

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 28 August 2013

**Public Authority:** Marine Management Organisation

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

### Decision (including any steps ordered)

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1. The complainant has requested from the Marine Management Organisation ("MMO") copies of all communications that the MMO held about her previous requests, except those with the Information Commissioner's Office ("ICO"). The MMO applied section 12 (cost of compliance exceeds the appropriate limit) to the request.
2. The Commissioner's decision is that the MMO has correctly applied section 12 to the complainant's request. He does not therefore require the MMO to take any further steps to ensure compliance with FOIA.

### Request and response

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3. On 9 January 2013, the complainant wrote to the MMO and requested information in the following terms:

*"Please consider this email a request for:-*

- 1. Any and all emails, notes of meetings, conversations, advice, faxes, letters, in relation to any and all of my requests for information from the MMO.*
  - 2. This should include communications within the MMO and its board, and with Defra and or any other parties (apart from the ICO) my requests were discussed or communicated with."*
4. The MMO responded on 28 January 2013. It refused the request under section 12.

5. The complainant requested an internal review on 28 January 2013. The MMO informed the complainant of the outcome of the internal review on 1 March 2013. It upheld its application of section 12 to her request.

### **Scope of the case**

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6. The complainant contacted the Commissioner 18 March 2013 to complain about the way her request for information had been handled, specifically the MMO's application of section 12 to her request.
7. The Commissioner considered whether the MMO had correctly applied section 12.
8. The Commissioner notes that some of the information requested is likely to constitute the complainant's personal data, because it relates to her in some way, either by naming her or because she is identifiable from it. This information should be dealt with by the MMO in accordance with the provisions of the Data Protection Act 1998.

### **Reasons for decision**

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#### **Section 12 – Cost of compliance exceeds the appropriate cost limit**

9. Section 12(1) of FOIA states that:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."*

10. Section 12(3) states that:

*"In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases."*

11. The appropriate limit is currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). A public authority may take into account the cost of locating, retrieving and extracting the requested information in performing its calculation. The cost limit that applies to the MMO is currently set at £450. Under the Fees Regulations, public authorities are required to cost their spending on the relevant activities at £25 per person per hour. Consequently the appropriate limit would only be exceeded if the MMO estimated that it would take longer than 18 hours to carry out the relevant activities in order to comply with the request.

12. Under regulation 4(3) a public authority may, for the purposes of estimating the cost of complying with a request, only take account of the costs it reasonably expects to incur in:
  - a. determining whether it holds the information;
  - b. locating a document containing the information;
  - c. retrieving a document containing the information; and
  - d. extracting the information from a document containing it.
13. The MMO provided the Commissioner with an explanation of the reasons why it believed that compliance with the request would exceed the appropriate limit, this included estimates of time for complying with the request.
14. The MMO confirmed that requests for information that it receives are handled by its Access to Information Team. Requests are logged and acknowledged upon receipt by the Access to Information Officer.
15. The MMO explained that its Access to Information Team has developed a case management system which enables details of all requests to be captured in a unique 'file' by reference to each request's own unique identifier. This system is also used to log information relating to each request, including, but not limited to, the name of the requester, the date the request is received, the relevant access regime, the date a response is due, the application of any exemptions/exceptions required and the date a response is provided.
16. In addition, and to supplement this, the Commissioner understands from the MMO that it collects e-mail communications relating to each request. These are held by the MMO's Access to Information Officer in a folder specific to that request in his Outlook account. These same folders, in relation to some of the more recent requests, are also held in the MMO's SharePoint system. Some of the files are also held in the MMO's shared drive. Any information received in hard copy format is scanned and placed into this filing system.
17. The MMO explained that, during the process of searching for information falling within scope of a request, the Access to Information Officer contacts the relevant operational area and a search for records held, falling within scope, is carried out. All information gathered is then provided to the Access to Information Officer for review. Any decision on the application of exemptions or exceptions is made by the Access to Information Officer, subject to comments from the operational area concerned on any sensitivities related to the information. A copy of the MMO's response is then stored, both within the Access to Information

Officer's personal Outlook file, as well as the second file within the SharePoint system.

18. The MMO informed the Commissioner that the majority of communications in relation to the handling of a request would be located within the FOI Officer's Outlook system, the MMO's shared drives and its SharePoint system. However, it stated that it could not say for certain that this will cover all information falling within the scope of the complainant's request.
19. The MMO considered that the scope of the request was very broad, and was not therefore limited to the initial handling of the request only. Its view was that even information 'relating' to the requests submitted by the complainant, despite not being directly linked to the initial handling process, would fall within the scope of the request. It would include, for example, discussions between the complainant and various members of the MMO's staff and MMO's Board about her requests. The MMO informed the Commissioner that such correspondence may not have been copied to the MMO's Access to Information Officer. In addition, it may include situations where information had been provided to, and discussed with, the MMO's executive team, at a later date, to identify particular areas of operational interest or importance, which needed to be flagged appropriately.
20. This made it extremely difficult for the MMO to provide unequivocal assurance that all information relating to complainant's request would be captured within the information held by the Access to Information Officer and within the access to information function.
21. Similarly, the MMO explained that colleagues from operational areas of the organisation may have discussed certain elements of the complainant's requests with Defra and/or the devolved administrations, particularly if they included matters relating to operational or policy areas in which they were involved in, as was often the case. Once again, in relation to this, it was unable to provide robust assurance that all of this information would be captured within the records held by the Access to Information Officer or the relevant team.
22. Taking into account the above, the MMO felt that a search of records held within the Access to Information Officer's Microsoft Outlook account, the shared drive and the SharePoint system, would not capture all of the information falling within scope of the request.
23. The Commissioner raised a query as to how difficult it would be for staff at the MMO to locate any relevant communications by means of reasonably straightforward searches. The MMO explained that there is no obligation on members of staff, outside of the access to information

function, to file records/correspondence relating to requests for information submitted by the complainant, together with the unique identifier used for each request. In light of this, the only reasonable means of searching for this information would be for staff to search records using the complainant's name.

24. The MMO confirmed that it had received 14 requests for information from the complainant up to the date of request of 9 January 2013.
25. The MMO confirmed that there were 356 pieces of correspondence held in the Access to Information Officer's Outlook account in respect of the 14 requests, 161 in the shared drive and 42 in its SharePoint system. This made a total of 559 pieces of correspondence. The MMO explained that all of these would need to be reviewed to determine whether they fell within the scope of the request. It estimated that this would take a minimum of two minutes for each piece of correspondence.
26. The Commissioner notes that based on the MMO's estimate of a minimum of two minutes to review each piece of correspondence, it would take over 18 hours to review all of the above correspondence. If this estimate was correct, this exercise alone would result in the appropriate limit being exceeded.
27. However, the Commissioner notes that, based on the MMO's description of the system operated by its Access to Information Team, all, or at least most, of the correspondence to be reviewed should have a unique identifier related to one of the complainant's requests and should be filed in a folder specific to that request. It should therefore be reasonably apparent whether it falls within the scope of the request. Consequently, whilst the Commissioner accepts that it would take some time to review all of this correspondence, he is not convinced that to do so would, on its own, exceed the appropriate limit.
28. The MMO also informed the Commissioner that it had asked two members of its staff, who were outside its Access to Information Team and who had provided information in relation to a number of the complaint's requests, to do a search of their own Outlook accounts and estimate the amount of time it would take to review correspondence to determine whether it fell within the scope of the request. Using the complainant's name as a search term, one member of staff had identified 815 pieces of correspondence and the other member of staff had identified 270 pieces of correspondence.
29. The MMO estimated that it would take two minutes for a member of staff to review each item of correspondence to determine whether it related to one of the complainant's 14 requests for information. Consequently, it would take approximately 27 hours for the member of

staff with 815 pieces of correspondence to complete this process and approximately 9 hours for the member of staff with 270 pieces of correspondence to do the same. This resulted in a total time of 36 hours which, at £25 per hour, would result in a total estimated cost of £900 for the two members of staff to search for and identify information falling within the scope of the request.

30. The MMO also stated that it was important to note that there was no guarantee that a search limited to the complainant's name would retrieve all of the information relating to her requests. Therefore, additional searches might need to be performed to capture all correspondence falling within the scope of the request.
31. The MMO went on to explain to the Commissioner that it believed that there was likely to be at least 10 members of staff within the organisation who were likely to hold information falling within the scope of the request, which could be additional to the information held by the Access to Information Officer. To ensure that all information falling within scope of the complainant's request was identified, the MMO was of the view that it would need to conduct a review of all items of correspondence held by these individuals to determine whether they fell within the scope of the request.
32. In relation to the exercise carried out by the two members of MMO's staff, the Commissioner notes that, even if calculated on the basis of allowing only one minute to review each piece of correspondence, this would require 18 hours of work to review the correspondence that they identified. Added to this, the MMO indicated that the two individuals would probably have to carry out further searches, in addition to simply searching their Outlook accounts using the complainant's name, to identify all of the information that they held falling within the scope of the request.
33. The Commissioner also notes that the MMO indicated that, in addition to the two members of staff who searched their Outlook accounts, there was at least another 8 members of staff who were likely to hold information falling within the scope of the request and who would therefore need to go through a similar exercise. Added to this, the Access to Information Officer would need, as outlined above, to review some 350 pieces of correspondence to check that they all fell within the scope of the request.
34. In light of the above, the Commissioner is satisfied that the MMO's estimate, that the cost of responding to the request would be likely to take longer than 18 hours, and therefore exceed the appropriate limit of £450, is a reasonable one. On that basis, he is satisfied that the MMO has correctly applied section 12 to the request.

## Other matters

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35. The Commissioner is pleased to note that the MMO's Access to Information Team has developed a case management system for the handling of requests with the intention of trying to ensure that all relevant communications are allocated to a file specific to that request and also that each request has its own unique identifier. Such an approach is clearly extremely helpful in providing an audit trail in relation to the handling of individual requests and also enhances the ability of an organisation to respond quickly and effectively to information requests.
36. However, the Commissioner does have concerns, highlighted by this case, that this approach is not being applied consistently within the MMO. For example, it appears that correspondence may take place between a requester and members of the MMO's staff about a request and the Access to Information Officer may not be copied into this correspondence. In addition, there appears to be no obligation on members of staff, outside of the access to information function, to file correspondence relating to a specific request with the unique identifier used for each request. The result of this is that it may require very extensive searches on the part of a number of the MMO's staff to locate information related to the handling of a particular request.
37. In this particular case, in relation to the application of the Freedom of Information Act, the Commissioner has determined that the MMO is not obliged to try to locate and retrieve relevant information falling within the scope of the request as to do so is likely to exceed the appropriate limit under section 12. However, as the request almost certainly encompasses information that is the complainant's own personal data, it constitutes a subject access request under the Data Protection Act in respect of that personal data. As a result, in order to comply with that subject access request, the MMO will be obliged to identify any of the complainant's personal data that it holds that falls within the scope of the request and respond in accordance with provisions of the Data Protection Act. This is the case despite the fact that the Commissioner has upheld the MMO's application of section 12 of FOIA to the overall request.
38. As a consequence the MMO will need to identify any information that it holds that falls within the scope of the complainant's subject access request. This will be likely to be made much more difficult and time consuming because the MMO is not able to easily identify all of the communications related to the handling of the complainant's requests held by different members of staff, particularly those outside the Access to Information Team.



39. The Commissioner would hope that in future the MMO will try to ensure that it adopts a more consistent approach across the whole of the organisation to records management in relation to its handling of information requests. Clearly, this would not only be beneficial in terms of providing it with a complete audit trail in relation to its responses to particular requests, but would also enhance its ability to respond quickly and effectively to some information requests.



## Right of appeal

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40. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

41. 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.
42. 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 .....**

**Graham Smith**  
**Deputy Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**