

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 April 2013

Public Authority: Marine Management Organisation

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

Decision (including any steps ordered)

1. The complainant requested evidence supporting a statement contained in the Marine Management Organisation's ("MMO") annual report for 2011/12 that a strategic outcome, that it would publish quota management rules by December each year, had been met. The MMO confirmed that the relevant management rules were published in February 2012 but did not confirm that it did not hold any information falling within the scope of the request.
2. The Commissioner's decision is that the MMO has breached sections 1(1)(a) and 10(1) by not informing the complainant that it did not hold any information falling within the scope of the request.
3. The Commissioner does not require the public authority to take any further steps to ensure compliance with the legislation as it has now written to the complainant to confirm that it does not hold any relevant information.

Request and response

4. On 18 January 2013, the complainant wrote to the MMO and requested information in the following terms:

"With respect to the annual report for 2011/12 page 61 Strategic outcome 4, KS2 "PUBLISH QUOTA MANAGEMENT RULES BY DECEMBER EACH YEAR", it states this performance target was

MET. Could I please have sight of evidence that this was indeed met."

5. The MMO responded on 13 February 2013. It stated that the purpose of 'Annex 1 – Status report' within the 2011/12 Annual Report and Accounts is to detail the end of financial year status of all key performance measures and key steps that underpin delivery of the Strategic Outcomes. It informed the complainant that quota management rules for 2012 were published on its website on 25 February 2012 and provided a link to the rules. It was of the view that publication of the quota management rules for 2012 was evidence supporting the end of financial year status of 'Met'.
6. The complainant requested an internal review on 13 February 2013. She pointed out that the MMO had acknowledged that the 'quota management rules' were published on 25 February 2012 and that this was not evidence to prove that the target of publication by December 2011 had been met. She explained that she would have expected the MMO to confirm that it did not hold the information that she had requested, although at the same time confirming when the information was published.
7. Following an internal review the MMO wrote to the complainant on 11 March 2013. It stated that Annex 1 of the Annual Report and Accounts set out the end of year status of all key steps and key performance measures to be delivered by 31 March 2012. It explained that its original response had informed the complainant that the relevant key step, about which she had requested information, was delivered by 31 March 2012 and that publication of the rules on 25 February 2012 was evidence supporting the end of year status as 'met'. It believed that this was correct as Annex 1 within the Annual Report and Accounts was not intended to provide detailed analysis of all elements of delivery in respect of each key step and key performance measure listed. As such, the annex provided to the complainant (in relation to the publication of the rules on 25 February 2012) provided evidence validating the position that the MMO had met the requirement to publish quota management rules by 31 March 2012.
8. Following discussions with the Commissioner, the MMO wrote to the complainant and informed her that, given that the publication of quota management rules took place on 25 February 2012, it held no information confirming that the in year target of "publish quota management rules by December" was delivered in respect of the financial year 2011/12. However, it stated that it would like to reiterate the outcomes of its internal review dated 11 March 2012.

Scope of the case

9. The complainant contacted the Commissioner on 14 March 2013 to complain about the way her request for information had been handled, specifically why the MMO had not informed her that it did not hold the information that she had requested.
10. The Commissioner considered whether the MMO held the information that the complainant requested.

Reasons for decision

11. Section 1 of FOIA requires a public authority to inform a requester whether it holds information of the description specified in a request.
12. In its initial response and the outcome of its internal review, the MMO confirmed to the complainant that the relevant quota management rules were published on 25 February 2012. It argued that, as the rules were published before the end of the financial to which its annual report for 2011/12 related, that is by 31 March 2012, the key step in question had been met. However, it did not confirm whether it held information falling within the precise scope of the complainant's request which was for evidence that the key step, that it would publish quota management rules by December each year, had been met.
13. As the relevant rules were only published on 25 February 2012, it is apparent that the MMO could not hold any evidence that they were published by December 2011. It should therefore have informed the complainant that it did not hold any information falling within the scope of her request. As a result of failing to do this by the time of the conclusion of the internal review, the MMO breached section 1(1)(a). In addition, it breached section 10(1) as it did not comply with section 1(1) within 20 working days of receiving the request.

Other matters

14. The Commissioner is concerned that the MMO did not take the fundamental step of confirming that it did not hold any information falling within the scope of the request, either in its initial response to the complainant or in the outcome of the internal review. This is despite the complainant advising the MMO, when she requested an internal review, that it needed do this to comply with the Act.

15. Had the MMO simply confirmed that it did not hold any information at an earlier stage, it would have avoided the need for the Commissioner to become involved and also avoided the complainant having to waste a considerable amount of time. The Commissioner expects the MMO in future to make clear in any response to a requester whether it holds information that falls within the scope of the request that has been made.

Right of appeal

16. 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

17. 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.
18. 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

Rachael Cragg
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