

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 4 October 2018

**Public Authority:** Broads Authority  
**Address:** Yare House  
62-64 Thorpe Road  
Norwich  
Norfolk  
NR1 1RY

#### **Decision (including any steps ordered)**

---

1. The complainant has requested information relating to rowing craft on the Broads and to be provided with an index of all policies, procedures, guidance and reference documents held across the entire authority for any purpose. The authority provided some information and declined to consider one element of the request as it considered that it was unclearly worded.
2. During the Commissioner's investigation the authority confirmed that it now wished to rely on section 12 of the FOIA for the element of the request that was not initially processed.
3. The Commissioner's decision is that the authority is entitled to rely on section 12 of the FOIA. She has however found the authority in breach of sections 16 and 17 of the FOIA.
4. In relation to section 16 of the FOIA, the Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with advice and assistance to allow him, if it is possible to do so, to formulate a request seeking the information described in question 8 of this request (taking into account question 1 and 3 of the complainant's request of 4 January 2018 which has been aggregated) which can be answered

within the appropriate limit. If the authority considers it is not possible for the request to be reformulated in such a manner, it is to explain to the complainant why it says that is the case.

5. 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**

---

6. On 10 December 2017, the complainant wrote to the authority and requested information in the following terms:

"1. Locations on the Norfolk Broads where rowing craft are exempted from the normally enforceable speed limit and reasons why they are exempted.

2. Locations where rear facing rowing craft are permitted to race individually i.e. against their personal best times or as 2 or more craft collectively.

3. Any requirements or stipulations laid down by the Broads Authority in respect of 1 or 2 above to allow this to occur.

4. Criteria Broads Authority has for the marking and identification of craft (i.e. in the event of collision) using the waterways of the Norfolk Broads and any exemptions applied with reasons why.

5. Whether the Broads Authority agrees that rowing craft can "at whim" accelerate, decelerate, change direction, apply braking and effect an emergency stop, steer, rotate even through 180 degrees if desired (all as in fact required by novice juniors at Youth Silver Award) and given speeds approaching 15 mph are clearly definable as a powered vessel. If the BA feels they are not a powered vessel then on what basis with specific examples in clarification.

6. The Broads Authorities "documented" insurance requirements for high speed "rear facing" crewed rowing vessels which can proceed at circa 15mph and can be circa 13.5m (45ft) in length.

7. I understand given my previous requests circa July of this year that the BA has never assessed the risks high speed rear facing boats represent to other broads users but now formally request copies of any such documented risk assessment or confirmation that none exist.

8. I would like to receive a comprehensive copy of the Broads Authorities "index" of its own internal reference documents as in the organisations documents provided for procedural, policy, guidance, safety and any other purposes."
7. The authority responded on 4 January 2018. It provided a response to questions 1, 2, 3 and 4 and confirmed that it did not consider question 5 to be a valid FOIA request. In relation to questions 6 and 7 it confirmed that the information is not held. For question 8 it stated that could make no sense of this element of the request so could not respond.
8. The complainant requested an internal review on 10 January 2018. He questioned some of the information provided and confirmed that he disagreed question 8 was worded unclearly.
9. The authority carried out an internal review and notified the complainant of its findings on 26 January 2018. It provided further explanations and information to the complainant and confirmed, for question 8, that it remained of the opinion that this element of the request was unclear. It informed the complainant that it does not have a single "index" which covers all the various documents requested and the authority has many procedures, policy documents, guidance documents and health, safety and environment documents in place. It asked the complainant to rephrase the question and to confirm exactly what was being requested.

### **Scope of the case**

---

10. The complainant contacted the Commissioner on 20 February 2018 to complain about the way his request for information had been handled. He raised concerns over the authority's responses to questions 1, 2, 4 and 8. In relation to questions 1 and 2 he stated that the information disclosed related to motorised support vessels whereas he requested information relating to rowing crews. For question 4, the complainant stated that the initial response was inaccurate. Regarding question 8 he stated that this element of the request was clearly worded and therefore the authority should have now responded to it. For clarity however, he specifically stated that he requires an:
- "index of all procedures, policy documents, guidance documents and health and safety documents". He has stated that this should have reasonably been provided in whatever form it exists."
11. During the Commissioner's investigation further explanation and information was supplied to the complainant in relations to questions 1, 2, 4 and 8 of the request. The complainant was then asked to consider

whether this additional information now satisfied the terms of his request.

12. The complainant responded. No further issues were raised in relation to questions 1 and 2. For question 4 the complainant stated that the authority's initial response was entirely incorrect and therefore it would be reasonable to receive an apology from the authority for this. In relation to question 8 he stated that he was not satisfied to just receive a link to section 5 of the authority's publication scheme appendix (which provides a list of its policies and procedures) and stated again that he required all internal reference documents across the entire authority – all procedural, policy, guidance, safety documents and any others held for any other purpose.
13. In relation to question 4, the Commissioner cannot compel a public authority to apologise. She therefore considers this element of the request to now be resolved. The complainant has now received further explanations and information which satisfies this element of the request.
14. The remainder of this notice will therefore address question 8 of the request only. The authority has now confirmed that it wishes to claim a late reliance on section 12 of the FOIA. It wishes to now aggregate the cost of compliance with question 8 and the cost of compliance with another request made by the complainant on 4 January 2018 (on which the Commissioner has also served a decision notice; case reference FS50727928) in accordance with regulation 5 of the Fees Regulations.
15. The Commissioner considers the authority is entitled to claim a late reliance on the application of a particular exemption; in this case section 12. The question now for the Commissioner to consider is whether the authority is entitled to aggregate the cost of complying with question 8 of this request and the cost of complying with the complainant's request of 4 January 2018. As section 12 has been claimed, the Commissioner must also consider whether the authority has met its obligations under section 16 of the FOIA.

## **Reasons for decision**

---

16. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to comply with it.
17. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request;

18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the authority. A public authority can take into account the time and cost involved in carrying out the following activities under section 12 of the FOIA:

- (a) determine whether it holds the information;
- (b) locate the information, or a document which may contain the information;
- (c) retrieve the information, or a document which may contain the information; and
- (d) extract the information from a document containing it.

18. Where a public authority claims that section 12 of the FOIA is engaged it should, *where reasonable*, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

19. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied. Those conditions require the requests to be:

- made by one person, or by different persons who appears to the public authority to be acting in concert or in pursuance of a campaign;
- made for the same or similar information; and
- received by the public authority within any period of 60 consecutive working days.

20. Dealing with the first bullet point, both requests have been made by the complainant so this condition is met. The Commissioner also considers that this request relates to any extent to similar information the complainant requested in his January request. They are linked to and stem from the same issue (the complainant's collision with a vessel from a rowing club) and therefore can be said to have an overarching theme in terms of the information that has been requested. The second condition outlined above is therefore met.

21. Turning now to the third condition, the Commissioner notes that the Fees Regulations do not cover how to reconcile the ability to aggregate requests received over 60 consecutive working days with the public authority's obligation to respond to requests within 20 working days as

required by section 10(1) of the FOIA. However, the Commissioner's approach is to allow the aggregation period to only run up to 20 working days 'forward' from the date of any single request under consideration to take into account the requirements of section 10(1). The aggregation period will however be able to run up to 60 days 'backwards' from the date of any single request under consideration.

22. The requests were made within the same 20 working day period; the first request was made on 10 December 2017 and the second request was made on 4 January 2018. Considering the first request was made on a Sunday, so the statutory timeframe for compliance did not commence until Monday 11<sup>th</sup> December, and then there followed three public holidays (Christmas Day, Boxing Day and New Year's Day), the second request was made on the 16<sup>th</sup> working day following the receipt of the first request. Therefore the third condition outlined in section 5 of the Fees Regulations is met.
23. As the three conditions outlined in regulation 5 of the Fees Regulations are met, the Commissioner is satisfied that the complainant's requests can be aggregated for the purposes of section 12.
24. In the notice she served for the complainant's request of 4 January 2018 (reference FS5050727928), the Commissioner considered the authority's cost estimation for one element of the request. The authority estimated that it would take 25.6 hours to retrieve and extract the remaining requested information (a small element of it was disclosed). The request related to the reported water incidents from January 2013 to the date of the request. The authority advised that in total there were 513 incidents falling within the scope of this element of the request. It provided a small amount of information for each incident but explained what would be involved in providing the remaining information. It estimated that it would take 3 minutes per incident to retrieve and extract the additional information requested, where this was recorded and for those where some of the information was missing a while longer. The Commissioner accepted this estimation and concluded that section 12 of the FOIA applied to the January request.
25. As the cost limit would be exceeded by at least 7 hours if the authority was to comply with the 4 January 2018 request alone and the Commissioner is satisfied that both requests can be aggregated, it follows that section 12 of the FOIA applies to this request as well.

## **Procedural matters**

26. The complainant disputes that the authority required clarification in respect of question 8 and remains of the opinion that this element of the request was clearly worded. He therefore considers that the authority delayed responding to this element of the request.
27. The Commissioner considers the authority's initial concerns over this element of the request related to the extent of the request, what it would cover as currently worded, the work involved in that and whether the complainant really wanted all that information or not. She does not agree that it could not be understood from how it was worded what information was being requested, it was more an issue of the extent of information it actually did cover and whether the complainant really wanted all of that and to require the public authority to go to the lengths of obtaining and providing it. She also does not consider the request could be read as having more than one interpretation.
28. That being said, the Commissioner is the opinion that there is nothing stopping a public authority engaging with an applicant in such situations and potentially offering advice and assistance in accordance with section 16 of the FOIA to enable them to make a reframed request if they are willing to do so (in fact she would consider this a matter of good practice). But if the applicant is not willing to reframe or reword the request, or if they do but still wish to pursue the first request as it was originally worded, the public authority is still obliged to respond to the first request in accordance with the FOIA within 20 working days of receipt.
29. As the authority did not, and did not apply section 12 of the FOIA until much later, the Commissioner has found the authority in breach of section 17 of the FOIA.
30. The application of section 12 triggers section 16 of the FOIA; the duty to provide advice and assistance where reasonable to those proposing to or have made a request. As the authority did not apply section 12 to this request until part way through the Commissioner's investigation it has not to date considered its obligations under section 16 of the FOIA or indeed met them.
31. In this case, the Commissioner considers that it would be reasonable to offer the complainant some advice and assistance. Had it applied section 12 and issued a notice to this effect within 20 working days of the request it could have explained how in practice the request as currently worded covered a vast amount of information and time, what information it could provide within the cost limit and explained how the

complainant could have refined his request (i.e. limiting to certain departments or topic or key procedures and guidance).

## Right of appeal

---

32. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

33. 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.
34. 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

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**