

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 October 2018

Public Authority: Maritime and Coastguard Agency

Address: 105 Spring Place
Commercial Road
Southampton
Hampshire SO15 1EG

Decision (including any steps ordered)

1. The complainant has requested information about the NLMK1 life-raft. The Maritime and Coastguard Agency ('the MCA') has categorised the requests as vexatious under section 14(1) of the FOIA and has refused to comply with them.
2. The Commissioner's decision is as follows:
 - The complainant's requests are vexatious and the MCA is not obliged to comply with them.
3. The Commissioner does not require the MCA to take any steps to ensure compliance with the legislation.

Request and response

4. On 17 February 2018 the complainant wrote to the MCA and submitted six requests for information about the NLMK1 life-raft, in the following terms:

"...We therefore wish to make a request, Under the Freedom of Information Act 2000 (the act), for the Following information 1/. For all copies held on emails-Document's, and Electrical Searches On each of these Individuals Investigation's Carried out by the Maritime and Coastguard Agency 2/ Had the Maritime and Coastguard Agency, during these Four Investigation's. Contacted The ONLY Manufacturer of the Board of Trade N L.M K 1 Life raft, R F D Beaufort air-sea Equipment Limited (Liverpool). And the Sea Survival Equipment Test Center (S S E T C)H.M Naval Base Portsmouth Hampshire Who are both Approved, and Maritime Safety Agency(M S A) Accredited by the Maritime and Coastguard Agency Who carry out Three to Four unannounced inspections, at these approved (M S A), service stations each year (And have done so, for the Past Twenty Years) Had the Maritime and Coastguard Agency, requested these approved service stations, for copies of there File's, and Record's(As this is a Board of Trade Life raft). 3/ Had the Maritime and Coastguard Agency during there Four Investigations Contacted the Ministry of Defence, The Royal Navy, and the Ministry of Defence Establishment, The Ship Supply and Support Agency, Ensleigh, Bath.Who are involved in the Purchasing, and Supplying Royal Naval Ships, with this Board of Trade N.L.M K 1 Life raft Had the Maritime and Coastguard Agency, during there Four Investigations asked these above organisations, for copies of there Files, and Records, on this serious issue 4/. Had the Maritime and Coastguard Agency, (To support there Four Investigations, (And the File of Evidence, we had Provided to you).Formally requested the Manufacturer R F.D Beaufort air-sea Equipment Limited(Liverpool), and the Sea Survival Equipment Test Centre (S.S E T.C), H.M. Naval Base, Portsmouth, Hampshire. For ALL copies, of Defects Found (i e Valves Fitted to the N L.M K 1 Life raft) Which has to be Reported, and Documented, on a Special Survey Form(SUR 235) Which has to be completed, by these two above Maritime Safety Agency(M.S A) Accredited Departments (Under your own Laid Down Maritime Laws, and Regulations) And which has to be completed, and Returned to the Maritime and Coastguard Agency, during there Four Investigations, asked these above Service Departments, for the copies of these Special Survey Forms (SUR 235) 5/ Is the Sea Survival Equipment Test Centre (S S E T C), on H.M Naval Base Portsmouth, Hampshire Still Approved with a Maritime Safety Agency (M S A) Accreditation By the Maritime and Coastguard Agency To Test Service, and Pack, This Board of Trade (Registered) 25 man N L M K 1 Life raft 6/. IF the S.S E T C is no longer, accredited with a approved Maritime Safety Agency(M S.A)Accreditation, from the Maritime and Coastguard Agency, (As this would be a Part of your Investigation) Could you Please let us know when this occurred, and Provide us with copies of the reason, or reasons why?..."

The MCA responded to the requests on 8 March 2018. It categorised the requests as vexatious under section 14(1) of the FOIA and refused to comply with them. The MCA maintained this position in its internal review dated 24 April 2018.

Scope of the case

5. The complainant first contacted the Commissioner on 5 April 2018 to complain about the way his requests for information had been handled.
6. The Commissioner's investigation has focussed on whether the MCA is entitled to categorise the complainant's requests as vexatious under section 14(1) of the FOIA.

Reasons for decision

Section 14 – vexatious and repeat requests

7. Section 14(1) of the FOIA says that a public authority is not obliged to comply with a request under the FOIA if the request is vexatious.
8. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
 - Abusive or aggressive language
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
9. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
10. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified

level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.

11. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
12. In its submission to the Commissioner the MCA says that the complainant's six requests of 17 February 2018 follow numerous pieces of correspondence that it has received from the complainant on the same subject, going back to March 2017. The MCA has confirmed that it has applied section 14(1) to the current requests because the complainant has been raising the same, or broadly similar, issues regarding the naval life-raft Mark 1 (LMK1) on each request and contact. The MCA has provided the Commissioner with a list of contacts and correspondence made by and received from the complainant.
13. By way of a background, the MCA has told the Commissioner that the NLMK1 life-raft was involved in a fatal accident in 1998 and this appears to the MCA to be the catalyst behind the complainant's correspondence and requests.
14. The MCA has explained that the complainant has contacted the MCA more than 22 times in the period from March 2017 to March 2018, all regarding the subject of the NLMK1 life-raft. This is in addition to contacting two MPs, the National Union of Rail, Maritime and Transport Workers (NMT), the International Maritime Organization (IMO) Maritime Safety Division and, previously, the Ministry of Defence (MOD).
15. The MCA says that it did not take the decision to apply section 14(1) to the complainant's requests lightly. It says that throughout its previous contacts with the complainant every attempt had been made to answer his questions, against the MCA's consistent response that it does not hold information that the complainant has requested, and does not have grounds to investigate his concerns.
16. The Commissioner has referred back to the MCA's response of 8 March 2018 to the complainant's request, which the complainant provided to her. In this correspondence, the MCA refers to the fact that the complainant has been raising questions about the safety of the NLMK1 life-raft with various bodies since at least June 2007, including more than 22 separate requests for information between June 2007 and September 2008 to MOD.
17. The Commissioner is aware that the requests from the complainant to MOD in 2007 and 2008, also about life-rafts and safety matters, were categorised as vexatious by MOD. The Commissioner upheld this

position in 2010, in her decision: FS50200860. She has noted this separate decision but has considered the current case on its own merits.

18. In the current case the MCA's response to the complainant goes on to note that, from his correspondence, it is aware that he has also made requests to other bodies, mentioned at paragraph 15. It says that in addition to responding to his other written requests, senior MCA officials have engaged in discussions on the telephone with the complainant on several occasions. The MCA tells the complainant that, as it had summarised to him in correspondence dated 1 February 2018, it had completed a thorough search of its records regarding the NLMK1 and was not aware of any ongoing safety risks associated with the continued use of the NLMK1 which would affect UK seafarers. It had stated that in the absence of new evidence, the MCA did not consider its response to have changed and that, therefore, the MCA's investigations and correspondence on this issue would rest.
19. The MCA notes that on 18 February 2018, it had then received the current request which, it says, raised issues that are similar if not identical to those which it has dealt with before. The MCA states to the complainant that it is clear that he has been engaged in a campaign relating to the NLMK1 life-raft for more than 10 years, through protracted correspondence with public bodies and through the use of the FOIA. The MCA makes the point that it, in common with all public bodies, faces severe constraints on its resources. It says that a significant number of its staff have been involved in considering the complainant's requests and replying to his correspondence which relate to an incident reported in February 2005. The MCA explains that the significant burden imposed on its staff in dealing with the requests risks diverting staff away from its core functions for considerable periods of time, as well as imposing an ever-increasing cost on it. For these reasons, the MCA says it categorised the complainant's current requests as vexatious.
20. The complainant has sent to the Commissioner a copy of a 'Sun' newspaper article, and a screen shot from a BBC News online article, both from 28 February 2005, which both concerned faults found in life-rafts and which the MCA referred to in the above response. The life-rafts concerned are not named in the articles as NLMK1 life-rafts. The outcome reported in the news story was that the faulty life-rafts were replaced.
21. The complainant has also provided the Commissioner with a background to his current requests. From his correspondence to her, the Commissioner understands that the complainant was a former employee of the MOD. He says that in 1998 he brought his concerns about a design fault in the NLMK1 life-raft to the MOD's attention. He further

says that raising this matter cost him his job. The complainant has told the Commissioner that an organisation called Concerns at Work has been advising him, and it was Concerns at Work that advised him to contact the IMO and the RMT. The IMO had advised him to contact the Maritime and Coastguard Agency. This appears to have resulted in the correspondence MCA has referred to and the requests that are the subject of this notice.

22. In further correspondence to the Commissioner dated 17 August 2018, the complainant discusses his concerns about the NLMK1 life-raft further and presents his view on situations involving particular ships and the above life-raft. The Commissioner notes however that, according to the complainant, these events occurred in 1997 and 1998 ie 20 years ago. In another email dated 24 August 2018, the complainant has told the Commissioner that the NLMK1 life-rafts are still in service.
23. The Commissioner notes that the newspaper article the complainant has provided to her was written 13 years before the complainant submitted his request to MCA. From her own, albeit not in any way exhaustive, research, the Commissioner has been unable to find any evidence that, in the intervening 13 years, any widespread concerns about the NLMK1 life raft have emerged, continued or deepened.
24. The Commissioner has reviewed the chronology that the MCA has provided her. This summarises the 22 communications – in writing and by telephone - associated with the complainant from 27 March 2017 to 17 February 2018, when he submitted the current requests. In response to a request for information from the complainant in March 2017, the MCA advised him in April 2017 that it does not hold any information about the life-rafts in question. In response to a further request the MCA advised the complainant in June 2017 that, as a civilian regulator, it has no grounds to initiate a formal investigation of his concerns. Also in June 2017, and despite the MCA's earlier response to him, the complainant again asked MCA if it will be requesting a full and independent enquiry regarding the NLMK1 life-raft. He continued to write to MCA (and other bodies) about the NLMK1 life-raft during the remainder of 2017 and into 2018.
25. In the Commissioner's view, MCA quite clearly informed the complainant in April 2017 that it does not hold information about the NLMK1 life-raft and has also advised him that it has no grounds to initiate a formal investigation. (The Commissioner assumes that the MCA is likely to have considered any evidence the complainant provided to it.) The complainant has, nonetheless, continued to correspond with the MCA about the life-raft in question.

26. The Commissioner has not been persuaded by the material that the complainant has provided to her that his ongoing concerns about the NLMK1 life-raft are justified or warrant a decade-long correspondence with various public bodies including, at this point, the MCA. The incidents and events the complainant has referred to in his correspondence to her took place between 13 and 20 years ago and, with regards to the 2005 incident, it is not evident that this involved the NLMK1 life-raft. As the Commissioner has mentioned, she is not aware, and has not been made aware, of any compelling recent evidence that the NLMK1 life-raft is a cause for concern.
27. The Commissioner has considered all the circumstances of this case, including the wider circumstances and history, and is satisfied that the MCA is entitled to categorise the complainant's requests of 17 February 2018 as vexatious. The complainant appears to be pursuing, with a degree of unreasonable persistence, a campaign, or personal investigation that has no merit. As such, to respond to the complainant's requests for information about the NLMK1 life-raft would continue to place a burden on the MCA that is disproportionate to the requests' value. The Commissioner therefore finds that the MCA correctly applied section 14(1) of the FOIA.

Right of appeal

28. 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

29. 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.
30. 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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