

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 21 November 2006

Public Authority: Marine Accident Investigation Branch (part of Department for Transport)

Address: Great Minster House
76 Marsham Street
London
SW1P 4DR

Summary

1. The complainant requested information about the basis of statistic quoted in the public authority's 2005 Annual Report. The request was refused on the grounds of exceeding the cost limit, so the complainant modified his request and this was again refused on cost grounds. The Commissioner approached the public authority and is satisfied that they correctly estimated that the cost of complying with the complainant's requests would exceed the appropriate limit.

The Commissioner's Role

2. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

3. The complainant wrote to the Marine Accident Investigation Branch ('MAIB') on 8 June 2006 and requested information about the basis of a statistic quoted in the foreword to the MAIB's 2005 Annual Report. The statement containing the statistic was:

'For the two months 8 August – 10 October, we compiled a register of leisure craft accidents and incidents in UK waters, using the criteria against which merchant ships and fishing vessels report to the MAIB. With little effort, we identified an

astonishing 1162 leisure craft accidents/incidents in UK waters. By the end of 2005, we were aware of 24 deaths in leisure craft accidents in the UK'.

4. The complainant requested:

- The particular criterion/criteria applicable to each incident [i.e. the 1162 incidents] that would have made it a reportable incident if it had involved a merchant or fishing vessel.
- Please identify the date and general location of each incident, the size or type of each vessel involved and the number of fatalities, injured persons, and vessels lost in each incident.
- For incidents based on reports from the emergency services, please indicate whether a distress signal or message was sent by the vessel concerned.

5. The MAIB responded on 16 June 2006 and explained that the criteria for reporting incidents are contained within its regulations and these regulations are published on its website (www.maib.gov.uk).

6. With regard to the remainder of the request, the MAIB suggested that although it did hold the information on a database, to recover the requested information for all 1162 leisure craft incidents would be a 'huge administrative task'. The MAIB informed the complainant that the cost of fulfilling his request was estimated to be above £600 and therefore his request was being refused under section 12 of the Act.

7. The MAIB asked the complainant to contact them in order that a revised request could be agreed upon which could be answered within the £600 threshold.

8. The complainant contacted the public authority on 16 June 2006 and suggested two amended requests. The first request narrowed the scope of the original request and asked only for the details about the size and type of each vessel and the nature of each incident. In the second alternative request, the complainant suggested that if the problem would be eased by reducing the amount of editing or selection of information, he would be satisfied if he was simply supplied with the raw data upon which the statistic was based. The complainant suggested to the MAIB that using this raw data he would then extract the information he had originally requested.

9. The MAIB emailed the complainant on 23 June 2006 and informed him that it would not be possible to answer his amended requests of 16 June 2006. In this email the MAIB explained that the register of 1162 leisure craft incidents mentioned in the annual report was only based on a numerical log of the leisure craft incidents between 8 August and 10 October 2005. The MAIB explained that the details of these incidents were not in fact entered onto a database, and as a consequence it was not possible to simply interrogate a database in order to gather the information required to fulfil any of his requests. The MAIB explained that in order to answer the requests, it would need to manually extract from the Coastguard reports, and other reports, the details of each incident, a process that would be a 'huge task for our administrative staff'.

10. On 12 July 2006 the complainant contacted the MAIB once again and suggested that the separate responses he had received from it were contradictory. The complainant noted that in one response it suggested that the requested information was held on a database, whereas the subsequent response suggested that information was not held on a database. The complainant again requested that, if the data was available, the public authority should provide him with it.
11. In a final response to the complainant dated 14 July 2006, the MAIB clarified that while it did hold the information needed to answer his request, it did not hold it in a searchable database format. The MAIB explained that in order to gather the requested information, it would need to manually extract the data from a significant number of individual incident reports. The MAIB reiterated its position that the cost the cost of fulfilling the request would exceed the £600 limit.

The Investigation

Scope of the case

12. On the 14 July 2006 the complainant contacted the Commissioner to complain about the way his request had been handled. The complainant alleged that the MAIB were incorrect in arguing that the cost of fulfilling his request was over £600. The complainant suggested that in compiling the statistic for inclusion in its Annual Report, the MAIB must have already undertaken a detailed analysis of each leisure craft incident. The complainant therefore disputed the MAIB's explanation that in order to fulfil his request the MAIB would actually have to analyse all of the 1162 incident reports.
13. The complainant also raised with the Commissioner the fact that he had suggested to the MAIB that he would be happy to be supplied with the raw data and filter the requested information himself, but the MAIB had not clarified whether this was possible.
14. In addition, the Commissioner has considered whether the MAIB fulfilled its duty to provide advice and assistance to the complaint, in accordance with section 16 of the Act.

Chronology

15. The Commissioner contacted the MAIB on 4 September 2006 and asked for an explanation of how it held the requested information and a detailed breakdown of the estimated cost of supplying the requested information. The Commissioner asked the MAIB to provide this breakdown with reference to the four activities listed in regulation 4(3) of The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). Regulation 4(3) states that in deciding whether the appropriate limit is exceeded public

authorities can take into account the cost of determining whether the information is held, locating the information, retrieving the information and extracting the information.

16. The Commissioner also asked the MAIB if it had given any consideration to the complainant's suggestion that he be supplied with the raw data upon which the statistic was based, as he was prepared to extract the requested information himself.
17. In addition, the Commissioner also asked the MAIB to provide it with a representative sample of the Coastguard reports.
18. The MAIB replied to the Commissioner on 26 September 2006. The MAIB explained the statistic was based was on a log which recorded the number of incidents involving leisure craft. In order to compile this numerical log the MAIB had counted the number of leisure craft incidents reported in daily Coastguard reports.
19. The MAIB explained that the sole purpose of maintaining this numerical log was to quantify the number of leisure incidents which occurred during the period under review and therefore, no other details other than the number of incidents per week were recorded. The MAIB explained that the numerical log data was held on a simple Excel spreadsheet, not a database.
20. With regard to the cost estimate of fulfilling the request, the MAIB provided the Commissioner with the following breakdown:

a) Determining whether it holds the information:

The MAIB does not hold the information that underpins these statistics

Cost = £0

b) Locating the information:

The daily Coastguard reports from which this data was assembled is available electronically from the Maritime and Coastguard Agency ('MCA')

Cost = £0

c) Retrieving the information:

(i) 64 daily reports Cost = £25

*(ii) 1162 accident reports (MCA/MAIB) @ 20 minutes per report
Cost = £9683*

d) Extracting the information from a document containing it:

(i) daily reports: 64 days @ 30 minutes each – Cost = £800

(ii) 1162 accident reports @ 10 minutes each – Cost = £4842.

21. The MAIB therefore estimated that the cost of fulfilling the complainant's original request was £15,350.

22. The MAIB explained to the Commissioner that although it does not *physically* hold the daily Coastguard reports for 2005, it could easily obtain copies of the reports from the MCA, an executive agency of the Department for Transport. The Commissioner noted that under the Act, the MAIB and the MCA are in fact part of the same public authority, the Department for Transport.
23. However, the MAIB explained that the 64 daily Coastguard reports would only provide it with an outline of each incident involving a leisure craft. In order to obtain the detailed information about each incident that would be needed to answer the complainant's request, the MAIB explained that it would have to review the report for each incident (i.e. 1162 individual reports).
24. As outlined above, the first stage in this process would be for the MAIB to analyse the 64 daily reports for any references to leisure craft incidents.
25. Having identified each of the leisure craft incidents the MAIB explained that it would then have to locate all of the 1162 incident reports. The MAIB explained to the Commissioner that it did not actually hold the incident reports and that they were in fact held by the network of Maritime Rescue Co-ordination Centres ('MRCC') around the UK. There are 19 regional MRCC in UK which act as control centres for responding to reports of maritime and coastal distress. The MAIB explained that it would have to contact the relevant MRCC in order to retrieve the 1162 incident reports. Having received all of the 1162 incident reports, the MAIB explained that it would have to analyse each report in order to extract the relevant details requested by the complainant.
26. The MAIB explained to the Commissioner that the 1162 incident reports constituted the 'raw data' upon which the statistic was generated. However, the MAIB explained that these reports contained personal data, such as individual's names and addresses, which could not be released to the complainant under the Data Protection Act. Therefore, the MAIB argued that it could not simply give the complainant unredacted copies of the 1162 reports. The MAIB argued that the process of supplying the raw data would be also be above the cost limit because it would have to 'identify, recover and sanitise all individual 1162 reports', a process which it believed would effectively involve the same amount of work as fulfilling the original request.
27. The MAIB also provided the Commissioner with copies of 10 daily Coastguard reports.

Findings of fact

28. The Commissioner is satisfied that the statistic quoted in the foreword of the annual report was simply based upon the data contained within a log which recorded the number of leisure craft incidents.
29. The Commissioner is also satisfied that in compiling the quoted statistic, the MAIB did not undertake any detailed analysis of each leisure incident and consequently, it does not hold the requested information on a database.

30. The Commissioner accepts that because of the way the MAIB holds the requested information, the task of fulfilling either the complainant's original request of the 8 June or his amended requests of 16 June would have been a significantly lengthy, and therefore costly, process.
31. The Commissioner bases this finding on the fact that the estimated cost of simply locating and retrieving the 1162 incident reports needed to answer the requests far exceeds the appropriate limit (this cost is estimated at £10,508). This process would have to be completed before the MAIB would be in a position to extract the requested data in order to fulfil the original request of 8 June or the first amended request of 16 June. This process would also have to be completed before the MAIB would be in a position to redact any potentially exempt information in order to supply the complainant with the raw data (i.e. the 1162 incident reports) as suggested in his request of 16 June.
32. The Commissioner notes that, under the Regulations, the MAIB would not be entitled to charge for the cost of redacting any personal data contained in the reports. Consequently, the cost of this activity could not be included in the MAIB's calculations into whether the cost of fulfilling the request for the raw data would exceed the appropriate limit.
33. Furthermore, the Commissioner has established that under the The Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 the MAIB is only obliged to investigate accidents involving merchant ship and fishing vessels. Therefore, there is no statutory duty for the MAIB to investigate accidents or incidents involving leisure craft. Consequently, the Commissioner is satisfied that the MAIB would not have any need to hold information about leisure craft incidents on a sophisticated database which could be used to fulfil this request.

Analysis

34. The Commissioner has considered the MAIB's response to the complainant's request for information.

Section 12

35. Section 12 of the Act states that a public authority is not obliged to comply with a request for information if it estimates that the request would exceed an appropriate cost limit.
36. The appropriate limit, as prescribed by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, is £600 for Central Government and £450 for other public authorities, with staff costs calculated at a rate of £25 per hour. When calculating whether the appropriate limit is exceeded, authorities can take account of the costs of determining whether the information is held, locating and retrieving the information, and extracting the information from other documents. They cannot take account of the costs involved with

considering whether information is exempt under the Act. For the public authority to legitimately cite section 12 in this case, therefore, it needs to demonstrate that the time needed to comply with the request exceeds 24 hours.

37. The Commissioner is satisfied that the cost of process which the MAIB would have to undertake in order to fulfil the original request, or the amended requests of 16 June, would exceed the appropriate fee limit of £600.

Section 16

38. The Commissioner has considered the provision of advice and assistance given by the MAIB in this case. He accepts that the complainant was asked to clarify and narrow down his request, and that he was given the opportunity to contact the public authority to discuss his request. However, based upon the Commissioner's findings in this case, it is clear that no amount of clarification could have brought the cost of compliance with a similar request under the appropriate cost limit, and the Commissioner feels that the MAIB could have explained this fact more clearly in its initial response of 16 June 2006. Nevertheless, the Commissioner considers that the level of advice and assistance given in by the MAIB in this case satisfies the requirements of the Secretary of State's Code of Practice issued under section 45 of the Act, and therefore the duty at section 16 of the Act.

The Decision

39. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

40. The Commissioner requires no steps to be taken.

Right of Appeal

41. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 21st day of November 2006

Signed

**Richard Thomas
Information Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF**