

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 November 2022

Public Authority: Maritime and Coastguard Agency (Executive Agency of the Department for Transport)

Address: Spring Place
Commercial Road
Southampton
SO15 1EG

Decision (including any steps ordered)

1. The complainant has requested information about migrant vessel incidents. The above public authority ("the public authority") refused the request as vexatious.
2. The Commissioner's decision is that the public authority has not demonstrated that the request is vexatious and consequently is not entitled to rely on this exemption.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request that does not rely on section 14(1) of FOIA.
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

5. On 18 August 2022, the complainant wrote to the public authority and requested information in the following terms:

"A copy of all information, including that listed in the background section above, which was entered into Vision for migrant vessel incidents that took place in the Channel between 00:00 on 19 November and 23:59 on 20 November 2021. I understand these incidents had the following HMCG GIN numbers: A) 19 November 2021: 40867, 40872, 40913 B) 20 November 2021: 40924, 40929, 40931, 40934, 400935 [or 40935], 40938, 40940, 40941, 40942, 40946, 40943, 40944, 40945, 40947, 40949, 40950, 40951, 40952, 40954, 40955, 40958, 40956, 40960, 40962, 40963, 40964, 40965, 40971, 40968, 40978, 40967, 40969, 40970, 40974, 40975, 40976, 40977, 40981, 40984, 40979, 40980, 40982, 40985, 40987, 40986, 40989, 40990, 40988, 40993, 40996, 40997, 40998, 40999, 41002, 41004, 41001, 41005, 40994, 41007, 40892, 41013, 41012, 41015, 41024, 41019, 41018, 41026, 41027, 41028, 41029, 41031, 41032, 41034, 41033, 41035, 41036, 41037, 41038, 41040, 41041, 41043, 41020, 41047, 41046, 41048, 41053, 41051, 41055, 41057, 41059, 41064, 41063, 41071, 41086, 41087, 41093, 41100, 41101, 41103, 41104, 41102, 41113, 41117, 41118, 41105, 41089, 41073, 41069, 41061, 41146 If retrievable within the cost limit, please specify the total number of migrant vessels that were detected in the English Channel on 19 and 20 November 2021 and specify which of the above HMCG GINs refer to each vessel. I understand that these GINs I have listed in point 1 will have been generated each time a call comes in about a vessel and that, since multiple calls can come in about the same vessel, a vessel may have multiple GINs."

6. The public authority responded on 16 September 2022. It refused the request as vexatious – a position it upheld at internal review.

Scope of the case

7. The Commissioner commenced his investigation of this complaint on 13 October 2022 with a letter to the public authority asking it to provide a submission and providing his provisional view of the complaint. He explained that, based on its responses to date, the public authority would likely have difficulty demonstrating that section 14 would apply, but that he was happy to consider arguments in respect of section 12 (cost of compliance).

8. The Commissioner asked the public authority to provide arguments in support of either section 12 or section 14 of FOIA by 10 November 2022. The Commissioner also warned the public authority that, should it provide no or inadequate submissions, he reserved his right to issue a decision notice without further warning.
9. The public authority contacted the Commissioner on 9 November 2022, to say that it was as yet unable to respond as the matter was with the Private Office and may need clearance from Special Advisers. The public authority asked for an extension of defined length.
10. As no response has been received, some two weeks later, the Commissioner does not consider it appropriate to wait any further.

Reasons for decision

11. A public authority may refuse a request it considers to be vexatious. The term "vexatious" has been defined in law as one

"likely to cause a disproportionate or unjustified level of disruption, irritation or distress."
12. The Commissioner's provisional view of the complaint was as follows:
 - Seven requests over four months does not indicate a high frequency of requests – especially if some of those requests are refined versions of other requests.
 - The requests are not scattergun, they start out by seeking to understand what type of information the public authority holds, then use that knowledge to seek targeted information about specific incidents. This does not appear to indicate intransigence or unreasonable persistence.
 - There is a serious purpose and strong value to the request because of the information it seeks – there would thus be an expectation that the public authority would need to accept a certain level of disruption.
13. The public authority has had a reasonable opportunity to provide evidence and arguments to explain why the Commissioner's provisional view was incorrect or otherwise explain why the request was vexatious. As the public authority has failed to do this, the Commissioner considers that it is not entitled to rely on the exemption and must therefore issue a fresh response.

Right of appeal

14. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

15. 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.
16. 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

Roger Cawthorne
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Wycliffe House
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SK9 5AF