

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 14 January 2013

**Public Authority:** Marine Management Organisation

**Address:** Lancaster House  
Hampshire Court  
Newcastle upon Tyne  
NE4 7YH

**Decision (including any steps ordered)**

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1. The complainant requested information from the Marine Management Organisation ("MMO") regarding the number of days vessels spent at sea in the Western Waters area fishing for scallops in each of the first two quarters of 2012, based on calendar day and 24 hour period calculations. The MMO refused the request under regulation 12(4)(a) (information not held). It accepted that it held lists of vessels for the first two quarters of 2012 with days at sea calculated on calendar day and 24 hour period basis. However, as it did not hold lists with days apportioned between the appropriate quarters where a vessel's fishing trip spanned two quarters as the complainant was seeking, it argued that the requested information was not held.
2. The Commissioner's decision is that regulation 12(4)(a) is not applicable as the MMO does hold the requested information as it holds the necessary data to be able to provide the information in the form requested by the complainant.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - To provide the complainant with the information in the form that she requested it or to issue a refusal notice setting out the exception, or exceptions, that it seeks to rely on.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the

Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

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5. On 6 August 2012, the complainant made a verbal request for information related to the days at sea for vessels fishing for scallops in the Western Waters area in 2012. She requested the total of fleet effort for the first two quarters of 2012 in 24 hour days and calendar days to be able to compare the introduction of the management regime in 24 hour days, while using calendar days to calculate effort.
6. On 4 September 2012, the MMO provided a response to the complainant. It interpreted her request to be for information in respect of two vessels. It informed her that it was withholding this information under regulation 13 (personal data) of the EIR.
7. On 5 September 2012 the complainant requested an internal review of the MMO's decision on the basis that its response did not accurately reflect the request that she had actually made. She contended that her request had not been limited to the two vessels in relation to which a response had been provided but encompassed all of the relevant vessels in the Western Waters area.
8. The MMO provided the outcome of its internal review on 3 October 2012. It acknowledged that there had been a lack of clarity on its part as to the information that the complainant was seeking to obtain. It noted the clarification the complainant had provided in her request for an internal review of 5 September 2012 regarding what she believed was the scope of her request. It then appeared to suggest that it would treat this clarification as a new request and would respond within the requisite time period.
9. The complainant emailed the MMO on 4 October 2012 to point out that had it confirmed the scope of her request before it provided its initial response, then any confusion could have been resolved at that point. She also pointed to evidence which she believed supported her view as to the scope of her request.
10. Following discussions with the Commissioner, the MMO provided a new response to the complainant on 12 October 2012. This included information about vessels falling within the scope of her request.

11. The complainant informed the MMO that its response still did not provide her with the information that she had requested. The MMO provided her with a further response on 18 October 2012.
12. The complainant argued that she still had not received the information that she had requested as, where a vessel's fishing trip spanned more than one quarter, the lists that had been provided to her allocated all of a vessel's days at sea to the quarter in which it landed rather than apportioning the days to the appropriate quarters.
13. The MMO subsequently argued that it did not hold the information in the format requested by the complainant and therefore applied the exception in regulation 12(4)(a).

### **Scope of the case**

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14. The complainant contacted the Commissioner to complain about the way her request for information had been handled by the MMO and its decision that it did not hold the information that she had requested.
15. The Commissioner considered whether the MMO had handled the complainant's request in accordance with the EIR and whether it held the information that the complainant had requested.

### **Reasons for decision**

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#### **Application of exception**

#### **Regulation 12(4)(a) – Information not held**

16. The MMO argued that it did not hold the information that the complainant had requested. It applied the exception in regulation 12(4)(a) of the EIR which provides that:

*"(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –*

*(a) it does not hold that information when an applicant's request is received;"*

17. In situations where there is a dispute between a public authority and a complainant about whether requested information is held by the public authority, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints,

the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.

18. During the course of the Commissioner's investigation, the MMO provide the complainant with lists of the number of days, calculated on a calendar day basis and also a 24 hour period basis, that each of the vessels fishing for scallops in the Western Waters spent at sea in the first and second quarters of 2012. However, where a vessel's fishing trip spanned two quarters, all of the days at sea for that fishing trip were allocated to the quarter in which the vessel landed.
19. The complainant argued that the MMO had not fully complied with her request. In her view, for the MMO to do this, where a vessel's fishing trip spanned two quarters, it needed to apportion the appropriate number of days to each of the relevant quarter rather than allocate all of the days to the quarter in which the vessel landed.
20. However, the MMO explained that it did not hold lists of the number of days that vessels spent at sea for the first and second quarters of 2012, calculated on a calendar day basis or a 24 hour period basis, with the days apportioned to the relevant quarter as the complainant had requested. The only lists that it held were those with the days at sea allocated to the quarter in which a vessel landed.
21. Consequently the MMO argued that as it did not hold lists with days apportioned between the appropriate quarters, where a vessel's fishing trip spanned two quarters, as the complainant was seeking, it did not hold the information that had been requested.
22. The Commissioner accepts that the MMO does not hold a list of the number of days that vessels spent at sea for the first and second quarters of 2012, calculated on a calendar day basis or a 24 hour period basis, with the days apportioned to the relevant quarter as the complainant had requested. However, it has confirmed that it does hold details of the time and date that each vessel left on fishing trips and the time and date that they returned from fishing trips that took place in the relevant quarters.
23. It is therefore possible, given this data, for the MMO to identify those vessels that were at sea on a voyage that spanned two quarters. It would also be possible from this data for it to be able to apportion the appropriate parts of a voyage that spanned two quarters to the relevant quarter, both on a calendar day basis and also on a 24 hour period basis. The question that the Commissioner has to determine is consequently whether the information requested by the complainant is information that is held by the MMO.

24. In his guidance "*Determining whether information is held*", the Commissioner makes reference to whether the relevant building blocks can be identified, extracted and manipulated from information in the form that it is kept by a public authority to present information in the way that it has been requested. He states that "*[w]hat is involved in carrying out these tasks will have a bearing on whether the information is held...The Commissioner accepts that the level of skill and judgement required to answer a request will determine whether information is held...Such skills include the application of mathematical calculations and the writing of basic computer programs to extract information from a database.*" (paras 15-17)
25. The Commissioner goes on to state that "*...if answering the request involves exercising sophisticated judgement, the information will not be held. But if only a reasonable level of judgement is required to identify the relevant building blocks, or manipulate those blocks, the information will be held.*" (para 21)
26. In light of the fact that the MMO holds details of the time and date that each vessel left on fishing trips and the time and date that they returned from fishing trips, the Commissioner believes that it would only take a reasonable level of judgement to identify those vessels that were at sea during a period that spanned two quarters and then apportion the appropriate parts of a voyage for a relevant vessel between those two quarters, both on a calendar day basis or a 24 hour period basis. He has therefore determined that the MMO holds the information that the complainant requested and that regulation 12(4)(a) is not applicable.

## **Procedural issues**

### **Regulation 14 – Refusal to disclose information**

27. Under regulation 14(2), where a public authority is relying on an exception contained in regulation 12, it should issue a refusal notice as soon as possible and no later than 20 working days after the date of receipt of the request. The MMO did not inform the complainant that it was relying on the exception contained in regulation 12(4)(a) within the required time period and therefore breached regulation 14(2).

## **Other matters**

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28. After the complainant made her request on 6 August 2012, it took until 18 October before the MMO was able to provide her with a response which she accepted correctly addressed the scope of that request. A considerable amount of the complainant's, the Commissioner's and the MMO's own time was wasted before this point was reached. This could

have been avoided had the MMO taken the simple step of writing to the complainant to confirm the scope of her request shortly after she had made it and certainly before it provided its response to her. This is especially important where, as is permitted under the EIR, a request is made verbally to a public authority. If, as in this case, this does not happen, there is always a significant risk of problems arising as a result.

29. The Commissioner expects that the MMO will have learnt from its experiences in this case and will ensure that, in future, it confirms to a requester the scope of any request shortly after the request is made. This should allow it time to address any issues as to exactly what information the requester is seeking to obtain before it is obliged to provide its response.

## Right of appeal

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30. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

31. 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.
32. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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