

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

Date: 21 October 2013

Public Authority: Marine Management Organisation

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

Decision (including any steps ordered)

1. The complainant has requested from the Marine Management Organisation ("MMO") copies of correspondence from the European Commission ("EC") confirming it was content with delays in the reporting of fishing data and underreporting of fishing effort. The MMO provided the complainant with a copy of a letter from the EC but the complainant claimed that this did not fall with the scope of her request.
2. The Commissioner's decision is that the MMO has breached regulation 14(3)(a) of the EIR by not issuing a refusal notice stating that it did not hold information falling within the scope of the request at the time that it was made and citing the exception contained in regulation 12(4)(a).
3. The Commissioner does not require the MMO to take any further steps to ensure compliance with the legislation.

Request and response

4. On 18 January 2013 the complainant wrote to the MMO and requested information in the following terms:

"Could you please let me have sight of the correspondence from the EC confirming that they are content with the vast time lags (in some cases 6 months) within the reporting of [Western Waters] data to the Commission on a monthly basis and also they are content that the UK has underreported to the EC (at

least since 2008) the real amount of WW scallop effort deployed by the UK by on average approx 10-12% and by doing so in some cases hidden an overfish of WW effort such as in 2009."

5. The MMO responded on 13 February 2013. It refused to provide the requested information, citing the exceptions in regulation 12(4)(d) (unfinished documents or incomplete data) and 12(5)(a) (adverse affect on international relations) of the EIR.
6. The complainant requested an internal review on 13 February 2013. The MMO provided the outcome of the internal review on 12 April 2013 in which it changed its original position and disclosed a letter to the complainant. It withheld some personal data contained in the letter under regulation 13.

Scope of the case

7. The complainant contacted the Commissioner 17 April 2013 to complain about the way her request for information had been handled. In particular, she believed that the MMO did not hold the specific information that she had requested at the time that she made her request.
8. The Commissioner has considered whether the MMO held the information that the complainant requested at the time that she made her request.

Reasons for decision

Regulation 12(4)(a) – Information not held and Regulation 14 – Refusal notice

9. In its initial response to the complainant, the MMO issued a refusal notice which cited the exceptions in regulation 12(4)(d) and 12(5)(a). Following an internal review, the MMO determined that the two exceptions were not applicable and disclosed a copy of a letter to the complainant that it had received from the EC.
10. During the course of the Commissioner's investigation, the MMO provided him with a copy of the letter it received from the EC and which had been provided to the complainant. The MMO explained that it had requested the EC to review its reporting procedures under the Western Waters Scallop regime. As part of this request, it had provided the EC with a document that referred to the issue of time lags in the reporting

of Western Waters data to the EC. The document also encompassed matters related to the reporting of effort. The MMO informed the Commissioner that the EC did not raise any concerns in respect of either of these matters.

11. The MMO also informed the Commissioner that it had in no instance hidden any overfish from the Commission. It said that its practice was to report effort data to the Commission as required i.e. submitting to the Commission fully validated data held on the MMO's systems as at the date on which reports were required to be submitted. The final data for a year was released later within the statistics publication which was freely available, with details of the release being sent to staff in the Commission.
12. The MMO initially informed the Commissioner that as the letter from the EC, which was disclosed to the complainant, was received as a direct result of its contact with the EC about issues related to time lags in its reporting of Western Waters data and the reporting of effort data, it believed that it fell within the scope of the request.
13. After reviewing the content of this letter, the Commissioner informed the MMO that he was of the view that it did not contain information that fell within the scope of the wording of the complainant's request. This was because it did not state that the EC was content with time lags in the reporting of Western Waters data or that it was content with the underreporting of Western Waters scallop effort, irrespective of whether these statements were correct or not.
14. The MMO subsequently informed the Commissioner that it understood his conclusion that it did not hold any information falling within scope of the exact wording of the complainant's request, at the time that the request was made. It also confirmed that it did not hold, at the time of the request, any other information which might fall within the scope of the request.
15. Regulation 14 of the EIR requires a public authority to issue a refusal to a requester in writing. Under regulation 14(3)(a) the refusal should specify the reasons for not disclosing information that has been requested including details of any exception relied on under regulation 12. Where a public authority does not hold the information that has been requested, it should cite the exception in regulation 12(4)(a).
16. The MMO has confirmed that it did not hold, at the time of the request, information falling within the scope of the request. Consequently, it should have issued a refusal notice citing the exception in regulation 12(4)(a). By failing to do so it breached regulation 14(3)(a).

Right of appeal

17. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

18. 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.
19. 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
Water Lane
Wilmslow
Cheshire
SK9 5AF