

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 February 2015

Public Authority: Marine Management Organisation
Address: Lancaster House
Hampshire Court
Newcastle Upon Tyne
NE4 7YH

Decision (including any steps ordered)

1. The complainant has requested information from the Marine Management Organisation ("the MMO") relating to advice or guidance the MMO, its staff or its Board Members has sought, provided or received about section 17 of the Terms and Conditions of Appointment of Board Members and any other information held relating to the interpretation or application of section 17.
2. The Commissioner's decision is that MMO has provided the complainant with all the recorded information it holds that falls within the scope of his request.
3. The Commissioner requires the public authority to take no steps.

Request and response

4. On 7 May 2014, the complainant wrote to the MMO and requested information in the following terms:

"...please provide me with sight of:

- (a) *Any advice or guidance that the MMO, its staff or its Board Members have sought, provided or received about Section 17 of the Terms and Conditions of Appointment of Board Members, since 6th February 2014.*

- (b) *Any other information held by the MMO about the interpretation or application of Section 17, since 6th February 2014”.*
5. The MMO responded on 5 June 2014. It stated that the information requested was exempt from release under section 42 of FOIA.
 6. Following an internal review the MMO wrote to the complainant on 18 July 2014. It upheld its previous decision.

Scope of the case

7. The complainant contacted the Commissioner on 4 August 2014 to complain about the way his request for information had been handled.
8. During the Commissioner’s investigation the MMO explained that it was incorrect to apply section 42 of FOIA to the request on the basis that it did not hold any information within the scope of the request.
9. The Commissioner returned to the MMO and asked for sight of the information that it originally considered to fall within the scope of the request. After reviewing the information, the Commissioner considered that one draft letter fell within the scope of the request and the remaining information did not. The Commissioner advised the MMO of this and it has subsequently disclosed a copy of the draft letter to the complainant.
10. The complainant was informed of the fact that the MMO had changed its position and now considered that it held no recorded information within the scope of his request. The complainant strongly disputed this.
11. The Commissioner has therefore had to consider whether the MMO holds any recorded information within the scope of the request.

Reasons for decision

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

“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 information of the description specified in the request, and

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

13. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
14. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
15. The complainant disputed the MMO's claim that it held no recorded information within the scope of his request.
16. The Commissioner has investigated this complaint by returning to the MMO and asking it a number of questions in order to determine whether the MMO holds any recorded information sought by the complainant. When doing so, the Commissioner took into account the arguments raised by the complainant which supported his position that the MMO would hold recorded information that would be captured by his request.
17. The Commissioner asked the MMO to detail the searches that had been carried out to locate the requested information and why these searches would have located any relevant information. The Commissioner explained that a shared drive search may not retrieve all relevant information and it would be reasonable to assume that information may be held on personal drives. The Commissioner subsequently asked the MMO to detail the departments and individual officials it had contacted in order to determine that no recorded information within the scope of the request was held by the MMO.
18. The MMO explained that the searches that had been carried out were focussed on reviewing information held locally. It further explained that all information handled by members of staff working within the MMO is stored across their own Microsoft Outlook accounts, a shared network drive and the SharePoint system. It considered that *"conducting searches of Microsoft Outlook, the shared network drive and SharePoint was highly likely to retrieve any relevant information, taking into account the fact that the storage mediums identified here should represent a comprehensive record of all relevant information held by the MMO and offer the most relevant source of all relevant information in this instance"*.
19. The MMO confirmed that all searches involved using key information drawn from the scope of the request to include the data range provided within the request and key search terms such as 'Section 17', Board Member Terms and Conditions'.

20. The MMO determined that the most likely departments to hold information relevant to the request were the MMO's executive, Board and Executive Services and Human Resources teams. The MMO explained that searches of personal drives and Microsoft Outlook accounts were therefore limited to individuals working within these departments. It further explained:

"This is due to the fact that these are the only business functions that may have any direct involvement in the subject matter of the request. In addition, as MMO Board Members are employed by Defra who also therefore manage the Terms and Conditions of Board Members, it is highly unlikely that members of staff working within other business functions of the MMO would hold information falling with the scope of [redacted initials] request".

21. The Commissioner asked the MMO to confirm that its search was not limited to complete documents. The MMO stated that its search included all possible recorded forms of information including drafts, notes, telephone call records, emails and any other possible forms of recorded information.
22. The Commissioner further asked the MMO to confirm whether any internal requests had been made for the interpretation of section 17 or whether any requests had been made for advice/application of section 17. The MMO confirmed that no such requests had been made.
23. With reference to some specific letters the MMO had sent to Defra, the MMO confirmed that no explanation was sought by Defra in respect of the letters and no information was provided to Defra about the interpretation/application of section 17.
24. The MMO concluded by stating that section 17 is a term contained within a contract to which the Department of Environment, Food and Rural Affairs ("Defra") and board members are parties. It is not a term drafted or indeed enforced by the MMO and as such the MMO has not sought to determine how it should be interpreted or applied by either party.
25. The Commissioner has acknowledged the arguments raised by the complainant and has considered these throughout the investigation. However on the basis of the arguments provided by the MMO, the Commissioner has determined that on the balance of probabilities, the requested information is not held by the MMO.

Right of appeal

26. 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

27. 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.
28. 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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SK9 5AF