[NL] Ministry ordered to reassess large parts of freedom of information request from broadcaster

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On 30 December 2020, an important judgment on freedom of information (FOI) requests by the media, under the Public Access to Government Information Act (*Wet openbaarheid van bestuur*), was delivered by the District Court of Midden-Nederland (Rechtbank Midden-Nederland). In allowing a broadcaster's appeal over a ministry's refusal to release certain documents relating to a tragic train accident which was subject to widespread public debate, the court held that a large number of documents were "incorrectly refused", "improperly redacted", and that the decision was taken "carelessly and insufficiently motivated."

The case arose in October 2018, following the Oss train accident, when a passenger train collided with an electric-powered cart which was carrying a number of children, resulting in the death of four children. Following the accident, there was a public debate over the safety of the small electric-powered carts, called Stint carts, that can transport small groups of children, and the news programme *RTL Nieuws* submitted an FOI request to the Ministry of Infrastructure and Water Management (Ministerie van Infrastructuur en Waterstaat). The broadcaster sought access to internal documents, memorandum and emails relating to the accident, including internal documentation on the safety of Stint carts. After carrying out a search, the Ministry identified 781 documents that related to the broadcaster's request. While the Ministry partially granted the access request, it refused to release documents that included "personal policy views". Furthermore, the Ministry refused to release documents from the Ministry's Inspectorate for Transport (Inspectie Leefomgeving en Transport, ILT), because, in it's view, the Inspectorate's interest in supervision and inspection outweighed the interest in disclosing the documents.

RTL Nieuws appealed the Ministry's decision to the district court, arguing that access to the documentation should be granted under the Public Access to Government Information Act. First, in relation to the Ministry's refusal to release the Inspectorate's internal documents, the court held that the Ministry had wrongly refused to release the documents. The court considered that there was nothing in the documents that could harm the Inspectorate's interest in conducting supervision and investigation. Secondly, in relation to documents refused because they contained personal policy views, the court reiterated that Article 11 of the Act, which permits the non-disclosure of documents with personal

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policy views drawn up for internal consultation, was intended to ensure that civil servants should be free to contribute unimpeded to policy preparation or implementation, and to study, brainstorm, consult, and write notes. However, the court stated that factual data are not personal policy views, and cannot be refused on the basis of Article 11. Notably, it held that 135 documents had been wrongly refused under Article 11, and in its opinion, these documents did not contain any personal policy views at all. Furthermore, the court held that 75 other documents should not have been refused in their entirety based on Article 11, and should have been disclosed in redacted form, as they also contained factual information that did not represent personal policy views.

The court issued an interim measure for the Ministry to release the documents, or, where the reasons given were inadequate, to make the documents public or provide further reasons for refusal to release. The court concluded by holding that the Ministry had incorrectly refused and improperly redacted a "large number of the documents" and that the decision had been taken "carelessly and insufficiently motivated."

Rechtbank Midden-Nederland, ECLI:NL:RBMNE:2020:5668, 30 december 2020

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBMNE:2020:5668

District Court of Midden-Nederland, 30 December 2020

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