

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 October 2018

Public Authority: The 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 reported safety incidents since January 2013 and any correspondence between the Broads Authority (the authority) and rowing clubs on matters of safety. Initially the authority applied section 12 of the FOIA but at the internal review stage provided what it believed to be the required information.
2. During the Commissioner's investigation the authority confirmed that for questions 1 and 3 of the request it wished to rely on section 12 of the FOIA. For question 2, it confirmed that it does not hold any further recorded information.
3. The Commissioner's decision is that the authority is entitled to rely on section 12 of the FOIA for questions 1 and 3. For question 2, the Commissioner is satisfied that on the balance of probabilities the authority does not hold any further recorded information. The Commissioner also considers the authority breached section 16 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 further advice and assistance to allow him, if it is possible to do so, to formulate a request seeking the information requested in question 1 and 3 of the request

(taking into account question 8 of the complainant's request dated 10 December 2017 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 4 January 2018, the complainant wrote to the authority and requested information in the following terms:
 - "1. Copies of all records in whatever form of "on" or "adjacent to" the water safety incidents since 1 Jan 2013 to current date, including incident date, nature of occurrence, how reported, who investigated, investigation findings and any actions resulting.
 2. Copies of any correspondence letter, email, notes of discussion or minutes between the BA & Rowing Clubs on matters relating to safety since 1 Jan 2013 to response supply date. Whilst I appreciate these might be redacted to remove names where this is justifiably appropriate I would expect to receive the otherwise complete original detailed document regardless on the basis it is Public Organisation to Organisation.
 3. Copy of the original "Broads Control" incident Logs please since 1 Jan 2013 or earlier to current date."
7. The authority responded on 12 January 2018. It began by seeking clarification from the complainant but ended its response by saying regardless of what clarification is provided it estimated that the cost to comply with the request would exceed the appropriate limit.
8. The complainant responded on 15 January 2018. He provided the authority with the clarification it needed and suggested that a link to its IRIS (the authority's Incident and Investigation Reporting system) summary may well be suffice.
9. The authority responded on 13 February 2018. It provided the complainant with the information it considered fell within the scope of

the request or would satisfy his requirements. It therefore considered that it had now responded to the request in accordance with the FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 21 February 2018 to complain about the way his request for information had been handled. He stated that the authority had released information he had already received and had failed to provide any information in respect of question 2. He confirmed that the IRIS summary he had received provided poor information and fell short of what he had actually requested.
11. During the Commissioner's investigation it was determined that the authority wishes to rely on section 12 of the FOIA for questions 1 and 3. In relation to question 2, its position is that no further recorded information is held.
12. The Commissioner therefore considers the scope of this investigation to be to determine whether the authority is entitled to rely on section 12 of the FOIA for questions 1 and 3 and as section 12 triggers the duty to provide and assistance, whether the authority has met its obligations under section 16 of the FOIA. In relation to question 2 the Commissioner will consider whether on the balance of probabilities the authority holds any further recorded information to that already provided.

Reasons for decision

Section 12 – cost of compliance, questions 1 and 3 of the request

13. 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.
14. 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.
15. 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.
 16. Dealing with question 1 first, the authority has already disclosed a summary from IRIS which provides the incident date and nature of occurrence. It stated that there are no searchable fields or subject boxes that would provide the additional information requested. This information would only be obtainable, where recorded, from additional sheets on the IRIS system. The sheets also contain information that has not been requested so the authority would have to review these for each incident and extract the remaining requested information from the information that it outside the scope of the request.
 17. The authority explained that there were 513 incidents falling within the scope of the request. In order to retrieve and extract the remaining information, it would have to go into each individual incident on IRIS and review three additional sheets of data. It believes there will also be some cases where not all of the remaining information has been recorded. The authority stated that it would take 3 minutes to go into an incident and retrieve the additional information from the three supplementary sheets. For 513 incidents it estimates that it would take 25.6 hours to comply with this element of the request.
 18. For those incidents where all the requested information is not available, it estimates that it would take it a further 2 hours to retrieve the information not held on IRIS from other sources.
 19. It also commented that the complainant has also asked for "Any actions resulting" for each incident. It stated that this information would not necessary be found on the IRIS system and may be that an incident would be taken through to the safety committees. This element of the request may therefore have to be satisfied by consulting other records.
 20. The Commissioner has reviewed the IRIS summary provided to the complainant. She notes that this contains fairly limited information on the incidents recorded (incident number, date of incident, location, nature of activity etc). The authority has explained that in order to provide the level of detail the complainant requires for each incident it

would have to go into each individual incident on the IRIS system and consult three additional sheets of data. The Commissioner understands that these additional sheets contain the remaining requested information, where recorded, but also other information that has not been requested. The authority would therefore need to extract what has been requested from what has not and consult other record sources for those cases where the information has not been recorded.

21. The Commissioner considers the authority's estimate of 3 minutes per incident appears reasonable from the way the authority has described how the information is held. As there are 513 incidents falling within the scope of the request, the authority has estimated that it would take 25.6 hours to retrieve and extract the remaining requested information. As detailed above, the cost limit prescribed by the FOIA is 18 hours. Compliance with this element of the request as it is currently worded would therefore exceed the appropriate limit by 7 hours. Therefore, the Commissioner is satisfied that section 12 of the FOIA applies.
22. Section 12 has also been applied to question 3 of the request on an aggregated basis. The Commissioner considers the authority is permitted to aggregate both elements of the request for the purposes of section 12. They are requests for very similar information relating to an overarching theme and have been made within the same communication to the authority (thereby satisfying the requirement for the requests to have been made within 60 consecutive working days).
23. As the Commissioner has already accepted that the cost limit would be exceeded if the authority was to comply with question 1 alone, it follows that it would exceed the cost limit further if the authority was to comply with question 3. Section 12 of the FOIA therefore applies to this element of the request as a result of the aggregation of both elements of the request.

Question 2 – is the information held?

24. Initially the authority applied section 12 of the FOIA to this element of the request. At the internal review stage however it disclosed a copy of its Code of Conduct for the use of coaching vessels, a map showing rowing locations and also provided a link to its Navigation Committee papers, which are already in the public domain. It then informed the complainant that it does not hold any further recorded information falling within the scope of this element of the request. It stated that it had carried out a search and could find no indexed correspondence with Rowing Clubs on safety matters.
25. The complainant informed the Commissioner that he remained dissatisfied with the authority's handling of this element of the request.

He stated that he has not been provided with any recorded information of the nature specified.

26. During her investigation the Commissioner asked the authority to explain its position and what searches it had undertaken to date. She also asked the authority to carry out fresh searches to ensure that it does not hold any further recorded information.
27. The authority confirmed that it consulted the Head of Ranger Services who in turn made enquiries of the Ranger Team and the Rangers for the River Yare and Waveney. It also confirmed that the head of Ranger Services went through her own records and files and those of her predecessor. No further recorded information was identified. It commented that there will be communications between rowing clubs on matters such as tolls but this is not the information being asked for here.
28. It went on to say that no further recorded information is held for the following reasons:
 - "The clubs are generally well-run.
 - They are subject to their own safety standards with British Rowing, to which they will report on such matters.
 - Safety issues can be taken up with the Boat Safety Management Group, but not exclusively.
 - The clubs do not generate much by way of either correspondence on or about safety issues.
 - One of our co-opted Members can bring rowing safety issues to the Navigation Committee.
 - The rowing clubs will receive our Notices to Mariners and newsletters.
 - The Clubs have their own safety officers"
29. It explained that it undertook fresh enquiries and searches as requested by the Commissioner and it is confident that no further recorded information exists.
30. The Commissioner has enquired of the searches undertaken and requested that the authority carries fresh searches and enquiries, as a result of the complainant's dissatisfaction. She is now satisfied that, on the balance of probabilities, all relevant enquiries have been made and

appropriate searches undertaken and the authority does not hold any further recorded information falling within the scope of the request.

Procedural matters

31. The application of section 12 triggers the duty to provide advice and assistance to applicants who propose to make, or have made, requests for information so far as it is reasonable to do so under section 16 of the FOIA. The Commissioner has reviewed the authority's refusal notice and notes that it did inform the complainant that it could provide a summary of incidents within the cost limit from its IRIS system.
32. However, the authority did not explain what *further* information could be provided within the cost limit if the request was refined. In addition to the IRIS summary it is possible that the authority could potentially provide the additional information that the IRIS summary does not supply for a certain amount of reported incidents or for reported incidents within a tighter timeframe.
33. Although some advice and assistance was provided, the Commissioner considers that the authority could have provided more by explaining what, if any, further information could have been provided within the 18 hour limit in order to assist the complainant in making a more refined request if he is wished. The Commissioner has therefore concluded that the authority breached section 16 of the FOIA in this case.

Other matters

34. The Commissioner considers that the authority would have been entitled to rely on section 12 for question 2 as well, considering that the authority has demonstrated that compliance with question 1 of the request alone would exceed the cost limit. Public authorities are entitled to aggregate requests provided the requirements outlined in regulation 5 of the Fees Regulations are met.

Right of appeal

35. 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

36. 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.
37. 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
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