

Decision Notice 092/2020

Ticketing and operations

Applicant: The Applicant

Public authority: CalMac Ferries Limited

Case Ref: 201902190



Scottish Information
Commissioner

Summary

CalMac was asked for a range of information about its ticketing and operations.

CalMac disclosed some information and explained that it did not hold other information requested.

The Commissioner was satisfied that, by the end of his investigation, CalMac had carried out appropriate searches and had disclosed all the relevant information it held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 25 February 2019, the Applicant made a number of requests for information to CalMac Ferries Limited (CalMac). Two of the requests were for:
 - a. details of any freight or transport companies (other than the Applicant's business) which are unable to purchase return tickets on CalMac ferries for unaccompanied travel
 - b. a note of standard conditions of travel for CalMac users and any additional conditions which apply to the Applicant or to his business whilst vehicles are on ports and vessels unaccompanied.
2. CalMac responded on 2 April 2019, and:
 - a. stated that there are no companies which can buy return tickets for unaccompanied travel. Only single tickets are sold and these are sold by special arrangement; this is not a standard offer.
 - b. provided a weblink to its standard conditions of carriage: <https://www.calmac.co.uk/conditions-of-carriage>. CalMac told the Applicant there are no additional conditions applying to him or to his business.
3. On 9 May 2019, the Applicant emailed CalMac requesting a review of its decision on the basis that he considered that further information was held.
4. CalMac notified the Applicant of the outcome of its review on 30 May 2019. It confirmed its initial response.
5. On 29 November 2019, the Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of CalMac's review because he considered that further information was held, than had been disclosed.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 9 December 2019, CalMac was notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. CalMac was invited to comment on this application and to answer specific questions. CalMac responded to the questions raised regarding the searches it had conducted and the information that was held.
9. On 17 February 2020, CalMac emailed the Applicant and noted that, in responding to the initial request, it had made the assumption that he was only interested in information regarding the Kennacraig to Islay route, but now appreciated that perhaps it should have provided with information relating to other routes. CalMac provided the Applicant with details of ticket categories for unaccompanied vehicles and the routes for which they were available.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and CalMac. He is satisfied that no matter of relevance has been overlooked.
11. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
12. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
13. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.

Request a – unaccompanied travel

CalMac's submissions

14. In response to this request, CalMac stated that it searched its website for any information relating to unaccompanied vehicles. The department responsible for ticketing was contacted for any relevant information. Customer Care searched its database for any complaints

relating to unaccompanied vehicles and reported that it was unable to locate any related complaints.

15. The Port Manager at Kennacraig was consulted about any information held and confirmed that no further information was held.
16. CalMac submitted that it had made a reasonable assumption that the Applicant was referring to the Kennacraig to Islay route as his business is based on Islay and the most likely route he would use would be to Kennacraig. On reflection, it was appreciated that perhaps information relating to all routes on the network should have been considered as within the request.
17. As detailed above, on 17 February 2020, CalMac provided the Applicant with information relating to the other routes which have the option of unaccompanied travel.
18. CalMac confirmed that no other companies can buy return tickets for unaccompanied travel on the Kennacraig-Islay route. However, CalMac confirmed that it does have five ticket types for unaccompanied vehicles. Of these ticket types, three are only available as singles and two as singles/returns but only on a limited number of routes. These tickets were introduced after a request in 2016 to help with the Royal Mail contract that was in place. Prior to 2016, CalMac only carried unaccompanied cars, single ticket only and commercial vehicles on the overnight Ullapool to Stornoway route, again as singles. In its submission of 24 February 2020, it stated that it was a member of staff at Oban who had commented that he was receiving feedback that return fares would help.
19. The Applicant had stated that he has bought return tickets at other ports; therefore, he should be able to get a return on Kennacraig. CalMac has advised the Applicant that return tickets for unaccompanied travel are not available to anybody on that route.
20. CalMac stated that if there was any other information available, it would have been provided and would be published on its website. It highlighted that the FAQs¹ on its website state that unaccompanied vehicles will only be carried by arrangement with the port manager.
21. CalMac stated that there is no information available regarding why only singles are available on certain routes. This is a historical matter and there is no information CalMac could locate which explains the reasoning.

The Applicant's submissions

22. The Applicant considered that his business had been affected financially by CalMac's ticketing practice. He submitted that his business had suffered severely over the last number of years through unfair policies and practices. He considered that unaccompanied tickets were available to purchase, but there was no formal documentation to substantiate this point.

The Commissioner's conclusions

23. The Commissioner considers that the Applicant may have had a reasonable expectation that the information he sought about the inability to purchase tickets for unaccompanied travel would have been created or would exist, but the investigation has not identified the specific information sought.

¹ <https://www.CalMac.co.uk/faqs/commercial-vehicles/unaccompanied-vehicles>

24. The Commissioner's decision is on the basis of the actual information requested. He has taken a reasonable interpretation of the request, allowing for the fact that the Applicant would have been unlikely to know exactly how information is recorded by CalMac or complaints dealt with.
25. The Commissioner has considered the terms of the Applicant's request, and concludes it is narrow in scope, limited to details of companies other than his own who were unable to purchase return tickets. He has considered the range of information disclosed by CalMac and concludes that CalMac has provided the Applicant with the information it holds and falls within scope of the request.
26. Having considered the responses provided to the Applicant by CalMac and the submissions from both parties during the investigation, the Commissioner is satisfied that CalMac has now taken adequate, proportionate steps to establish whether it held any information falling within the scope of the request. Taking all of the above into consideration, the Commissioner is satisfied, on the balance of probabilities, that CalMac does not hold the specific information requested by the Applicant regarding companies' inability to purchase tickets for unaccompanied travel.
27. As noted above, CalMac originally took a narrow interpretation of the request and only providing the Applicant with further explanatory information relating to all routes during the investigation. Although not falling within scope of the specific terms of the Applicant's request, the Commissioner considered such explanations were informative and has assisted him in reaching a finding in this case.
28. The Commissioner is therefore satisfied that CalMac does not (and did not, on receipt of the request) hold the specific information requested. He concludes that section 17(1) of FOISA applies in this instance.

Request b – conditions of carriage

CalMac's submissions

29. CalMac provided the Applicant with a weblink to its conditions of carriage. It informed the Applicant that there are no additional conditions applying to him or to his business. CalMac submitted that it was unclear what further information the Applicant was seeking.

The Applicant's submissions

30. The Applicant was asked why he considered that CalMac held further information than that disclosed about the conditions of carriage. The Applicant did not respond to this point.

The Commissioner's conclusions

31. Having considered the relevant submissions, the Commissioner accepts that CalMac does not hold further information about the conditions of carriage, than already provided to the Applicant. The Commissioner is therefore satisfied that CalMac does not (and did not, on receiving the request) hold further information than that disclosed about the conditions of carriage.
32. The Commissioner is therefore satisfied that CalMac complied with Part 1 of FOISA in responding to this part of the request.

Decision

The Commissioner finds that CalMac Ferries Limited complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information requests made by the Applicant.

Appeal

Should either the Applicant or CalMac 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.

Margaret Keyse
Head of Enforcement

14 August 2020

Appendix 1: Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

17 Notice that information is not held

- (1) Where-

- (a) a Scottish public authority receives a request which would require it either-

- (i) to comply with section 1(1); or
(ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

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