



Decision Notice 246/2024

Correspondence involving evaluators of the procurement process for Hulls 801 and 802

Authority: Caledonian Maritime Assets Ltd
Case Ref: 202201426

Summary

The Applicant asked the Authority for specific correspondence involving evaluators of the procurement process for Hulls 801 and 802. The Authority told the Applicant that it did not hold the information.

The Commissioner investigated and found that the Authority had failed to provide adequate submissions to justify its position. He required the Authority to carry out further searches and to issue a new review.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (4) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 28 October 2022, the Applicant made a request for information to the Authority. He asked for;
 - (i) Any correspondence involving the independent and internal evaluators for the procurement process for Hulls 801 and 802 on the topic of Houlder Ltd.

- (ii) Any correspondence involving the independent and internal evaluators for the procurement process for Hulls 801 and 802 covering discussions of the quality of the bids and any concerns raised about the similarity of the content of any bids to CMAL or CalMac technical specification documents.

He asked that that his request should cover the period between 1 July 2014 and 31 October 2015.

2. The Authority responded on 7 November 2022. It gave the Applicant notice, under section 17(1) of FOISA, that it did not hold any information falling within the scope of his request.
3. On 9 November 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he considered that the Authority had deliberately misinterpreted his request by narrowing the scope beyond what he intended.
4. The Authority notified the Applicant of the outcome of its review on 7 December 2022. The Authority upheld its original decision in full.
5. On 12 December 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he believed the Authority had taken a pedantically narrow approach to the request, in order to withhold information from him.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 20 December 2022, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice of the application in writing and invited its comments.
8. The case was subsequently allocated to an investigating officer.
9. The Authority did not provide any comments to the Commissioner.

Commissioner's analysis and findings

10. The Commissioner has considered all of the submissions made to him by the Applicant and has considered the Authority's review outcome.

Section 17(1) – Notice that information is not held

11. The Authority claimed in its review that it did not hold the information requested by the Applicant.
12. In considering whether a Scottish public authority holds the requested information in any given case, the Commissioner must be satisfied that the authority has carried out adequate, proportionate searches in the circumstances, taking account of the terms of the request and all other relevant circumstances. He will consider the scope, quality, thoroughness and results of those searches, applying the civil standard of proof (the balance of probabilities).

Where appropriate, he will also consider any reasons offered by the public authority to explain why it does not, or could not reasonably be expected to, hold the information.

13. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it does not hold the information (or holds no more information than it has identified and located in response to the request). In this case, despite being given the opportunity given to provide comments, the Authority declined to provide any.
14. In its review outcome, the Authority stated that it took into consideration the points raised by the Applicant in his requirement for review. However, the Authority failed to provide the Commissioner with any evidence to demonstrate that it has considered the concerns raised by the Applicant. The Authority did not provide the Commissioner with details of the searches it carried out, neither did it provide him with an explanation of how it interpreted the scope of the Applicant's information request. Given the lack of evidence presented by the Authority, the Commissioner cannot be satisfied that the Authority's interpretation of the request was reasonable, nor that the searches it carried out were adequate.
15. In all the circumstances, therefore, the Commissioner cannot find that the Authority was entitled to give the Applicant notice, under section 17(1) of FOISA, that it did not hold the information he had requested.
16. He requires the Authority to carry out fresh searches for the information, giving particular attention to the scope of the information requested by the Applicant. The Authority's searches should focus on:
 - any correspondence sent to or from any of the independent and internal evaluators for the procurement process for Hulls 801 and 802 on the topic of Houlder Ltd.
 - any correspondence sent to or from the independent and internal evaluators for the procurement process for Hulls 801 and 802 covering discussions of the quality of the bids and any concerns raised about the similarity of the content of any bids to CMAL or CalMac technical specification documents.

Searches should focus on correspondence sent between 1 July 2014 and 31 October 2015.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

Specifically, the Authority has failed to satisfy the Commissioner that it does not hold the requested information. As a result, the Commissioner finds that the Authority failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Authority to carry out adequate, proportionate searches for the information, reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA), by **16 December 2024**.

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Jennifer Ross
Deputy Head of Enforcement

1 November 2024