

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 4 December 2012

Public Authority: Marine Management Organisation

Address: Lancaster House
Hampshire Court
Newcastle upon Tyne
NE4 7YH

Decision (including any steps ordered)

1. The complainant requested information from the Marine Management Organisation ("MMO") about the selection process for a fishing industry management group. Following the Commissioner's intervention, the MMO either disclosed information, or confirmed that it did not hold information, in respect of each of the different parts of the request.
2. The Commissioner's decision is that the MMO has not complied with section 10 of FOIA in its handling of the request.

Request and response

3. On 8 March 2012, the complainant wrote to the MMO and requested information in the following terms in relation to a fishing industry management group:

"I am disappointed to see that I am the only woman on this group, could you tell me how many others were invited to apply? I am surprised to see what seems to be a non UK business on the list, could you tell me on what basis this person was selected and what other foreign companies/individuals were invited to apply?"

4. The MMO responded on 14 March 2012. It indicated that the complainant's correspondence had been passed to Defra to provide a response.

5. On 10 April 2012, the complainant requested that the MMO carry out an internal review as she had not received the information that she had requested.
6. The MMO responded on 22 May 2012. It informed the complainant that it believed that an internal review under the EIR would not be appropriate as it was entitled to treat her request as a normal customer enquiry. It would also not be appropriate as the request in the main sought answers to questions and not specific pieces of information. It suggested that the matter should be addressed through its customer service process.
7. Subsequently, during the course of the Commissioner's investigation, the MMO confirmed that, whilst there had been some discussions with Defra about the complainant's request, the request had not been formally transferred to Defra for a response.
8. Following the Commissioner's intervention, the MMO carried out an internal review on 26 July 2012. It provided some information to the complainant and confirmed that it did not hold the remainder of the requested information. It informed the complainant that, in relation to the information that it did not hold, it could transfer these parts of her request to Defra, with her agreement.

Scope of the case

9. The complainant contacted the Commissioner on 9 July 2012 to complain about the way her request for information had been handled, particularly the refusal of the MMO to carry out an internal review. Subsequently, following the MMO's response of 26 July 2012, the complainant accepted that it had, in respect of the different parts of the request, either provided the information requested or confirmed that it was not held. However, she asked the Commissioner to make a determination regarding any breaches of the legislation that had occurred during the course of the handling of her request.
10. The Commissioner considered whether the MMO had breached any of the provisions of FOIA in responding to the complainant's request.

Reasons for decision

11. The MMO dealt with the complainant's request as a request for environmental information under the EIR. However, as the information requested relates to the selection process for representatives for a

fishing industry management group, the Commissioner's view is that the request is not a request for information which falls within the definition of "environmental information" under regulation 2(1)(a)-(f) of the EIR. He has consequently applied the relevant provisions of FOIA in reaching his decision.

Section 10 – Time for compliance with request

12. Section 1 of FOIA provides:

"(1) 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 the information of the description specified in the request, and

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

13. Section 10(1) of FOIA goes on to provide that:

"...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

14. The MMO did not inform the complainant that it did not hold some of the information that she had requested, and did not disclose the remaining information that it did hold to her, within 20 working days of the receipt of the request. It therefore breached section 10(1).

15. In relation to other procedural aspects of the handling of the request, aside from the time for compliance with the request under section 10, the Commissioner's view is that these matters have to be assessed on the basis of what the public authority had done by the time that the internal review is concluded. As the MMO had provided the complainant with the information that it held and confirmed that it did not hold the remainder of the requested information by this stage, the Commissioner has not found there to be a breach of section 1. In addition, as it was not seeking to rely on an exemption under Part II of the Act, there was no breach of section 17. However, he has commented on procedural aspects of the MMO's handling of the request in the "Other matters" section, below.

Other matters

Initial handling of the request

16. In its initial response to the complainant, the MMO indicated that the management group, about which she had requested information, was a matter for Defra and therefore her correspondence had been passed to Defra with a request that it respond to her.
17. The Commissioner notes that the Section 45 Code of Practice on the handling of requests under FOIA makes it clear that a public authority should only consider transferring a request to another public authority where it does not hold the requested information itself and has confirmed that the other public authority does hold it. In addition, before doing so, it may need to seek the requester's consent to the transfer, particularly where there may be any grounds for believing that the requester may object to the transfer.
18. Similarly, if the request is one for environmental information under the EIR, as the MMO believed that this request was, the request can only be transferred under regulation 10 if the public authority does not hold the information requested. In addition, the Code of Practice on the EIR states that a public authority should seek the consent of a requester before transferring a request to another public authority as the requester may have valid reasons for not wanting their request to be transferred (para 36).
19. The Commissioner would expect that, if the MMO was considering the transfer of a request to another public authority in future, it would check carefully to ensure that it did not hold the relevant information and that the other public authority did hold it. In addition, it would be advisable for it to seek consent from a requester before initiating a transfer to ensure that the requester had no objections to this taking place.
20. During the course of the Commissioner's investigation, the MMO confirmed that, whilst it had discussed the complainant's request with Defra, it had not actually transferred the request to Defra for a response. In addition, it also confirmed to him that it held some of the information that the complainant had requested. The MMO subsequently provided the complainant with the information that was held. With regard to the parts of the request in respect of which it did not hold any information, it informed the complainant of this and asked her if she wished these parts of the request to be transferred to Defra.
21. The Commissioner is extremely concerned that, as a result of the MMO misleading the complainant into believing that her request had been transferred to Defra, a significant amount of her time, and the

Commissioner's time, was wasted in dealing with this matter before it was established that no transfer had taken place. The Commissioner expects that the MMO will ensure that nothing of a similar nature occurs again. In particular, that it ensures that it clearly informs requesters what information it holds and what information it does not hold. Also, that it communicates clearly with requesters when it is considering the possibility of transferring their requests to another public authority.

22. In addition, the initial response provided to the complainant by the MMO did not inform her of her right to request an internal review or of the appeal provisions under the legislation. The Commissioner would expect that the MMO would ensure that this information is contained in any future responses that it provides to requests.
23. The Commissioner notes that, had this matter fallen to be determined under the EIR, the MMO would have been obliged to provide a refusal notice, applying regulation 12(4)(a) to the information that it did not hold. Consequently, in circumstances such as these, the delay in providing the refusal notice and the failure to set out the right to request a review and the appeal provisions would have resulted in breaches of regulation 14.

Internal review

24. The complainant requested an internal review on 10 April 2012. The MMO responded on 22 May 2012 and informed the complainant that it believed that an internal review was not appropriate as it was entitled to treat her request as a normal customer enquiry and, in addition, her correspondence in the main sought answers to questions and not specific pieces of information. Therefore it sought to deal with correspondence through its customer service process. It was only following the intervention of the Commissioner that the MMO carried out an internal review. The outcome of this was sent to the complainant on 26 July 2012.

(i) Failure to treat the complainant's questions as a valid request

25. Whilst the complainant's original correspondence with the MMO contained questions about the selection process for the management group, it is apparent that she asked these questions in order to obtain information that she believed was held by the MMO. As such these questions were valid requests for information within the terms of section 8 of FOIA and should have been handled in accordance with the Act.
26. The Commissioner's accepts that there are circumstances where it may be appropriate for a public authority to deal with a request as part of its normal course of business. However, this would normally be the case

where the request is of a routine nature and a public authority intends to provide the requester with all of the relevant information that it holds. It is not appropriate to seek to do this in circumstances such as these where the request is clearly not of a routine nature and the public authority is considering transferring the request to another public authority.

27. The MMO needs to be careful in future to ensure that it identifies valid requests for information, even though they may be phrased in the form of questions, and that it handles such requests in accordance with FOIA or the EIR, whichever is appropriate.

(ii) Time taken to complete the internal review

28. The Commissioner's guidance states that an internal review should be completed within 20 working days in most cases or 40 working days in exceptional circumstances. If the request had been one for environmental information under the EIR, as the MMO believed that it was, its failure to complete an internal review within 40 working days would have been a breach of regulation 11(3).
29. The Commissioner sees no reason why an internal review in relation to a request, such as the one that the complainant made, should take any longer than 20 working days. In future, he would expect the MMO to complete an internal review within this time frame unless it is clear that exceptional circumstances apply which would warrant taking up to 40 working days.

Right of appeal

30. 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

31. 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.
32. 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

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