

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 7 October 2021

**Public Authority:** Warrenpoint Harbour Authority

**Address:** The Docks, Warrenpoint  
Newry  
BT34 3JR

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Warrenpoint Harbour Authority (WHA) regarding communications between it and various third parties with reference to current Tribunal proceedings.
2. The Commissioner's decision is that WHA has correctly applied section 12(1) of the FOIA to the complainant's request.
3. However, the Commissioner finds WHA in breach of its obligation under section 16 of the FOIA to provide advice and assistance to the complainant.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - WHA should offer further advice and assistance to help the complainant narrow or refine his request, further to its duty under section 16(1) of the FOIA.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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6. On 30 July 2020 the complainant made two requests for information in the following terms:-

1. "With respect to current ongoing proceedings at Tribunal VR/11/2019 Excip Ltd vs Commissioner of Valuation I request the information below pursuant to the Freedom of Information Act 2000:

A copy of any and all communication, informal or formal, between Warrenpoint Harbour Authority (WHA) and Land and Property Services between September 2011 and July 2019. Also any notes or other records in that same regard."

2. With respect to current proceedings at Tribunal VR/11/2019 Excip Ltd vs Commissioner of Valuation I request the information below pursuant to the Freedom of Information Act 2000:

A copy of any and all licences, contracts, rental agreements or contractual services agreements, informal or formal, between WHA and Seatruck Ferries Ltd. also T/A Clipper Logistics Group Limited between 1977 and current. Records should include square metreage of area allocated. Also provide copies of any notes, records, emails or communications in this regard. Excip Ltd accepts the redaction of any commercially sensitive or financial information contained therein.

A copy of any and all licences, contracts, rental agreements or contractual services agreements, informal or formal, between WHA and Forestwood Agencies Limited between 1977 and current. Records should include square metreage of area allocated. Also provide copies of any notes, records, emails or communications in this regard. Excip Ltd accepts the redaction of any commercially sensitive or financial information contained therein.

A copy of any and all licences, contracts, rental agreements or contractual services agreements, informal or formal, between WHA and Commex McKinnon Limited between 1977 and current. Records should include square metreage of area allocated. Also provide copies of any notes, records, emails or communications in this regard. Excip Ltd accepts the redaction of any commercially sensitive or financial information contained therein.

A copy of any and all licences, contracts, rental agreements or contractual services agreements, informal or formal, between

WHA and Aylesforte Interiors between 1977 and current. Records should include square metreage of area allocated. Also provide copies of any notes, records, emails or communications in this regard. Excip Ltd accepts the redaction of any commercially sensitive or financial information contained therein.”

7. WHA responded to the complainant on 24 and 25 August 2020, stating that compliance with the request as it stood would go over the cost limit as set out in the FOIA at section 12(1). WHA offered the complainant the opportunity to narrow or refine his request. In relation to the complainant’s second request, WHA also stated that the vast majority of the information sought was likely to be commercially sensitive under section 43(2) of the FOIA.
8. On 27 August 2020 the complainant sought an internal review of the WHA’s handling of his request. The result of that internal review was provided to him on 22 September 2020. The reviewer upheld the original decision.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 12 November 2020 to complain about the way his request for information had been handled.
10. The Commissioner has considered WHA’s handling of the complainant’s request, in particular its application of section 12(1) of the FOIA.

### **Reasons for decision**

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

11. Section 12(1) of the 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.”
12. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 20041 (“the Regulations”) sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.

13. A public authority is only required to provide a reasonable estimate, rather than a precise calculation, of the cost of complying with the request, and in putting together its estimate it can take the following processes into consideration:
  - determining whether the information is held
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
14. WHA explained to the Commissioner how it had arrived at its estimate of the amount of time it would require in order for it to be able to fully respond to the complainant's request, with reference to the four activities as set out above.
15. The first aspect of the complainant's request relates to communications between WHA and LPS between September 2011 and July 2019. In order to establish a realistic estimate, it reviewed a similar exercise which was carried out by it at the request of LPS in June 2020. LPS sought information on one discrete issue, which WHA already knew that it held, predominantly in electronic format. The process of locating, retrieving and extracting the relevant information took approximately 30 hours (10 for each of the three activities, since it already knew the information was held).
16. WHA explained that, as the first aspect of the complainant's request covers all communications of any nature whatsoever between it and LPS over an 8 year period, much of the information is likely to be held by it in hard copy format within archived files. Given the frequency of such communications, WHA considers that the exercise would take significantly longer than the one detailed in paragraph above.
17. The second aspect of the complainant's request relates to information which could be held by WHA in either electronic or hard copy format. The electronically held information could be located via a search function, however location of the information held in hard copy would involve a more cumbersome manual search through files held onsite.
18. WHA has provided the Commissioner with a detailed estimate of the time it would take to respond to both aspects of the request in total, which amounts to 160 hours. Its estimate in relation to the second aspect of the request, broken down into the search time involved in determining the information is held, then in locating, retrieving and extracting that information for each company mentioned e.g. Seatruck, is 110 hours.

19. On the basis of the WHA's submissions, the Commissioner is satisfied that the WHA has estimated reasonably that compliance with the request would exceed the appropriate limit, and that section 12 therefore applies. The WHA was not, therefore, obliged to comply with the complainant's request.

### **Section 16(1) – Duty to provide advice and assistance**

20. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the Section 45 Code of Practice ("the Code") issued by the Secretary of State, it will have complied with section 16(1).
21. The Code advises that, where an authority is not obliged to comply with a request for information because, under section 12(1) and the regulations made for that section, the cost of complying would exceed the appropriate limit, it should provide the requestor with reasonable advice and assistance.
22. The Commissioner's guidance states that the minimum a public authority should do in order to satisfy section 16(1) is indicate if it is able to provide any information at all within the appropriate limit. Communicating this to a complainant may avoid further and futile attempts to refine the request to bring it under the appropriate limit. If the requestor understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next.
23. In this case, the WHA advised the complainant in its initial refusal notice that he may wish to re-focus his requests to include communications of a more specific nature or a narrower time range and they would be considered afresh.
24. The Commissioner has considered the advice and assistance provided to the complainant by WHA and is not convinced by it. The complainant's original requests cover an 8 year period and WHA has not suggested to the complainant how he could narrow his requests to a shorter time period in order that responding to them might fall under the £450 cost limit, nor does it appear, in relation to Part 2 of his request, to have considered whether it could potentially disclose information relating to a smaller number of companies, irrespective of whether section 43 might apply to these, as previously stated. It also does not appear to have considered that the complainant could perhaps refine his search to all or part of the information held electronically by it, as WHA has stated that this could be located via a search function.



## Right of appeal

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25. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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 .....**

**Deirdre Collins**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**