

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 December 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 spreadsheets tracking responses to distress calls in the English Channel. The above public authority ("the public authority") provided copies of the spreadsheets with certain data fields redacted. It relied on sections 31 (law enforcement) and 27 (international relations) to withhold the remaining data fields.
2. The Commissioner's decision is that the public authority has correctly relied on section 31 of FOIA to withhold the remaining information and that the balance of the public interest favours maintaining the exemption.
3. The Commissioner does not require further steps.

Request and response

4. On 11 July 2021, the complainant wrote to the public authority and requested a copy of all entries in a database called "Shared UK Migrant Tracker Her Majesty's Coastguard (HMCG) & Border Force (BF)" from the start of 2020 to the date of the request.
5. The public authority responded on 9 August 2022. It provided some information but withheld the remainder, relying on sections 21, 31 and 40 of FOIA in order to do so.

6. Following an internal review the public authority wrote to the complainant on 15 September 2022. It provided some additional information, but now relied on sections 27, 31 and 40 of FOIA to withhold the remaining information.

Scope of the case

7. The Commissioner notes that he was obliged to issue an information notice requiring copies of the withheld information and the public authority's final submission when these documents were not supplied to his office in a timely fashion.
8. One of the data fields the public authority has withheld contains the phone numbers that were used to make each call. The complainant accepts that this should be withheld so the Commissioner has excluded this field from his consideration.
9. As the public authority has applied section 31 to all the withheld information and section 27 to only some, the Commissioner will look at section 31 first.

Reasons for decision

10. Section 31 allows a public authority to withhold information whose disclosure would impede any body tasked with enforcing the law.
11. In this case the public authority noted that a number of organised crime groups were operating around the north French coast with the intention of either helping people to enter Britain illegally or trafficking people. Releasing this information could hinder the police and UK Border Force's efforts to prevent such activity – and hinder their efforts to prevent people from entering the country illegally.
12. The public authority explained to the Commissioner that releasing the remaining data fields would provide useful information to people smugglers to help them achieve their objectives. The public authority had reason to believe that some of these groups were already analysing publicly available information to help refine their tactics. Whilst the public authority's submission was vague, the Commissioner was able to clarify matters in a phonecall.
13. The complainant had received a copy of one of the spreadsheets where the redactions had not been properly applied and where he could therefore see some of the information that had been withheld. Having

seen this information, he argued that the redacted information would not be of use to people smugglers.

14. The Commissioner accepts that disclosing the spreadsheet in its entirety would provide useful information to those wishing to enter the UK illegally. In this case the focus is not on any individual items of information that have been withheld, but on how those items fit into a broader picture of how the English Channel is monitored.
15. The complete, unredacted version of the spreadsheet provides location data for where each call was received. It also shows whether the incident was dealt with by British or French authorities, what assets were tasked to respond to each incident and what the outcome of that incident was.
16. The Commissioner accepts that analysing a single row of data (ie. just one call) provides very little useful information. However the spreadsheet covers a whole year's worth data and, once that data is analysed, it would be possible to identify patterns and trends. Even though the data is over a year old, it may still be of use as it might show how tactics have evolved, which in turn may indicate how they might evolve in future.
17. By analysing a group of calls relating to the same incident, it would be possible to identify the asset that was tasked to respond and to work out approximately how long it took to redirect that asset to the incident (calls are likely to stop once help arrives). That response time can then be matched to publicly available information (such as the speed of a boat) to deduce an approximate area in which that asset would have been operating prior to the first call. Carrying out similar analyses for each group of calls, over an entire year, is likely to build up an increasingly accurate picture of what assets are likely to be operating and where they are likely to be deployed, at any given moment.
18. The public authority explained that some criminal groups aimed to get vessels across the Channel completely undetected. Other groups aimed to keep their vessels undetected until they were confident that British authorities would respond and escort the occupants safely to the UK. Either way, knowing where particular assets would be operating at any given moment (and therefore the probability of interception at any given point) would be useful information for anyone planning a crossing.
19. The public authority also noted that the withheld information contains some of the details provided in each distress call. It explained that one of the tactics used by people smugglers is to encourage the occupants of a migrant boat to make false distress calls as soon as they believe those

calls are likely to be picked up by British authorities – as opposed to French authorities more likely to escort such boats back to France.

20. The public authority further explained that it was aware that organised crime groups were “coaching” those in the boats to make false distress calls, including providing advice as to what form of words was likeliest to provoke the most immediate response. The public authority noted that it had received calls which had claimed that an occupant of a particular boat had had a heart attack or that there were children onboard – when in fact this was not the case. Providing such a large volume of data about distress calls could potentially indicate which sorts of calls were more or less likely to provoke immediate attention – which would be of use to people smugglers.
21. The Commissioner notes that the work involved in deriving useful information from this dataset would be considerable. It would only be undertaken by a highly-motivated individual with a degree of skill. However, he considers it more than a hypothetical possibility that such highly-motivated individuals exist: people smuggling can be a lucrative business – particularly if a gang is able to continue exploiting those it has successfully trafficked after they arrive in the UK. There is therefore a powerful incentive to carry out such analysis.
22. The Commissioner is therefore satisfied that there is a realistic probability that disclosing the spreadsheets in unredacted form could harm the ability of the UK Border Force to prevent people smuggling.

Public interest test

23. The Commissioner recognises that the issue of migrant crossings is one which was firmly in the public eye at the time of the request and remains so today. There is a strong public interest in understanding how the public authority is enforcing the law and the steps it is taking to prevent any loss of life.
24. In particular, the Commissioner notes that the withheld information covers a particularly tragic incident in the early hours of 24 November 2021 – when 27 migrants drowned after their boat capsized in the Channel. There is a particularly strong public interest in understanding whether the public authority and other organisations responded appropriately to that incident.
25. However, having taken everything into account, the Commissioner considers that the balance of the public interest in this case favours maintaining the exemption.
26. The specific incident that took place on 24 November 2021 is already the subject of a formal investigation – therefore the particular public

interest in those events will be satisfied by that investigation being carried out and allowed to reach a conclusion. The investigation can demand access to the withheld information as well as any other data it deems relevant to its inquiries. The public interest is therefore best served by allowing the investigation to go about its business unhindered.

27. In respect of the remaining information, the Commissioner notes that once information is disclosed under FOIA it is disclosed to the world at large. The public authority will (possibly subject to copyright) relinquish all control over how that information is used or re-used. It has no power to prevent the information from being further disseminated and, in most cases, it must provide the same information to anyone who asks for it.
28. The complainant in this case is an investigative journalist and is unlikely to misuse the information but the applicant- and motive-blind nature of disclosure under FOIA means that, once the information is disclosed, the public authority cannot prevent that information from falling into the hands of someone who might wish to misuse it.
29. In the Commissioner's view there is a very strong public interest in withholding information that would assist criminal gangs. Such gangs are often exploiting desperate people and, in some cases, will carry on exploiting those people if they successfully enter the UK undetected. There is thus a strong public interest in the public authority and the UK Border Force being allowed a certain degree of ambiguity as to the precise tactics being deployed so that they can disrupt the work of such groups.
30. Finally, the Commissioner also considers that there is a strong public interest in preventing the making of false distress calls. Firstly, when help is demanded unnecessarily assets must be diverted to the scene of the incident. That potentially puts not only other migrant boats (which may genuinely be in distress) in greater danger, but also other shipping – if the public authority's attention is diverted by people who do not require assistance.
31. Also, the Commissioner notes that those who put to sea to answer distress calls put their own lives at risk when they do so. Although they tend to be experienced seafarers with appropriate equipment, seas can be unpredictable and therefore this is a resource that should only be used when necessary.
32. The Commissioner is therefore satisfied that section 31 applies to the requested information and that the balance of the public interest favours maintaining the exemption.

Right of appeal

33. 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

34. 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.
35. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF