

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 June 2023

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

Address: Spring Place
105 Commercial Road
Southampton
SO15 1EG

Decision (including any steps ordered)

1. The complainant has requested information from the Maritime and Coastguard Agency (MCA) recorded in the Coastguard's Vision command and control database relating to all small boat incidents (migrants crossing the English Channel in small boats) during a specific timeframe. The MCA refused to provide the requested information, citing section 40(2)(personal information) and section 31(1)(a)(law enforcement) of FOIA as its reasons for non-disclosure.
2. The Commissioner's decision is that section 31 of FOIA has been cited correctly and that the public interest favours non-disclosure. However, the MCA breached section 1(1)(b) of FOIA by disclosing information beyond the statutory timeframe.
3. The Commissioner does not require further steps.

Request and response

4. On 18 January 2023, the complainant wrote to MCA and requested information in the following terms:

“...Specifically I request:

All information recorded in the Coastguard's Vision command and control database relating to all small boat incidents (migrants crossing the English Channel in small boats) which were reported between 00:01 UTC and 23:59 UTC on 2 January 2023.

Please provide this information in Excel format. I would like to note that the time taken for redactions - such as to remove personal information - does not normally contribute towards the cost limit.”

5. On 15 February 2023 MCA apologised for a technical problem in being unable to extract the information and provide it in Excel format and this delayed its response.
6. MCA responded on 14 March 2023 and provided some information (in PDF form) within the scope of the request. MCA cited section 40(2) and section 31(1)(a) of FOIA as its reasons for doing so.
7. The complainant asked for an internal review on 17 March 2023, querying specifically the citing of section 31(1)(a) regarding some of the redacted information.
8. MCA provided an internal review on 12 April 2023 in which it identified some inconsistencies and produced a new redacted version for part of its response but still maintained that some of the information was exempt under section 31(1). MCA also maintained the citing of section 40(2) of FOIA but did not focus on it as the review request had not challenged its use and was concerned with the citing of section 31.

Scope of the case

9. The complainant contacted the Commissioner on 26 April 2023 to complain about the way their request for information had been handled, stating that any law enforcement arguments are outweighed by the public interest in disclosing the requested information.
10. The Commissioner considers that the scope of his investigation is to consider whether MCA cited section 31 of FOIA appropriately.

Reasons for decision

11. The MCA is relying on section 31(1)(a) of FOIA in relation to part of the withheld information which it has provided to the Commissioner.

12. Section 31 of FOIA states that -

“(1)Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(a)the prevention or detection of crime...”

13. The Commissioner’s guidance¹ states that the -

“exemption also covers information held by public authorities without any specific law enforcement responsibilities. It could also be used to withhold information that would make anyone, including the public authority itself, more vulnerable to crime...”

14. To engage a prejudice based exemption such as section 31 there must be the likelihood that disclosure would, or would be likely to cause prejudice to the interest that the exemption protects. In the Commissioner’s view, three criteria must be met in order to do so:

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure ‘would be likely’ to result in prejudice or disclosure ‘would’ result in prejudice.

¹ [law-enforcement-foi-section-31.pdf \(ico.org.uk\)](http://ico.org.uk/law-enforcement-foi-section-31.pdf)

15. Consideration of the exemption at section 31 is a two-stage process, even if the exemption is engaged the Commissioner needs to consider where the public interest lies.
16. The MCA contends that disclosure of the requested information would or would be likely to prejudice the prevention and detection of crime. In its response to the complainant the MCA explained that the -

“Prevention and detection of crime includes protection of an authority’s information: where disclosure would make it more vulnerable to crime and can be used where that authority has no law enforcement role but the role of another authority requires protection.”

The MCA explained that the authority was Border Force and UK Visas and Immigration.

17. The MCA provided the Commissioner with the context concerning “small boat crossings of the English Channel” as follows:

“As part of an attempt to enter the UK (either in order to claim asylum or to enter undetected), significant numbers of migrants are using small boats to cross the English Channel from France. For many migrants (although not all) the intention in crossing the English Channel is to be rescued by HMCG on the basis that they will then be brought to a place of safety within the UK in order that they can claim asylum.

Some of these journeys are organised independently by one or more migrants, however significant numbers are facilitated by OCGs [organised crime groups]. Research identifies that OCGs worldwide operate their criminal enterprises mimicking the models of legitimate business. Much like a legitimate market appraisal, the OCGs facilitating illegal crossings of the English Channel will analyse their market to maximise success which will fuel future business.”

18. The public authority contends that OCGs “will adapt their enterprise to evolve and exploit opportunities, what works, and avoid disbenefits, and what doesn’t work”. It describes the position in January 2023 which is the focus of the request:

“the crossing of the English Channel by migrants in boats in order to claim asylum in the UK potentially involved the commission of a criminal offence on the parts of the migrants and/or the facilitators of such a crossing”.

The MCA referred the Commissioner to sections 24(1)(a), 25, 25A, 24D1

of the Immigration Act 1971² regarding the detail of the legislative offences.

19. If the requested information was disclosed, the MCA considers the following to be relevant to the prevention or detection of crime, the withheld information:

“records how small boat incidents are handled by HMCG or which particular circumstances are prioritised for a SAR response by HMCG would be likely to enable OCGs, either alone or in combination with other information which is already in the public domain, to understand HMCG’s response to distress calls and enable the OCGs to adapt and evolve their instructions to migrants making the crossing, their choice of vessels, departure and landing sites, choices of travel window i.e. weather conditions, season, times, etc in a manner which is likely to maximise the chances of the small boat being identified as requiring a SAR [search and rescue] response or retaining such grading in a manner which will facilitate the offending to which the Immigration Act 1971 is directed”.

20. The Commissioner accepts that the exemption is engaged and that there is a causal relationship between disclosure and the prejudice that the exemption is designed to protect at the lower level, for the reasons given by MCA in the previous paragraph.

Public interest test

21. Although the exemption is engaged, the Commissioner needs to consider whether it is in the public interest that the requested information is released nevertheless.

Public interest factors in favour of disclosing the requested information

22. The complainant states that they had –

“requested records from one key incident in which it appears HM Coastguard and Border Force abandoned a small boat carrying 38 people in the English Channel on 2 January 2023, allowing it to drift back in the French waters:

² [Immigration Act 1971 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<https://www.theguardian.com/uk-news/2023/jan/19/uk-accused-of-abandoning-38-people-adrift-in-channel>³."

They believe that "The redacted information appears to include the UK's records of the decision as to why it allowed the small boat to drift back".

23. The complainant argues that -

"There is overwhelming interest in transparency regarding the handling of this incident, with the French coastguard accusing the UK of endangering people's lives by making this decision."

Their view is that this information "is likely to be of very little use to organised crime groups, as the MCA argues". The complainant points to paragraph 16 of a previous decision of the Commissioner's [IC-190947-K6W7](#) where "the ICO upheld the imposition of redactions to a spreadsheet requesting containing (sic) information from similar incidents spanning more than a year". They quote from that decision as follows - "The Commissioner accepts that analysing a single row of data (ie. just one call) provides very little useful information." The complainant contends that they were only requesting "information from one specific incident from which it would not be possible for OCGs to draw a broader pattern of how the Channel is monitored".

24. The MCA accepts the public interest in transparency "around how the HMCG operate in general terms and how they respond to distress calls from people at sea".

Public interest factors in favour of maintaining the exemption

25. The MCA stated in its response to the requester/complainant that the argument for transparency,

"...is outweighed by the risk of use of the information in informing the strategies of organised crime groups and individuals making the crossings, leading to increased risk to the safety of life at sea and prejudice of the prevention and detection of crime".

26. The MCA argues that the "public interest is met by the significant information which has already been disclosed by the MCA in particular in the context of migrant crossings".

³ [UK accused of abandoning 38 people adrift in Channel | Immigration and asylum | The dGuardian](#)

27. Having regard to the very strong public interest in ensuring that the disclosure of information does not materially impede the prevention and detection of crime, it believes that the public interest balance lies in favour of maintaining the exemption.

Balance of the public interest

28. The Commissioner has previously recognised that the issue of migrant crossings is one which is firmly in the public eye. He agrees with the complainant that there is a strong public interest in how the MCA handled this incident and the decision-making that took place.
29. However, although this is not a spreadsheet of data, it is several pages of information relating to one incident. Most of that information has already been provided to the complainant and is available under the FOIA to anyone asking for it. If the withheld parts of the requested information are provided, it cannot be restricted to those (like the requester) who are solely concerned about what transpired on that day. In other hands, certain details could inform strategies likely to undermine the prevention or detection of crime.
30. If an incident warrants investigation, there will be formal processes in place to do so. On balance, in view of the amount of information that has been disclosed, the Commissioner has decided that the disclosure of information that has the potential to aid the strategies of organised crime groups is not in the public interest. For these reasons, the Commissioner accepts that the public interest favours maintaining the exemption.

Procedural matters

31. The Commissioner has recorded a breach of section 1(1)(b) of FOIA, as the MCA failed to provide information to which the complainant was entitled under section 1 of FOIA, within the statutory time for compliance. However, it was provided later (though not in the desired format for technical reasons) and no further action is required.

Right of appeal

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

Website: 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

Janine Gregory
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF