

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 13 July 2023

**Public Authority:** Maritime and Coastguard Agency  
(Department for Transport)

**Address:** Spring Place  
105 Commercial Road  
Southampton  
SO15 1EG

#### **Decision (including any steps ordered)**

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1. The complainant has asked the Maritime and Coastguard Agency (the MCA) for information relating to distress calls made from the English Channel.
2. The Commissioner's decision is that, on the balance of probabilities, the MCA holds no further recorded information relevant to the complainant's request and has complied with section 1(1) of FOIA.
3. The Commissioner does not require further steps to be taken by the MCA.

#### **Request and response**

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4. On 25 August 2022, the complainant made the following request for information to the MCA:

"Please can you provide me the following under the FOI Act:

- 1) A copy of the transcripts of all distress calls between people at sea in the English Channel and HM Coastguard which relate to the following HMCG GIN numbers:

- a) 38903
- b) 38921
- c) 38922
- d) 39001
- e) 39003
- f) 39006
- g) 39010
- h) 39034
- i) 39037
- j) 39047
- k) 39049
- l) 39054
- m) 39058
- n) 39069
- o) 39070
- p) 29092
- q) 39069
- r) 39131
- s) 39132
- t) 39143

These incidents took place between 2 and 3 November 2021.

- 2) A copy of all information which was entered into Coastguard's Command and Control Vision database in relation to the HMCG GIN numbers listed in point 1. I understand this will include, but may not be limited to, the following:
  - a. HMCG Global Incident Number (GIN)
  - b. Incident date and time – this is created at the start of the incident by the system
  - c. Initial incident type – this is the classification given to the incident at the start of the incident
  - d. Revised incident type – this is how the incident is revised by HMCG Operations
  - e. Latitude – this will reflect a known position of the small boat
  - f. Longitude – this will reflect a known position of the small boat
  - g. Free text boxes then allow an operator to add additional information which is then displayed in an incident log – a chronological list of messages.
- 3) If not included in point 1 or 2, please indicate which coastguard MRCC/JRCCs handled the calls and coordinated the responses to each of the incidents listed in point 1."

5. The MCA responded on 23 September 2022 stating:

“As a result of the exemption applied to your request on the 18th August 2022 and as explained in the Internal Review dated 23rd September 2022 any further FOI requests received from the 18th August 2022 from you in relation to this same subject matter will also be treated as vexatious.

Section 17(6) of the Act states that there is no need to issue a refusal notice if:

- the authority has already given the same person a refusal notice for a previous vexatious or repeated request; and
- it would be unreasonable to issue another one.

This exemption applies to your requests of 25/08/22 (our internal reference 4041) and 01/09/22 (our internal reference 4049).”

6. The Commissioner understands that the MCA sent the complainant a revised response to this request on 9 November 2022. In this response:

- 1) it stated that to transcribe the calls for the period the complainant requested would create a new dataset and combined with their other requests, this would exceed the appropriate cost limit under FOIA.
- 2) it provided redacted copies of the Vision incident logs for the GIN numbers requested. It relied on sections 40(2)(a) (third party personal data), 31(1) (law enforcement) and 38(1)(b) (health and safety) to redact some information from those logs; and
- 3) it confirmed that the incidents relating to the Gin numbers requested were all handled by the Dover JRCC.

7. The complainant requested an internal review on 10 November 2022 regarding the extent of the redactions to the Vision incident logs and the refusal to provide the call transcripts.

8. The MCA sent the outcome of its internal review on 10 January 2023 revising its position. In relation to the transcripts of the calls, it stated that it now considered that they were personal data and was therefore relying on section 40(2) to withhold them. In respect of the Vision incident reports, it stated that the redactions under sections 40, 31 and 38 had not been applied correctly. It provided the complainant with redacted copies of two datasets, relying on section 40 to withhold the remaining redacted information.

9. The complainant responded to the MCA on 11 January 2023 querying why some of the information, specifically that about changes to the incident grades which had been originally provided in the revised response, had now been redacted.
10. The MCA responded to the complainant on 11 January 2023 and explained that in the original document it provided, the headings were not included in the fields and provided details of those headings. It stated that the complainant was correct that the incident grades were incorrectly omitted from the data sent on 10 January 2023 and provided the complainant with an updated file including the incident grades.
11. The complainant responded to the MCA on 12 January 2023, again querying why changes to the incident grades that had been originally provided in the revised response had now been redacted.
12. The MCA responded to the complainant on 19 January 2023. It stated that it had reviewed the incident grade information requested and "believe(d) that the redactions were incorrectly applied to the data shared in the previous response, and that all of the incident grade information should have been redacted."

### **Scope of the case**

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13. The complainant initially contacted the Commissioner on 5 October 2022 to complain about the MCA's refusal to comply with the request because it was vexatious under section 14(1) of FOIA.
14. However, following the MCA's revised response and internal review decision the complainant contacted the Commissioner to complain about the MCA's handling of his request. Specifically, the complainant noted that some information included under the scope of their request was not included in the internal review decision, specifically:
  - 1) How coastguard staff "graded" each incident (eg 'monitoring phase', 'distress phase')
  - 2) How staff changed the grade over the course of the incident
15. The complainant stated that when they requested clarification on the missing information, the MCA accepted it had omitted Point 1 above incorrectly and provided this information. However, the MCA considered the information requested in Point 2 to be exempt under section 31 of FOIA for the following reason:

"If made available in the public domain, the incident grade information contained in the Vision logs would be used by organised crime groups (OCGs) to inform their criminal enterprise and exploitation of vulnerable migrants crossing The Channel illegally and utilising tactics that can lead to incorrect allocation of vital lifesaving resources."

16. The complainant therefore wishes to complain about the MCA's reliance on section 31 to part 2) of his request to refuse to provide the information on incident grades.
17. The Commissioner asked the MCA to confirm whether it has provided the complainant with all the information it holds relating to incident grades (whether in error or not).
18. The MCA confirmed that in its response to the internal review, it disclosed all the detail on incident grades in error. The MCA confirmed that these extracts contained all information on incident grading for each incident, including any changes. However, the MCA maintains that this information is exempt from disclosure under section 31 of FOIA and was disclosed in error.
19. Whilst the Commissioner recognises that the MCA disclosed the information relating to incident grades in error and believes that it should have been withheld under section 31 of FOIA, an investigation into whether it was correct in this belief would confer no practical advantage on the complainant as, even if the complaint were upheld, the public authority could only be required to disclose information the complainant already possesses. Equally, the Commissioner might conclude that the public authority was entitled to withhold the information at the point it disclosed it, resulting in the perverse situation of the Commissioner finding that the complainant was not entitled to have information they had already received.
20. The Commissioner is therefore not considering whether the incident grade information that has been disclosed to the complainant could have been withheld or not.
21. The complainant is also concerned that the MCA has failed to disclose all the information within these records falling within the scope of their request.
22. The Commissioner notes that the complainant has not disputed the MCA's application of section 40(2) in their submission to him.
23. The Commissioner therefore considers that the scope of his investigation in this case is to consider whether the MCA holds any further information

falling within the scope of the request that has not already been disclosed.

## **Reasons for decision**

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### **Section 1 – General right of access**

24. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt.
25. The complainant stated that they are generally concerned that because of the omissions that were only rectified following their requests for clarification, there is more information covered under the scope of their request which the MCA has failed to disclose.
26. In its submission to the Commissioner, the MCA stated that it was not aware of what information the complainant thinks should have been provided but has not been. The MCA has confirmed that it has gone back to the source data in the Vision electronic system and cross-checked this against the logs which were provided to the complainant as part of the initial response. It confirmed through a sampling exercise that all the entries contained on Vision had been extracted across to the logs.
27. The MCA stated that the complainant was provided with two datasets which had been extracted from the Vision system with its internal review decision. The MCA therefore considers that it has provided all the information that falls within the scope of the request, subject to those items which are being withheld under an exemption.
28. The Commissioner sees no reason to doubt the MCA's explanation. Other than concern about the MCA's handling of their request, the complainant has not provided any evidence or reasoning that would indicate that the MCA does hold further relevant information.
29. Having considered all the circumstances, the Commissioner therefore accepts the MCA's position that it does not hold any further non-exempt recorded information falling within the scope of the complainant's request. As such, the Commissioner has decided that the MCA has complied with section 1(1) of FOIA.

## **Other matters**

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### **General handling of the request**

30. The Commissioner is concerned about the way in which the MCA has handled this request for information, in particular, the MCA revising its position several times and the fact that it appears to have disclosed information that it believes could prejudice law enforcement purposes to the complainant in error.
31. The Commissioner therefore recommends that the MCA review its handling of this request and complaint to ensure lessons are learned and improvements made.

## Right of appeal

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32. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**