



Scottish Information
Commissioner

**Decision 021/2006 Mr Gordon Ross, Managing
Director of Western Ferries (Clyde) Limited and
Caledonian MacBrayne Limited**

*Information about expenditure on corporate hospitality and
attending and hosting formal dinners*

**Applicant: Gordon Ross, Managing Director of
Western Ferries (Clyde) Limited**

Authority: Caledonian MacBrayne Limited

Case No: 200501636 (Part 2)

Decision Date: 20 February 2006

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 021/2006 – Gordon Ross, Managing Director of Western Ferries (Clyde) Limited and Caledonian MacBrayne Limited

Information about expenditure on attending and hosting formal dinners and entertainment or corporate hospitality – section 12 of the Freedom of information (Scotland) Act 2002 (FOISA) – excessive cost of compliance – section 15 of FOISA – duty to advise and assist – section 17 of FOSIA – information not held

Facts

Mr Ross requested information about the total costs to Caledonian MacBrayne Limited (Caledonian MacBrayne) of attending and hosting formal dinners over the last three years. He also asked for a breakdown of Caledonian MacBrayne's entertainment or corporate hospitality expenditure over the last three years. Caledonian MacBrayne refused to comply with these requests on the grounds that, under section 12 of FOISA, doing so would exceed the prescribed cost limit of £600. Caledonian MacBrayne upheld its decision in relation to these requests following a review. Mr Ross then applied for a decision on these matters.

Outcome

The Commissioner found that Caledonian MacBrayne had acted in breach of section 1(1) of FOISA in refusing to comply with Mr Ross's two requests on the grounds of excessive costs.

In relation to Mr Ross's request for information on expenditure associated with formal dinners, the Commissioner found that Caledonian MacBrayne should have informed Mr Ross under section 17 of FOISA that the information requested was not held (apart from the limited information that was provided in relation to dinners associated with Board meetings).

In relation to the request for information about expenditure on entertainment, the Commissioner found that Caledonian MacBrayne should have provided Mr Ross with the total expenditure recorded under its "Entertainment Non Calmac" budget head for the period covered by the request.



In the course of this investigation, Caledonian MacBrayne provided information to Mr Ross in partial fulfilment of these two requests for information. The Commissioner found that although this information did not provide in full the information that Mr Ross requested, Caledonian MacBrayne has now provided as much as could reasonably be identified given the arrangement and contents of its financial records and systems. The Commissioner does not require any further steps to be taken in response to this decision.

Appeal

Should either Mr Ross or Caledonian MacBrayne Limited wish to appeal against my decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Background

1. Mr Ross wrote to Caledonian MacBrayne on 25 February 2005 in a letter containing four information requests. Two of these requests are the subject of this decision. These sought:
 - a) "Total cost to Caledonian MacBrayne of attending and hosting formal dinners, to include travel, accommodation, alcohol and all other incidentals over the last three years.
 - b) Breakdown of Caledonian MacBrayne's entertainment or corporate hospitality expenditure over the last three years. "
2. Caledonian MacBrayne responded to these requests separately in two notices dated 21 March 2005. These each indicated that Caledonian MacBrayne estimated that the costs of complying with the request would exceed the £600 prescribed cost limit set out in The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations). As a result, Caledonian MacBrayne notified Mr Ross that, under section 12 of FOISA, it was not required to provide a response.



3. Mr Ross requested reviews of these decisions in a letter dated 25 March 2005. He indicated that he believed that the information should be relatively easily available on print-outs from the general ledger of the company's accounting package. However, Caledonian MacBrayne's (again separate) responses of 25 April 2005 upheld its initial decisions on the grounds that compliance with the requests would exceed the prescribed cost threshold of £600.
4. Mr Ross applied to me for a decision in relation to these two requests for information in a letter dated 2 May 2005. This application also related to a number of other requests for information, which are the subject of the separate decision 019/2006.
5. Mr Ross's application again stated his view that the information under consideration here should be readily available from Caledonian MacBrayne's accounting package. He suggested that all accounting packages had the ability to investigate costs on a category basis. He suggested that in relation to previous years, assuming the information was not backed up electronically, paper copies would be available as all companies were legally bound to hold this information for taxation purposes.
6. Mr Ross's application for decision was received on 5 May 2005 and allocated to an investigating officer

Investigation

7. Mr Ross's appeal was validated by establishing that he had made valid information requests to a Scottish public authority under FOISA and had appealed to me only after asking the Caledonian MacBrayne to review the responses to his requests. Caledonian MacBrayne is a company wholly owned by the Scottish Ministers and as such is a publicly owned company (and therefore a public authority) for the purposes of section 3(1)(b) of FOISA.
8. The investigating officer wrote to Caledonian MacBrayne on 6 May 2005 informing it that Mr Ross's appeal had been received and that an investigation into the matters had begun. Caledonian MacBrayne was invited to comment on the case in terms of section 49(3) of FOISA.
9. This letter also asked for information on how Caledonian MacBrayne reached the conclusion that the costs of responding to each of the requests would exceed the £600 prescribed limit. Caledonian MacBrayne was also asked to confirm what, if anything, could be provided within the fees limit.



10. Caledonian MacBrayne's response to this letter was received on 25 May 2005. It indicated that the time taken to interrogate financial systems and collate responses to each of the two requests would exceed the fees limit. Caledonian MacBrayne advised that electronic systems did not store all invoices for the last three years, and so physical checks of all invoices and expense claims would be required in order to identify relevant information.
11. Caledonian MacBrayne confirmed that it could provide details of the cost of dinners accompanying certain Board of Directors meetings for the three year period 2002 – 2004, which would partially fulfil the request for information about the costs associated with formal dinners.
12. Caledonian MacBrayne also confirmed that it could provide details of expenditure on entertainment for each of the three financial years 2002-03 through 2004-05. It noted that the capture of entertainments costs under a unique heading had commenced part way through the 2002-03 financial year.
13. The investigating officer visited Caledonian MacBrayne's offices in Gourrock in September 2005 to discuss a number of ongoing investigations under FOISA. During this visit, she met with Caledonian MacBrayne's Accounts Manager, who was asked to provide details of the steps that would be involved in complying in full with Mr Ross's two requests for information on expenditure.

Information on expenditure on formal dinners

14. Caledonian MacBrayne's Accounts Manager explained that information sought by Mr Ross in relation to formal dinners could not be confirmed via any simple report from the company's electronic financial systems. A number of different sources of information would need to be consulted in order to confirm details of associated expenditure on travel, accommodation, alcohol and other incidentals, as well as the basic costs of hosting or attending formal dinners.
15. Caledonian MacBrayne's financial systems store invoices electronically for 6 months in live systems, and older invoices are then moved onto CD-Rom. Invoices relating to formal dinners might be categorised under the budget heading relating to "entertainment" where Caledonian MacBrayne was organising or hosting such an event. In other cases, Individuals or groups of employees might attend dinners held by trade associations. Invoices associated with these would be held under a different heading within the accounting system. The identification of relevant invoices could only be achieved by checking each invoice within any potentially relevant categories.
16. There would be further difficulties, however, in identifying relevant invoices given that these would not necessarily specify that the costs were associated with a dinner, formal or otherwise. For example, an invoice relating to accommodation would not necessarily indicate that the relevant costs were incurred in relation to a formal dinner.



17. Alongside costs invoiced to Caledonian MacBrayne, costs incurred in the course of attending or hosting dinners could be charged to company credit cards, or claimed in personal expenses. For both of these types of payment, forms would be submitted to the company detailing the expenditure. For travel expenses, this would include a start and end point. While these forms will also indicate the reasons for expenditure, these would not necessarily indicate these in a way that would allow identification of particular expenditure as incurred in the course of attendance at or hosting a formal dinner.
18. Forms detailing expense claims and credit card expenditure are not held electronically. Therefore, forms would need to be checked by hand to confirm whether any item was relevant to Mr Ross's request.

Information on expenditure on entertainment or corporate hospitality

19. When asked which budget categories would contain information relating to corporate hospitality/entertainment, Caledonian MacBrayne confirmed that the budget heading named "Entertainment non-Caledonian MacBrayne" in use since part way through 2002-03 would allow identification of spending on "entertaining" people from outside the organisation. Although confirmation of all spending on entertainment would require a further check of all expenses and credit card spending, the total for this budget heading provided the closest match that was readily available to the information sought by Mr Ross in this second request.

Release of information to Mr Ross

20. Following the investigating officer's visit, Caledonian MacBrayne confirmed that it did not consider the information that had been provided to my office on the cost of Board dinners, and expenditure on entertainment to be exempt from release. The company decided to release this information to Mr Ross in partial fulfilment of his requests for information.
21. Caledonian MacBrayne wrote two letters to Mr Ross in October 2005. In relation to each request, the company advised that it did not hold the information in a form that would all it to fully provide the information sought by his request. However, the company provided the following information:
 - a) The total cost of Board of Directors dinners between 2002 and 2004.
 - b) Total expenditure on entertainment (the total from the "Entertainment Non-Caledonian MacBrayne" budget heading) for each of 2002 -03, 2003-04 and 2004-05. The company also advised that this budget heading was introduced only part way through 2002-03 (and so the figure for this year would not necessarily reflect the full expenditure over the year).



22. The investigating officer contacted Mr Ross to confirm that he had received the two letters providing information on 28 October 2005. During this conversation, Mr Ross indicated that he remained dissatisfied with this outcome, and that his view was that Caledonian MacBrayne had still not complied fully with his request. Mr Ross advised the investigating officer that:
- a) He still believed that the information requested should be readily available through invoices stored in Caledonian MacBrayne's accounting software
 - b) He believed that information about Caledonian MacBrayne's expenditure on hospitality should be available through its tax return
 - c) He did not consider the figures provided for "entertainment" expenditure to be a full reflection of spending on hospitality. Mr Ross suggested that such costs may be recorded elsewhere, for example as "sundries"
 - d) He provided some clarification of what he meant by formal dinners, being formal dinners attended by Caledonian MacBrayne staff and their guests (for whom Caledonian MacBrayne would pay).
23. In the light of Mr Ross's views, the investigating officer wrote to Caledonian MacBrayne on 18 November 2005, communicating Mr Ross's points and requesting further information on the type of information that was associated with each invoice when stored in its electronic systems. Caledonian MacBrayne was asked further questions to establish what kind of searching might be possible to identify relevant invoices. Information was also requested to establish whether further information on expenditure on entertainment could be established from the company's tax returns.
24. Caledonian MacBrayne's response to this request confirmed that no further relevant information beyond that already provided to Mr Ross was recorded within the company's tax returns. The company also confirmed that invoices were stored within its systems in chronological order rather than by budget heading, and that the only way to identify any relevant invoices would be to check each manually.
25. Caledonian MacBrayne advised me that around 3000 invoices were captured within the purchase ledger system each month. Up to a further 1000 individual expense transactions could be undertaken alongside these each month.

The Commissioner's analysis and findings

26. The issues to be addressed in relation to Mr Ross's two requests differ slightly. I address these two requests in turn below.
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- a) "Total cost to Caledonian MacBrayne of attending and hosting formal dinners, to include travel, accommodation, alcohol and all other incidentals over the last three years.
- b) Breakdown of Caledonian MacBrayne's entertainment or corporate hospitality expenditure over the last three years. "

Expenditure on formal dinners

27. In the case of this first request, Caledonian MacBrayne has demonstrated to me that identification and collation of a figure for total costs associated with formal dinners would involve considerable challenges.
28. The way in which Caledonian MacBrayne's financial systems are organised would not facilitate simple searching or reporting on a specific topic such as the hosting or attending of particular types of events. As the company has pointed out to me, these systems are designed to support management reporting and statutory accounting requirements. Their function is not to allow detailed searching for financial records on any aspect of the company's work that a member of the public might be interested in.
29. Caledonian MacBrayne's expenditure on attendance at formal dinners could be recorded under a number of different expense categories, each of which would also account for a range of other activities and types of expenditure. Therefore, I accept Caledonian MacBrayne's submission that the only way that information required to provide a response to this request could be collated is by checking the relevant records directly.
30. Caledonian MacBrayne has identified three types of records that could hold information about expenditure associated with hosting or attending formal dinners. These are invoices, records of expense claims, and records of expenditure on company credit cards. While invoices are scanned and stored electronically (either in the live system, or CD-rom, depending on their age), credit card and expenses records are only stored in paper form. It is clear that reviewing these over a three year period would be a time consuming and costly task.
31. Following the investigating officer's inspection of the systems and records that would need to be searched in response to Mr Ross's request, however, I do not believe that such a search would actually allow the provision of a full response to Mr Ross's request.



32. Mr Ross has framed his request in very specific terms, seeking the total costs associated with formal dinners to include travel, accommodation and other incidentals. In order to allow this information to be gathered, these kinds of expenditure would need to be recorded in such a way within invoices, or records of expenses or credit card expenditure, to show whether a particular item related to the attendance at or hosting of a formal dinner. Various samples provided to the investigating officer suggest that this would often not be the case however. For example, expenses claims or credit card records might not provide detail of the event in relation to which costs were incurred. Examples were also given of invoices where costs associated with formal dinners were not clearly marked as such.
33. These limitations of Caledonian MacBrayne's financial records as a source of the information requested by Mr Ross lead me to conclude that Caledonian MacBrayne should have responded to this request by notifying him that the information requested was not held, in accordance with section 17 of FOISA. Although Caledonian MacBrayne's overall expenditure will clearly include costs associated with such events, the records of this will not necessarily allow such expenditure to be distinguished from that on other activities. It is clear to me that no matter what costs would be incurred in reviewing the relevant invoices and other records of expenditure, no systematic total figure could be provided.
34. I also conclude that Caledonian MacBrayne failed to comply with its duty to advise and assist Mr Ross under section 15 of FOISA, in its response to this request. Given that Caledonian MacBrayne's systems would not allow the provision of the specific information Mr Ross had requested, the company might have taken steps, for example, to
- a) explain the way in which financial information was recorded and stored within its systems,
 - b) seek clarification of the particular events, or types of events in which he was interested,
 - c) explain what information might be made available in partial fulfilment of the request.
- Such assistance might have enabled Mr Ross to reframe his request or to make a new one in a way that would allow him to access information of interest to him in a form that Caledonian MacBrayne's systems would allow.
35. I do note, however, that in the course of the investigation, Caledonian MacBrayne chose to provide information about costs relating to dinners associated with Board meetings over the last three years. Although this was only partial fulfilment of Mr Ross's request, I welcome this step and would suggest that in similar circumstances in future, such steps are considered when first responding to a request for information.



Expenditure on entertainment/corporate hospitality

36. Caledonian MacBrayne's responses to Mr Ross's second request mirrored those to the request for information about formal dinners. Its description of the task involved in collating a response to this request again assumed that a manual check of invoices, and other expenditure records would need to be conducted.
37. However, in this case, Caledonian MacBrayne's financial recording includes a specific category for expenditure on entertainment. The total expenditure within this category for the years covered by Mr Ross's request could be easily confirmed and was provided to him in the course of my investigation.
38. I find it unhelpful that Caledonian MacBrayne did not advise Mr Ross that this information could be provided to him, without any excessive cost being incurred. I find once again, therefore, that Caledonian MacBrayne has not fulfilled its duty under section 15 of FOISA to advise and assist Mr Ross when considering its response to this request.
39. The information provided by Caledonian MacBrayne to Mr Ross has limitations, however, and does not necessarily represent fully the total costs requested. The budget heading for entertainment expenditure was only introduced part way through the 2002-03 financial year. Some relevant expenditure for that year would therefore not be recorded within the total figure provided.
40. Nonetheless, I find that the information provided to Mr Ross in the course of this investigation is all that could be judged to be held for the purposes of FOISA in relation to this request. While further records and invoices might relate to expenditure on entertainment, these records would not necessarily allow such expenditure to be distinguished from that on other activities.
41. In the course of this investigation, I have also considered the points raised by Mr Ross, following Caledonian MacBrayne's provision of information on entertainment. Mr Ross suggested, for example, that Caledonian MacBrayne's tax returns would provide further recorded information about expenditure on entertainment. Caledonian MacBrayne has provided me with an extract from its tax return that demonstrates that this is not the case. I am also satisfied that Caledonian MacBrayne could not simply access all invoices relevant to Mr Ross's two requests as he suggests.
42. Therefore I conclude in relation to this second request that the information now provided to Mr Ross is all that Caledonian MacBrayne holds that could be expected to be provided. I find that Caledonian MacBrayne has now, albeit belatedly, complied with this request.



Decision

I find that Caledonian MacBrayne Limited (Caledonian MacBrayne) failed to comply with section 1(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) when it refused Mr Ross's two requests for information on the grounds of excessive cost. In both cases, I find that Caledonian MacBrayne misapplied section 12 of FOISA.

I also find that Caledonian MacBrayne failed to act in accordance with its duty under section 15 of FOISA to advise and assist Mr Ross when responding to these requests.

In relation to Mr Ross's request for information about expenditure on formal dinners, I find that Caledonian MacBrayne does not hold information that would allow it to collate the total figure Mr Ross has requested. Therefore, I find that Caledonian MacBrayne failed to comply with section 17 of FOISA when it did not notify Mr Ross that the information was not held.

In relation to Mr Ross's request for information about expenditure on entertainment, I find that Caledonian MacBrayne should have provided Mr Ross with the total expenditure recorded under its "Entertainment Non-Calmac" budget head for the period covered by the request.

In the course of this investigation, Caledonian MacBrayne has provided information to Mr Ross in partial fulfilment of each of the requests. I find that this is as much information as could reasonably be identified in response to Mr Ross's request and therefore do not require any further steps to be taken in response to this decision.

Kevin Dunion

Scottish Information Commissioner

20 February 2006