

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 December 2012

Public Authority: Maritime and Coastguard Agency (Department for Transport)

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

Decision (including any steps ordered)

1. The complainant requested information from the Maritime and Coastguard Agency (MCA) relating to the failure of a propeller on HoverTravel's Solent Express hovercraft. The request included notes, documents and research and inspection reports relating to the suspension of operations. MCA refused to disclose the information under section 30(2)(a)(i) (investigations and proceedings) of FOIA.
2. The Commissioner's decision is that the Maritime and Coastguard Agency (MCA) has correctly cited section 30(2)(a)(i). He therefore does not require any steps to be taken.

Request and response

3. The MCA is an Executive Agency of the Department for Transport. It works nationally and internationally with its partners in the shipping industry to promote the safe construction, operation and navigation of ships. The MCA makes Statutory Instruments and publishes guidance, including codes of practice, technical requirements and specifications, relating to a wide range of matters concerning the operation of vessels and the safety of crew and passengers on them. It also has responsibility for transposing European Union obligations relating to maritime issues into UK domestic law. The MCA also undertakes statutory oversight of hovercraft and their operations in the UK.

4. On 14 December 2011, the complainant wrote to the Maritime and Coastguard Agency (MCA) and requested information in the following terms:
 - *Copy of incident report(s) and related information to the 30 October 2011 regarding HoverTravel's Solent Express hovercraft.*
 - *All notes, documents and other papers generated which are related to the suspension of all HoverTravel operations (Freedom 90 and Island Express hovercraft).*
 - *All research and inspection reports concerning any propeller(s) used on HoverTravel craft to include data the MCA commissioned and HoverTravel conducted after 01 Oct 2010.*
 - *Copy of MCA's findings concerning HoverTravel's 'Safety Maintenance Systems.'*
5. MCA responded on 19 December 2011. It stated that it was refusing the request in reliance on section 30 of FOIA as MCA had not concluded its investigation into a propeller failure on one of Hover Travel's hovercraft.
6. Following an internal review MCA wrote to the complainant on 7 February 2012. It stated that it was maintaining its position that section 30 was correctly applied to the request as MCA had not yet completed its investigation. However, it did inform the complainant that the failed propeller was undergoing forensic investigation and provided details of the three stages of that investigation.
7. The Information Commissioner notes that MCA is not a public authority in its own right but is an executive agency of the Department for Transport. Therefore, the public authority in this case is the Department for Transport. For the purposes of this decision notice MCA is referred to as if it were the public authority.

Scope of the case

8. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. Following a request from the Information Commissioner for additional detail of the complaint the complainant referred to his letter to MCA requesting an internal review. In summary the complainant has asked the Information Commissioner to consider:

- whether it is in the public interest to release preliminary reports of investigations citing other countries where the information into similar incidents is freely available from other agencies; and
 - whether mechanical, procedural and safety items of public transportation are in the public interest.
9. During the course of his investigation the Information Commissioner requested a copy of the withheld information together with MCA's arguments for its application of section 30.
10. MCA informed the Information Commissioner that it was relying on section 30(2)(a)(i) of FOIA and that, having considered the request, the public interest in maintaining the exemption outweighed that in disclosure. It provided the Information Commissioner with a copy of the withheld information as well as a comprehensive explanation and description of the information which for the purposes of this notice the Information Commissioner can describe as extremely technical and complex.
11. The scope of the Information Commissioner's investigation is therefore to determine whether MCA correctly cited 30(2)(a)(i) of FOIA at the time of the request and whether the public interest favoured disclosure or retention.

Reasons for decision

Section 30 - investigations and proceedings conducted by public authorities.

12. MCA cited section 30(2)(a)(i) in relation to the withheld information which applies if the information was at any time held by the public authority for the purposes of conducting an investigation it has a duty to carry out.
13. Section 30 states that:

"(2) Information held by a public authority is exempt information if –

(a) it was obtained or recorded by the authority for the purposes of its functions relating to –

(i) investigations falling within subsection (1)(a) or (b), and

(b) it relates to the obtaining of information from confidential sources."

14. Subsection (1)(a) of section 30 states that:

"(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of –

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained –

(i) whether a person should be charged with an offence, or

(ii) whether a person charged with an offence is guilty of it."

15. The Information Commissioner has inspected the withheld information which he can best describe as complex and technical. Due to the volume and nature of the information it would not be appropriate to attempt to list the documents here.

16. The Information Commissioner asked MCA to provide an explanation of its reliance on section 30(2)(a)(i).

17. The MCA first explained its function by way of background to the complaint, as described in paragraph 2 above. In particular, it is an Executive Agency of the Department for Transport working nationally and internationally with partners in the shipping industry to promote the safe construction, operation and navigation of ships, including having statutory oversight of hovercraft and their operations in the UK.

18. MCA told the Information Commissioner that as a consequence of these regulatory responsibilities, it is charged with carrying out statutory survey and inspection duties under the Merchant Shipping Act. As part of this its appointed persons may make any examination or investigation as is considered necessary. This includes establishing the likely cause of incidents for the purpose of ensuring maritime safety. MCA is also the prosecuting authority for a wide variety of criminal offences relating to maritime safety regulation in the UK.

19. In respect of the withheld information in this case the MCA told the Information Commissioner that it was conducting an investigation into an incident involving the failed controllable pitch propeller on a hovercraft, Solent Express, that occurred on 30 October 2011. It said that both the forensic investigation and wider investigation into the accident was incomplete and that it had therefore not reached a conclusion from its investigation. It provided a copy of the withheld information to the Information Commissioner together with an aide memoir to navigate and further explain and describe that information. It

explained that the information also contained evidence that related to information obtained from confidential sources.

20. To be clear the MCA told the Information Commissioner that the information falling within the scope of the request was held to establish:
- the cause of the accident on board SOLENT EXPRESS on 30-10-11;
 - whether any person has failed to comply with the law (in this incident, or wider company operations and responsibilities);
 - whether circumstances which would justify regulatory action in pursuance of the Merchant Shipping Act exist or may arise (in this incident, or wider company operations and responsibilities);
 - the health, safety and welfare of persons at work; and
 - the protection of persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.
21. Having considered the withheld information in conjunction with the description provided by MCA the Information Commissioner is satisfied that the information is held for the purposes of a specific investigation which MCA is required to conduct as part of its statutory functions. He is also satisfied that an investigation of this type could lead to a decision by the MCA to institute criminal proceedings which it has the power to conduct. Accordingly, the Information Commissioner accepts that section 30(2)(a)(i) is engaged.
22. As section 30(2)(a)(i) is a qualified exemption the Information Commissioner has gone on to consider the public interest test.

Public interest

Public interest in disclosing the information

23. MCA told the Information Commissioner that it understood that there was a general and genuine public interest in the public being aware of the safety issues with hovercraft. It explained that it believed that the public interest is being served by the conduct of a full and proper investigation by it as the public authority charged with that duty under the Merchant Shipping Act. It argued that the vessel concerned has been taken out of service and will remain out of service until the facts and reasons for failure have been properly determined and any relevant actions undertaken.
24. The complainant argued that disclosure of information regarding the safety of public transport is in the public interest. He disagreed with the view of MCA that it would not be in the public interest to disclose the information or that the public interest is being served in that the vessel concerned has been taken out of service. He disagreed that MCA was correct to cite the public interest associated with the vessel and not the information in question.
25. The complainant also argued that other countries in carrying out aviation investigations routinely disclosed information from their investigations and that it was his view that this should be the case with the MCA investigation. He also told the Information Commissioner that he had concerns with the timing of the suspension of the fleet and felt that there had been unnecessary delays which in his view demonstrated a failure to act on the safety of passengers travelling on the vessels.
26. The Information Commissioner accepts that there is a strong public interest in the public being informed about the safety of public transport and how investigations into safety matters are undertaken. He accepts that this public interest remains even though the vessel concerned has been taken out of service and an investigation is being conducted.
27. In relation to the complainant's concerns about unnecessary delays and an alleged failure to act on the safety of passengers, he considers that these are matters of public interest. He considers that disclosing the information would give the public a fuller picture and allow it to judge for itself whether there is any real basis for such concerns.

Public interest in maintaining the exemption

28. The MCA argued that it was not in the public interest to disclose information whilst its investigation was ongoing. It argued that until it reached its final decisions and conclusions, disclosure of any incomplete and technical material relating to the incident and details of companies

involved in the interim could prejudice its investigation. It argued that if a prosecution were to be brought it could prejudice the outcome of that prosecution by presenting a partial and incomplete picture to the public. It also argued that inappropriate inferences could be made which give the impression that there had been culpable failings on the part of the businesses or individuals involved, when the final outcome of the investigation might be that such an impression was unwarranted. It also argued that incorrect inferences could be drawn from the information that could affect the business of other operators of similar vessels.

29. The Information Commissioner attributes significant weight to the arguments presented by the MCA that disclosure of unfinished investigative material would not be in the public interest because it is important to ensure the safeguarding of the investigatory process. He also notes that the incident subject to the investigation occurred on 30 October 2011 and that at the time of the request of 14 December 2011 the investigation was in its very early stages. It is his view that there is a strong public interest in not undermining an investigation where there could be a subsequent prosecution and in particular where any disclosure of information into the public arena could prejudice the right to the fair trial of any party. He accordingly attributes significant weight to this argument.
30. MCA also argued that if witnesses were aware that their comments may be given to the public at large then such knowledge could prevent the provision of accurate and honest comments about the incident for fear of any reprisals. Whilst it would be expected that their comments would have to be relied on as part of any formal proceedings, this is not the same as their comments being released for public scrutiny in advance of any proceedings. The Information Commissioner understands that the parties involved with the investigation would expect the evidence they provided to be used only for the purposes of the investigation and not to be released into the public domain for other purposes. Accordingly, the Information Commissioner considers that release of personal statements may well act as a deterrent to witnesses providing statements in the future, thereby undermining the administration of justice. The Information Commissioner finds this to be a compelling and significant argument for maintaining the exemption.
31. He does not give any weight to the argument about affecting the business of other operators as he does not accept that this is inherent in the exemption claimed. Section 30 of the Act is concerned with protecting investigations and proceedings conducted by public authorities, not with commercial prejudice.

Balance of the public interest arguments

32. In deciding where the balance of the public interest lies the Information Commissioner has taken into account the seriousness of the subject matter of the investigation. There is considerable public interest in the failure of a propeller on public transport being investigated as thoroughly as possible and ensuring that the best evidence is available to the MCA to inform its decisions. There is also considerable public interest in not prejudicing the outcome of any future proceedings.
33. Also, the MCA may be required to conduct other investigations into future incidents as it is statutorily required to do and the Commissioner recognises that such investigations would be severely harmed if witnesses were dissuaded from coming forward or being as open as possible because information in this investigation was made public.
34. Whilst the arguments in favour of disclosure are deserving of some weight, in the Information Commissioner's view the arguments in favour of maintaining the exemption have far more weight for the reasons given above. Therefore, he has concluded that the public authority appropriately refused the requests on the basis that section 30(2)(a)(i) applied and the public interest favoured maintaining the exemption.

Right of appeal

35. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

36. 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.
37. 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

Lisa Adshead
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