that they carry out the internal review. The Council only contacted the complainant after the Commissioner had asked them to carry out the review. The Commissioner notes that the Council appeared to be confused by which request the internal review was for and, as such, they contacted the complainant. However, the contact was made via an email address that the complainant was using for a different case, which led to the confusion. The Commissioner does not expect to have to ask a public authority more than once to carry out an internal review and implores the Council to engage with him far more proactively if faced with a similar complaint in future.
36. The Commissioner wants to also remind the Council that it needs to clearly log each case separately, so that there is no confusion regarding which case belongs to which complainant. He also advises it to ensure that the correct case reference is on a letter/email before it is sent out.

## Right of appeal

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37. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.

39. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**