

Freedom of Information Act 2000 (Section 50)

Decision Notice

10 September 2008

Public Authority: The Broads Authority
Address: 18 Colegate
Norwich
Norfolk
NR3 1BQ

Summary Decision

The complainant requested the Council to release the following information for all vessels registered for use on the Broads; the name and registration of each vessel, its make and model, type or class, dimensions, propulsion method and horsepower. The Council refused the request citing sections 31(1)(a) and 41(1) of the Act. Following the Commissioner's intervention the authority confirmed that it was now willing to disclose the name and registration number of each vessel. However, it remained of the view that the remaining information was exempt from disclosure under the exemptions it previously cited. The Commissioner has considered the remaining information and concluded that sections 31(1)(a) and 41(1) of the Act do not apply in this case. He has therefore requested the authority to disclose the requested information in its entirety to the complainant within 35 days of this Notice.

The Commissioner's Role

1. The Commissioner's role 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

2. The complainant contacted the Broads Authority ("the authority") on 5 January 2006 to make the following request for information in accordance with section 1(1) of the Act (full text of this section of the Act and any other sections/exemptions referred to in this Notice can be found in the Legal Annex towards the end of this Notice):

"Would you kindly supply me with a full copy of the public register of pleasure craft and houseboats maintained by the Authority in accordance with statute."
 3. The authority first responded on 12 January 2006 and informed the complainant that its register of vessels is not a public register and therefore it was unable to provide the requested information.
 4. The authority issued a further response on 14 February 2006 advising the complainant that it would deal with his request for information under the provisions of the Act and would contact him in due course.
 5. The authority issued its Refusal Notice on 3 March 2006. It advised the complainant that the requested information is exempt from disclosure under section 41 of the Act. It confirmed that the requested information is collected from the owner of each vessel and there is an expectation that this information will remain confidential.
 6. The complainant wrote to the authority on 7 March 2006 to appeal against its decision. He stated that he is not requesting personal information only information relating to the boats registered and informed the authority that other navigation bodies and public authorities have supplied similar information, for example, the Environment Agency, the British Waterways, Loch Lomond and Trossachs National Park, Bassingstoke Canal Authority and Bristol City Council.
 7. The authority responded on 7 April 2006 and informed the complainant of the outcome of its internal review. It stated that it had reconsidered its position and was now willing to disclose the requested information. The authority asked the complainant to specify exactly what information he required from the register.
 8. The complainant replied on 8 April 2006 narrowing his request to the following information:
 - registration number and name of vessel
 - type or class
 - make and model
 - dimensions
 - propulsion method and horsepower.

The complainant also asked the authority to provide the requested information in Word format or Excel.

9. The authority responded further on 2 June 2006. It advised the complainant that it had obtained further legal advice and was now only willing to release the type or class, make and model, dimensions, propulsion method and horsepower for each vessel registered. It explained that it was now of the opinion that the registration number and name of each vessel is exempt from disclosure under section 41 of the Act.
10. As the complainant remained dissatisfied he wrote to the Commissioner on 7 June 2006 to request that his complaint be given formal consideration.

The Investigation

Scope of the case

11. The Commissioner wrote to the complainant on 24 July 2007 to outline his understanding of the complaint. It was assumed at this point from the correspondence between the authority and the complainant that the complainant had received all requested information except the name and registration number of each vessel. The complainant wrote to the Commissioner on 25 July 2007 to confirm that this was incorrect and that he had received no information from the authority.
12. The Commissioner's investigation into the complainant's concerns has therefore sought to establish whether the authority complied with the requirements of section 1(1) of the Act and, in particular, whether it had appropriately applied the exemption cited to the following information:
 - registration number and name of vessel
 - type or class
 - make and model
 - dimensions
 - propulsion method and horsepower.
13. During the investigation the authority informed the Commissioner that it also wished to rely on section 31 of the Act for the non disclosure of the requested information. This Notice has therefore considered the authority's application of both section 41(1) and 31(1)(a) of the Act.

Chronology of the case

14. The Commissioner wrote to the authority on 27 July 2007 to request a further explanation regarding its application of section 41 to the requested information.
15. The authority replied on 1 October 2007. It stated that the requested information was collected by the authority to enable it to calculate the tolls to be paid by boats and to assist the overall management of the navigation. It explained that the information was provided by the owner of vessels for this purpose only and

therefore the requested information remains confidential. The authority stated that on reflection it no longer agreed that section 41 could be applied to the registration number or the name of each vessel but felt the remaining information was subject to this exemption.

16. The authority stated that its main concern with disclosure is that it is not possible to predict how this information will be used if released into the public domain. It stated that it believed boat owners would be concerned about the substantial amount of information that would be available about their individual vessel which is a private asset. It therefore suggested a means of disclosure that may satisfy both parties. It confirmed that it would release the requested information but in two different stages. It would first release the names and registration number of each vessel and then the make and model, type or class, dimensions, propulsion method and horsepower separately in order to prevent members of the public linking the two sets of data together.
17. The Commissioner wrote to the complainant on 5 October 2007 to put this suggestion to him. The complainant responded on 13 October 2007 and advised that he was unwilling to accept the requested information in this way, as in his view it would serve no meaningful purpose to him. The complainant again referred to other public authorities that have released this information and urged the Commissioner to order disclosure.
18. The Commissioner wrote to the authority on 18 October 2007 to advise it of the complainant's objections and to confirm that his investigation will continue to focus on whether the information should be released in its entirety. The Commissioner also raised some further issues about the application of section 41 of the Act and asked the authority to provide further information.
19. The authority replied on 31 October 2007. It stated that it was willing to release the names and registration numbers of each vessel to the complainant but remained of the view that the remaining information should be withheld under section 41 of the Act. It explained further why it was of the opinion that this exemption was engaged and outlined in further detail its concerns with the disclosure of this information into the public domain.
20. The Commissioner contacted the authority on 9 and 26 November 2007 and asked it to clarify why the Environment Agency and British Waterways hold a public register of the requested information and it appears the authority does not. The authority was also asked to consider whether this fact altered or weakened its decision to withhold the information.
21. The authority responded on 11 November 2007 and informed the Commissioner that the particular legislation which governs the Environment Agency and British Waterways stipulates that these authorities should make the register of vessels available for public inspection. However, the authority is subject to different legislation and there is no such statutory requirement. It confirmed that it did not consider this fact alters its decision in this case and stated that it remains of the view that the requested information is confidential and therefore covered by

section 41 of the Act. In addition, it informed the Commissioner that it now wished to rely on section 31 of the Act.

22. As the authority raised an additional exemption, the Commissioner wrote to the authority to ask for a further, more detailed, explanation as to why it considered the requested information was also exempt from disclosure under section 31 of the Act.
23. The authority responded further on 7 January 2008. It confirmed that it was of the view that disclosure would, or would be likely to, prejudice the prevention or detection of crime. It presented two main arguments. It confirmed that disclosure would be likely to increase the level of thefts of vessels themselves. Secondly, it argued that disclosure would be likely to increase the level of thefts of outboard motors, which is already a significant problem in the Broads area.

Background

24. The Broads Authority, the British Waterways and the Environment Agency are the three largest navigation authorities in the UK. As stated above, the British Waterways and the Environment Agency are subject to legislation that stipulates that they hold a register of vessels that use the waterways and that they make this available for public inspection.
25. The British Waterways Act 1971 stipulates that the British Waterways must hold a public register for those vessels that navigate its rivers. The types of vessels this would include are pleasure boats, leisure boats, narrow boats and houseboats, but not sea going vessels. For the Broads area, the register would also contain details of sea going vessels. The British Waterways Act states that it should make extracts of this register available to the public for a fee. This register would include the following information for each vessel registered:
 - name of the vessel
 - registration number
 - the length of the vessel
 - its mooring location
 - name and address of owner
 - name and address of mooring location.
26. The Environment Agency holds three different navigation registers under separate legislation for the waterways it manages. Under the Anglian Region, Recreational Waterways (Registration) Byelaws 1979 it holds a register that is available for inspection at its offices (the "Anglian register"). Inspection is limited to the name, address, craft number and tariff class of a boat although other particulars are collated during registration. The Thames Conservancy Acts 1932-1972 govern the register held of those vessels navigating the Thames (the "Thames register"). This legislation allows for the inspection of and, on application, copies of entries from the register. This register contains the same information to the register held for the Anglian waterways in addition to other particulars relating to the boat concerned. In relation to the Medway, the Southern Water Authority Acts 1982 and 1988 govern the registration of boats. Although

there is a register (the “Medway register”) under this legislation there is no provision for public inspection or access to the register.

27. A very similar case to this complaint, against the Environment Agency, has already been considered by the Commissioner. Although this case was resolved informally and therefore no Decision Notice was issued, the Commissioner notes that following his intervention the Environment Agency released information contained on all three registers to the applicant under the provisions of the Act. The Commissioner understands that the following information was disclosed for each vessel registered on the three registers outlined above:

- name and address
- craft name
- registration number
- year of construction
- engine size
- number of engines
- propulsion
- power type
- tariff class.

Analysis

Procedural issues

28. Although not raised as an issue by either the authority or the complainant, the Commissioner has considered whether the requested information could be environmental information as defined in regulation 2(1) of the Environmental Information Regulations 2004 (EIR). Requests for environmental information should be handled and determined in accordance with the EIR rather than the Act. However, because the requested information is factual information recorded about vessels on a register, rather than, say, information on the environmental impact of certain types of vessel navigating the Broads, the Commissioner does not consider it to be environmental information falling within the definition. He has therefore determined this complaint in accordance with the provisions of the Act rather than the EIR. In any event the Commissioner is satisfied that this does not affect the outcome in this case with regard to the authority’s obligation to disclose the requested information.

29. The Commissioner notes that the authority did not respond to the complainant’s request dated 5 January 2006 within 20 working days. The authority’s Refusal Notice was issued on 3 March 2006 outside the 20 working day timeframe prescribed by section 10(1) of the Act. As the authority failed to identify within 20 working days of the request the exemption(s) upon which it relied, the Commissioner has concluded that the authority was in breach of section 17(1) of the Act in this case.

30. The Commissioner also notes that the Refusal Notice issued was inadequate for the purposes of the Act. Section 17(7)(a) states that a Refusal Notice must contain details of any internal complaints procedure in place at the authority for dealing with complaints about the handling of information requests. Section 17(7)(b) also stipulates that the Notice should contain information about the complainant's right under section 50 of the Act to approach the Commissioner if he/she remains dissatisfied. As the Refusal Notice issued in this case did not contain any of this information, the Commissioner has reached the decision that the authority was in breach of sections 17(7)(a) and (b) of the Act.
31. As stated in paragraph 13 of this Notice, the authority decided to claim a late reliance on section 31 of the Act for the non disclosure of the requested information. As the authority failed to cite this exemption and the relevant subsection of this exemption in the Refusal Notice it issued, the Commissioner has found that the authority was further in breach of sections 17(1)(b) and (c) of the Act.

Exemptions

32. Turning now to the authority's decision to withhold the remaining information, the Commissioner will first consider the authority's application of section 41 of the Act. As the authority confirmed that it was now willing to release the name and registration number of each vessel registered (although this information has not to date been released to the complainant), the remainder of this Notice will concentrate on the authority's decision to withhold the remaining information about the vessels, this being:
- type or class
 - make and model
 - dimensions
 - propulsion method and horsepower

Section 41 – information provided in confidence

33. Section 41(1) of the Act provides an exemption to the right to know if the information in question was provided to the authority in confidence. There are two components to this exemption:
- the information must have been obtained by the Council from another party and,
 - disclosure of the information would give rise to an actionable breach of confidence.
34. The Commissioner understands that boat owners must register with the authority if they wish to keep their vessel in the Broads area for more than 28 days in a toll year. For the purposes of registration, the calculation of tolls and the management of the Broads area, the requested information is provided to the authority by each boat owner. As the requested information is provided to the authority by a third party, in this case the boat owner, the Commissioner is satisfied that the first component to this exemption is met.

35. The Commissioner now needs to consider whether disclosure of the requested information would give rise to an actionable breach of confidence. As outlined in the judgement of Megarry J in *Coco v A N Clark (Engineers) Limited [1968] FSR 415* (“Coco & Clark”), a breach of confidence will be actionable if:
- the information was imparted in circumstances giving rise to a duty of confidence;
 - the information has the necessary quality of confidence; and
 - there was an unauthorised use of the information to the detriment of the confider.
36. The Commissioner has considered the circumstances in which the requested information was imparted and whether each boat owner in this case would have a reasonable expectation that the requested information would only be used for the purpose of ensuring compliance with the Broads Authority Vessel Registration Byelaws 1997.
37. The authority argued that the expectation of confidentiality is obvious and implied by the fact that the registration form stipulates that the information is required in order for it to secure compliance with the Broads Authority Vessel Registration Byelaws 1997. It stated that although the form does not explicitly state that the information will remain confidential, it is reasonable to argue that boat owners will only expect the data provided to be used for the purpose of ensuring compliance with these byelaws.
38. The Commissioner has considered the reason for this information being collated and the likely expectation of boat owners. He does not agree that it is obvious from the evidence provided or implied by the circumstances that the information would remain confidential. For it to be obvious, the Commissioner would expect some form of clause in the form completed that states that the information will be held confidentially or for the form to contain more specific instructions concerning the use of this information. The circumstances surrounding the registration of vessels on the Broads appear very similar to those of other navigational bodies. As stated previously, due to legislation in place the British Waterways and the Environment Agency make registers of this nature available to the public for inspection.
39. The British Waterways and the Environment Agency make very similar information available for public inspection, with the exception of the Medway register. The equivalent information held by one of these authorities has also been disclosed under the provisions of the Act. Knowing that a considerable amount of information of this nature is already routinely made available or readily disclosed on request, the Commissioner considers that it is difficult to accept that all boat owners wishing to register with this particular authority would have the expectation that specific details relating to their vessel would remain confidential. If any boat owner had registered with another authority in the past, they would have been aware that the information provided would be held on a public register. Enthusiasts may also already be aware that in other areas this information is made available to the public.

40. The Commissioner will now consider if the requested has the necessary quality of confidence. It is the Commissioner's view that if information is of a trivial nature and/or readily available by other means or already in the public domain it is very unlikely to have the necessary quality of confidence.
41. For reasons already explained, the Commissioner is of the view that the requested information is the type of information which is already in public domain. The requested information is the type or class, make and model, dimensions, propulsion method and horsepower of the vessels registered with the authority. While some boats may be rare or even individually made, in the main, the majority of boats will be particular makes and models. A significant amount of the requested information could be obtained by an enthusiast simply observing those boats navigating or indeed moored on the Broads. As there is likely to be more than one and often numerous vessels of a particular make or model with identical dimensions, horsepower and propulsion method, it is also difficult to see how the information could be classed as confidential to one particular owner. It is also likely that some of the same models of vessels will navigate other waterways in the UK. As stated previously, in the main, very similar information to that requested is made available for public inspection by the other two large water authorities. The entire registers have also been disclosed under the Act by the Environment Agency.
42. The Commissioner is also of the view that it is possible to argue that for a significant number of vessels, the specifications are available by other means. The British Waterways and the Environment Agency make very similar information available for public inspection and one has released this kind of information in response to a freedom of information request. It will also be possible for enthusiasts to obtain at least some of the requested information by simply observing the vessels around the area. As stated in paragraph 40 above, information will not have the necessary quality of confidence if it is already in the public domain. In *Coco & Clark* it was clearly articulated that:
- "However confidential the circumstances of communication, there can be no breach of confidence in revealing something to others which is already public knowledge".
43. The Commissioner also notes that, in this case, the authority was quite willing to disclose the remaining information to the complainant provided that the specifications of each vessel could not be linked to the name and registration number. It is the Commissioner's view that such willingness to disclose information in this manner severely weakens the arguments presented by the authority concerning confidentiality.
44. It is the Commissioner's view that as the information was not imparted in circumstances giving rise to a duty of confidence and the requested information does not have the necessary quality of confidence, it is not possible to argue that disclosure would have a detrimental impact on the confider and therefore result in an actionable breach of confidence.

45. In conclusion, it is the Commissioner's view, for the reasons explained above, that section 41(1) of the Act is not engaged in this case.

Section 31 – law enforcement

46. As the requested information is not exempt from disclosure by virtue of section 41(1) of the Act, it is now necessary for the Commissioner to consider the authority's application of section 31(1)(a) to the requested information.
47. Section 31 of the Act is a prejudice based exemption. For the Commissioner to agree that this exemption is engaged the authority must demonstrate that disclosure of the requested information would, or would be likely to, prejudice any one of the various subsections in that exemption. As the authority argued that disclosure would, or would be likely to, prejudice the prevention or detection of crime, it would appear that it has relied on section 31(1)(a) of the Act. The Information Tribunal case of *John Connor Press Associates Ltd v Information Commissioner (EA/2005/0005)* outlined the Tribunal's interpretation of "likely to prejudice". It confirmed:

"the chance of prejudice being suffered should be more than a hypothetical possibility; there must be a real and significant risk".

In other words, the risk of prejudice need not be more likely than not, but it must be substantially more than remote. As this is a qualified exemption, in addition to demonstrating the likelihood of prejudice, the authority must apply the public interest test, weighing up the arguments for and against disclosure.

48. The authority argued that disclosure would be likely to provide potential criminals with a "shopping list" of vessels that navigate the Broads. From the requested information a criminal would be able to identify a specific vessel and determine its specifications, for example, the make and model, its exact dimensions, method of propulsion and horsepower. It stated that a "shopping list" would be likely to assist criminals to "cherry pick" expensive vessels and valuable items such as outboard motors from mooring locations, which are by their nature remote, unlit and poorly secured locations on the Broads.
49. The authority explained that it was of the view that the Broads is very different to the other waterways in the UK, which are, as stated earlier, mainly governed by the Environmental Agency and British Waterways. It advised that the Broads is a much smaller waterway consisting of approximately 200km of navigable waterways with fewer specified locations where a large majority of the vessels registered permanently moor. It also explained that the types of vessels that navigate the Broads are far greater than the type of vessels found on other waterways in the UK. Therefore the potential implications for releasing the information in this instance are more serious. It stated that vessels navigating other waterways in the UK are mainly narrow boats with similar equipment whereas the Broads host a wide variety of craft, from sea going vessels to more traditional boats many of which have been built in small numbers or on an individual basis. Sea going vessels tend to moor at a selection of marinas on one

river due to the low bridge restrictions in other areas rather than across the variety of mooring locations that are available.

50. It confirmed that it has liaised with the local constabulary regarding this request and currently there is a significant problem in the Broads area with the theft of outboard motors. It stated that a “shopping list” would not only be likely to create more opportunities for the theft of vessels themselves, but would also be likely to increase the level of thefts of outboard motors. The authority explained that it is not always possible to simply observe a vessel and identify its propulsion method. Many craft under sail for example may at times use an outboard motor. This would, however, be stored away until it is needed. Disclosure of the requested information would enable a potential criminal to look up the specifics of a particular vessel of this nature and easily identify whether it had an outboard motor. It also explained that a large number of vessels that are registered are powered by outboard motors. Therefore, putting the information into the public domain would be likely to worsen an already significant problem. To tackle the existing problem in the last few years, the local constabulary has appointed two officers to monitor boat related crimes on the Broads.
51. The authority also explained that a large number of vessels that are registered have a permanent mooring location and the majority of users are local to the Norfolk area. Some owners navigate daily, some less frequently and others very rarely. It follows that those that rarely navigate are mainly located at their permanent mooring site for the majority of the time. Permanent locations are offered by marinas and boatyards in the area and are often remote, poorly lit and unsecured locations. The authority confirmed that it does not offer this facility itself but it believes that there are 53 defined permanent mooring locations in the Broads area.
52. The authority provided a table to illustrate the number of vessels licensed by the authority from 1997 to 2007. This table contained figures for both private boats and hire boats, segregating those that are motorised from those that are not, such as rowing boats and sailing craft. The table also distinguished between the types of vessels that do navigate. The authority explained that the larger craft, such as motor cruisers and auxiliary yachts are those vessels that tend to have a permanent mooring at one of the 53 defined locations along the Broads. Smaller craft such as outboard dinghies are unlikely to be permanently moored and are often launched each day that they are used. It advised that day launches either have a permanent mooring or are again launched each day as required.
53. As stated in paragraph 23 the authority submitted two main arguments in support of its application of section 31(1)(a) of the Act. The Commissioner will first consider the authority's assertion that disclosure would be likely to prejudice the prevention or detection of crime by increasing the level of theft of vessels.

The theft of vessels

54. While the Commissioner may accept that disclosure would release specific information relating to each vessel that is registered, he notes that there were over 12,000 separate vessels registered with the authority in 2005 and 2006; the

years relevant to the complainant's request. He also notes that the requested information would not disclose any information about where any of the vessels registered are (or were) located at any one time.

55. As outlined in paragraph 34 above, all owners that wish to keep their vessels in the Broads area for more than 28 days in a toll year must register with the authority. The requested information confirms that a vessel will be likely to navigate the Broads for 28 days or more within that year. However, the requested information does not state when or for how long or even whether the boat is permanently moored in the area or not.
56. While the Commissioner accepts that certain types of vessels are more likely to permanently moor than others, for example, a motor cruiser is more likely to have a permanent mooring location than outboard dinghies or workboats, disclosure would not release any information from which the location of those that do permanently moor could be identified. The authority confirmed that it does not offer the facility of permanent mooring itself. However, it is aware of 53 separate defined locations that offer permanent mooring in the area. Those vessels that permanently moor could be located at any one of a number of locations.
57. The authority also confirmed that there are vessels that do not permanently moor in the area, for example, some vessels that launch daily and outboard dinghies. It is the Commissioner's view that there is no way of knowing exactly where these types of vessels will be at anyone time or when they will be used. Some vessels are likely to be kept somewhere other than the Broads, for example, in storage facilities or at the owner's own premises.
58. The majority of arguments submitted by the authority concern the potential impact on the theft of specific items such as outboard motors. Despite being given several opportunities to demonstrate exactly how disclosure of the requested information would, or would be likely to, increase the theft of vessels, the authority has failed to do so. For the reasons explained above, the Commissioner does not agree that disclosure would be likely to provide potential criminals with a "shopping list" of desirable vessels or that disclosure of the requested information would be likely to increase the number of thefts of vessels themselves.
59. The Commissioner will now consider the authority's arguments that disclosure would be likely to increase the number of thefts of outboard motors thereby prejudicing the prevention or detection of crime.

The theft of outboard motors

60. As stated in paragraph 58 above, the Commissioner notes that the authority's main arguments focus on the theft of outboard motors. The authority has recently accepted that the disclosure of the make and model, type or class or dimensions cannot in anyway be linked to the identification of such a propulsion method or possibly influence such crimes. In recent correspondence the authority confirmed that, primarily, it is concerned with the propulsion method and horsepower being released for each vessel, as together with the name and registration number it would be possible to identify which vessels have outboard motors. This

knowledge would in the authority's view increase the amount that are stolen. As the propulsion method has been requested in this case, it would be possible for a member of the public to look up a particular vessel using the name and registration number and identify accurately whether it is powered by an outboard motor or not. The Council also stated that it would be possible to identify whether a vessel has an outboard motor by obtaining its horsepower, as all outboard motors are produced within common capacity ratings.

61. As the authority failed to submit any arguments to demonstrate exactly how the type or class, make and model or dimensions would, or would be likely to, prejudice the prevention or detection of crime, the remainder of this Notice will concentrate on the remaining elements of the complainant's request; the propulsion method and horsepower of each vessel and whether section 31(1)(a) of the Act is engaged for this information.
62. The Commissioner accepts that for some vessels it is not always possible to identify its propulsion method from observation alone. The example used by the authority was a yacht under sail, which may at times use an outboard motor rather than sails. For those vessels where it is not always possible to identify its method of propulsion from observing, the requested information would enable a member of the public to establish definitively how it is powered. As stated in paragraph 60, knowing the horsepower of a vessel would also enable someone to determine with a good level of accuracy whether it is likely to have an outboard motor or not, as such motors are manufactured within common capacity ratings. Despite this, it is the Commissioner's view that for a large number of vessels it will be possible to identify its propulsion method or at least for an observer to guess to a good level of accuracy without the benefit of the requested information. For large motor cruisers, for example, these are more than likely to be powered by an onboard engine. For the majority of those powered by outboard motors, it will be obvious that it is powered this way by simply observing the vessel itself.
63. The Commissioner does not accept that disclosure would be likely to provide potential criminal with a "shopping list". When questioned further, the authority was unable to confirm exactly how many boats permanently moor and whether vessels that are powered by outboard motors are those that are likely to permanently moor at any one of the 53 defined locations. The authority did, however, state that it is likely that it is only the larger vessels such as motor cruisers and yachts that do permanently moor. Although some sailing yachts may have outboard motors, it is the Commissioner view that when these motors are not in use they are likely to be stored in a secure manner anyway.
64. As stated previously if disclosure were ordered, the requested information would not release any specific details concerning the types of vessels that permanently moor and those that do not or whether those vessels that do permanently moor are those that are likely to be powered by outboard motors. The Commissioner also notes that disclosure would not release any information about the specific location of those vessels that do permanently moor at any given time. The authority is aware of 53 defined permanent mooring locations along the Broads. Vessels that do permanently moor could be located at any one of a number of these sites at any given time within a toll year.

65. Although the Commissioner accepts that disclosure would potentially release the number of vessels that do use outboard motors, it is his view that a potential criminal would not be able to identify from this information when a vessel is likely to be navigating the waterway or when and where it is stored when not in use. Even if vessels powered by outboard motors could be one of the types of vessels that do permanently moor, a potential criminal would still have to select one or a number of vessels from over 12,000 entries and possibly visit approximately 53 separate locations in the hope of locating a particular vessel.
66. The fact that other navigation authorities in the UK make this type of information available for public inspection or in response to a request under of the Act is also of significance to this case. The Commissioner acknowledges that the authority is not governed in similar ways, although it has not explained why. However, it is his view that the legislation governing the British Waterways and the Environment Agency was based on sound decision making and that likely consequences of making such information public would have been considered. This legislation has also been in place for some time and the Commissioner is not aware of any specific amendments concerning the level of information that is currently made available or any issues surrounding criminal activity resulting from public access to this type of information, nor has the authority raised any such issues.
67. For the reasons explained above, the Commissioner has concluded that the authority has failed to demonstrate exactly how disclosure of the requested information would, or would be likely, to prejudice the prevention or detection of crime. He has therefore decided that section 31(1)(a) of the Act is not engaged in this case.
68. As the Commissioner has reached the view that section 31(1)(a) of the Act is not engaged, there is no need to consider the public interest test.

The Decision

69. As the authority failed to issue a Refusal Notice within 20 working days, the Commissioner found that the authority was in breach of section 17(1) of the Act. As the authority also claimed a late reliance on section 31(1)(a) of the Act and, failed to specify the relevant subsection of each exemption cited, the authority was found to be in breach of sections 17(1)(b) and (c) of the Act.
70. As the authority did not inform the complainant of his right to request an internal review and of his right to approach the Commissioner under section 50 of the Act in the Refusal Notice it issued, the Commissioner concluded that the authority was in breach of sections 17(7)(a) and (b) of the Act in this case.
71. The Commissioner has also decided that the authority did not deal with the complainant's request in accordance with section 1(1), as it inappropriately relied on sections 41(1) and 31(1)(a) of the Act thereby failing to disclose the requested information to the complainant.

Steps Required

72. In view of the matters referred to above the Commissioner gives notice that in exercise of its powers under section 50 he requires the authority to disclose the following information to the complainant within 35 days of the receipt of this Notice:

- Registration number and name of vessel
- Type or class
- Make and model
- Dimensions
- Propulsion method and horsepower

The above information should be supplied for all vessels registered with the Broads at the time of the complainant's request in January 2006

Right of Appeal

73. 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@tribunals.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 10th day of September 2008

Signed

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

Legal Annex

Freedom of Information Act (2000)

Section 1(1)

Provides 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.”

Section 10(1)

Provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 17(1)

provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(7)

Provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”

Section 31(1)

Provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”

Section 41(1)

Provides that –

“Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”