

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 March 2025

Public Authority: Maritime and Coastguard Agency (an 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 incident logs and emails relating to small boat crossings on the English Channel on a particular date. Maritime and Coastguard Agency (MCA) refused the request under section 31 FOIA.
2. The Commissioner's decision is that MCA has correctly engaged sections 31(1)(b) and (c) and the public interest favours withholding the information and maintaining the exemptions. He doesn't require MCA to take any steps.

Request and response

3. On 15 August 2024 the complainant made a request to the Maritime and Coastguard Agency. The request was for:
 - 1) "A copy of all incident logs in HM Coastguard's VISION command and control system for all small/boat migrant vessel incidents reported in the Channel between 00:01 UTC and 23:59 UTC on 14 December 2022. Please include a copy of the "Network Management" incident.
 - 2) A copy of all emails between HM Coastguard and CROSS Gris-Nez from 00:01 UTC and 23:59 UTC on 14 December 2022 regarding

small boat/migrant vessel incidents in the Channel. Please search the email accounts of both dover.ops@mca.gov.uk and dover.coastguard@mcga.gov.uk, as well as the on-duty 'Small Boats Tactical Commander' and 'SAR Mission Co-ordinator' for this correspondence."

4. MCA responded on 18 September 2024 confirming it held information but considered it exempt under sections 31(1)(a), (c) and (g) with 31(2)(e) FOIA.
5. The complainant responded on 21 September 2024 asking for an internal review of this decision. In particular they disagreed with the use of section 31(1)(g) with (2)(e) – the purpose of ascertaining the cause of an accident arguing MCA did not have any function in statute relating to it investigating accidents involving boats as this is the responsibility of the Marine Accident Investigation Branch. The complainant also considered the public interest test set out by MCA was insufficient and unbalanced.
6. At the time the complaint was made to the Commissioner no internal review had been forthcoming and he exercised his discretion to accept the complaint for investigation.

Scope of the case

7. The complainant contacted the Commissioner on 19 November 2024 to complain about MCA's refusal of their request.
8. During the course of the Commissioner's investigation MCA accepted it could not rely on section 31(1)(g) and 31(2)(e) to withhold information as MCA itself was not undertaking any action. However, MCA maintained its reliance on sections 31(1)(a), (b) and (c).
9. The Commissioner considers the scope of his investigation is to determine if MCA has correctly applied section 31(1)(a), (b) and/or (c) FOIA to withhold all the information in scope of the request.

Reasons for decision

Section 31 – law enforcement

10. Section 31(1) of FOIA states that information is exempt if its disclosure would, or would be likely to prejudice (a) the prevention or detection of crime, (b) the apprehension or prosecution of offenders or (c) the administration of justice.

11. In order for a prejudice based exemption, such as section 31, to be engaged the Commissioner believes that three criteria must be met:
 - 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 prejudice which is alleged must be real, actual or of substance.
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.
12. MCA explained that an investigation by the police was underway at the time of the request in relation to the incident the information relates to. There was also a [Coroner's investigation into the incident](#). This was still ongoing at the time of the request but has since concluded.
13. The Commissioner asked MCA some further questions around these investigations, particularly the timing of them and how the information in this case factored into these investigations as one of the complainant's issues was whether information could be withheld in full or if there may be some information in the documents held that was not part of any ongoing investigations and could be provided.
14. In terms of the incident logs, MCA advised that HM Coastguard shared the incident logs in scope of the request with the police on 20 December 2022 as part of an ongoing investigation. MCA therefore argue that disclosing the incident logs would be likely to prejudice the ongoing criminal conviction case as it would reveal information that is not in the public domain that could impact on the outcome of the proceedings.
15. Regarding the emails, MCA has confirmed it received a request from the police for emails relating to the incident. At the time of the request it had not received a request for this information from the Coroner's office but explained that based on its prior knowledge of coroner's inquests the emails in scope of the request would be requested in due course, usually once the police investigation has concluded.

16. As the Commissioner now understands the Coroner's inquest has concluded it is unclear if these emails were passed to the Coroner but it remains the case that the police did request these emails as part of their investigation.
17. The Commissioner asked some further questions around the timing of these investigations. MCA explained that, as far as they could ascertain, the police investigation began on 14 December 2022 and a request for disclosure was made a few days later under the Data Protection Act. This request was from the police to MCA and requested information to support an investigation. At this stage the incident logs were provided.
18. MCA cannot state exactly when the coroner's investigation was opened but believe an inquest was opened at the time of the incident. Certainly there are [newspaper articles from December 2022](#) stating an inquest had been opened by the Coroner with proceedings suspended until a later date on the basis of the ongoing police investigation.
19. At the time of the request MCA contacted the police officer leading the operation to ask for an update and was advised that a date had not been set for the appeal hearing or the coroner's inquest. The Commissioner has seen a copy of this correspondence.
20. The Commissioner is aware that the pilot of the boat at the centre of this incident was initially convicted in February 2024 but the [retrial did not conclude until December 2024](#), after the request was made. Following this the Coroner's inquest began and concluded in January 2025.
21. In order to accept that the exemption is engaged the Commissioner must be convinced there is a real and significant likelihood of the stated prejudice occurring, rather than it being a remote possibility. The Commissioner has focused on section 31(1)(b and 31(1)(c), meaning that the issue here is whether disclosure of the withheld information would result in a real and significant risk of prejudice to the apprehension and prosecution of offenders and to the administration of justice.
22. MCA's reasoning concerns the preservation of a safe space for the police and coroner's investigations to be carried out. The Commissioner accepts this argument in principle; it is the case that disclosing into the public domain information relating to an ongoing police investigation could be prejudicial to that investigation. The issue is whether disclosure of the specific information in question would create a real and significant likelihood of harm to the investigation process and the prosecution.

23. In this case MCA has advised it had received requests for the incident logs that have been requested by the complainant from the police. It is therefore clear that this information was of relevance to the police investigation and did form part of the evidence considered. Similarly the emails identified had also been requested.
24. Disclosure into the public domain of evidence relevant to an ongoing investigation and inquest could cause prejudice to that investigation. At the time of the request the appeal hearing was still pending and the Coroner's inquest was suspended pending the outcome of the appeal hearing. Releasing information that has been passed to the police as part of an active investigation when appeals and inquests were still outstanding, particularly in relation to such a high interest subject of migrant boat crossings, would almost certainly lead to increased speculation and scrutiny. This in turn could lead third parties, including the media, to add pressure to the police and the Coroner to conduct their investigations in a particular way.
25. The Commissioner's guidance on [section 31](#) is clear that the erosion of the safe space needed to conduct investigations and proceedings by disclosing information that forms part of the evidence could result in the prejudice argued in the various subsections of section 31(1).
26. Given that the issue at hand is, widely, one of media and public interest and the information requested has, in its entirety, been provided to the police as evidence, the Commissioner's view is that disclosure at the time of the request would have resulted in a real and significant likelihood of prejudice to the prosecution of offenders and the administration of justice. The exemptions at section 31(1)(b) and (c) are therefore engaged.
27. Having found sections 31(1)(b) and (c) are engaged, the next step is to consider the balance of the public interest.

Public interest arguments in favour of disclosure

28. MCA recognises that the information relates to an incident where there has been an interest from the public, including comment and information in the press. Release of the information could assist the public understanding of the circumstances of the incident. This would be likely to further public understanding of MCA's activities and involvement in the incident.
29. The complainant states there is significant public interest in the subject the information relates to – search and rescue operations conducted by MCA for migrant small boats crossing the Channel. Specifically in this case the information relates to the events of a shipwreck.

30. The complainant argues the event happened two years before the request was made and at this time the criminal trial had concluded as had one safety investigation. As such any other investigations still ongoing would have had plenty of time to collect and consider any relevant evidence and reach a decision as to how to proceed. They further argued that it is unlikely any investigations now will lead to further action.
31. They point to the public interest in disclosing the coastguard incident logs from the date of the shipwreck and highlights the [Cranston Inquiry](#) into a shipwreck from November 2021 for which MCA placed into the public domain a [list of documents](#) including the incident log of the shipwreck with only names redacted.
32. The complainant argues that the incident that is the subject of this request has lots of similarities and a fuller understanding of the December 2022 incident would allow the public to understand what improvements have been made to Coastguard operations in the Channel following the 2021 shipwreck. In addition the Cranston Inquiry demonstrates the high and sustained public interest in the full disclosure of specific information regarding shipwrecks with fatalities in the Channel.

Public interest arguments in favour of withholding the information

33. MCA states that release of the information would be likely to prejudice the active police and subsequent coroner's investigation into the incident. This may harm the ongoing investigations as the information could be used to invalidate evidence gathered or statements given. This would in turn prejudice the police in their prosecution of offenders and the administration of justice. MCA considers this would not be in the public interest as the police may be unable to ensure that an offender is prosecuted and has comprehensive and robust charges brought against them for any involvement in this incident.
34. Furthermore, the investigation by the coroner is an independent process for which MCA are obliged to provide information that will support and allow the independent investigation to take place. To release information into the public domain in advance of the Coroner's inquest would be likely to result in pressure or comment from third parties in relation to the incident that could impact the impartiality of the proceedings. It is essential the Coroner's inquest is able to take place within a safe space without interference or influence from the public or public interest groups that may lobby with an agenda. Disclosure would be likely to impede this process, with the risk that the Coroner is unable to

independently assess the incident and therefore may result in a less robust investigation.

35. This would be likely to prejudice the outcome of that investigation, meaning that recommendations or outcomes suggested by the Coroner may not be as robust or detailed as they might otherwise have been. This would not be in the public interest as it may prejudice the safety of future persons at sea if the Coroner is not able to make recommendations that may influence future policy without undue influence or pressure.
36. MCA acknowledges the information relates to an incident that occurred in 2022. While there was an interest from the public at the time of the incident, given the passage of time the information would be unlikely to significantly impact public understanding of the circumstances. Given release could instead prejudice ongoing investigations, MCA maintain that the balance of the public interest favours withholding the information until the investigations have concluded.

Balance of the public interest arguments

37. In finding that the exemption was engaged, the Commissioner accepted that the stated prejudice would be a likely outcome from disclosure of the requested information. The issue here is how much weight this should carry as a public interest factor.
38. The Commissioner considers there is a clear and weighty public interest in avoiding prejudice to ongoing investigations. At the time of the request an appeal hearing was still pending and the police were still actively involved in this. Whilst a sentencing had been made earlier in the year the police were still engaged in the prosecution and the evidence gathered was still of active relevance to the appeal. In addition to this the information was still not publicly available and the Coroner's inquest had not begun and did not conclude until January 2025.
39. The Commissioner recognises the significance of the incident and the importance the withheld information had in the police investigation as the logs and emails provide a record of the actions taken on the day. The ability of the police and the Coroner to be able to piece together accurately what happened and analyse the actions of all those involved to ensure a prosecution and an independent Coroner's inquiry is of significant public interest. At the time of the request and throughout much of the Commissioner's investigation the police activity and Coroner's inquiry remained ongoing and the information requested was part of the evidence considered. The public interest in avoiding prejudice to the prosecution of the offender and to the impartiality of the

Coroner's inquiry is a weighty factor in favour of withholding the information.

40. The Commissioner does not dismiss the fact that there is also significant public interest in the subject matter of migrant boat crossings and the actions of the various bodies involved in monitoring the Channel. The Cranston Inquiry shows the importance of public scrutiny of boat crossings resulting in fatalities. The Cranston Inquiry has placed a significant number of documents into the public domain as it is a public inquiry. The Commissioner acknowledges this includes incident logs of the same nature that has been requested here. However, the public Cranston Inquiry was set up to independently look at the November 2021 incident following the conclusion of all investigations and the publication of an [accident report](#).
41. The Commissioner considers there is a public interest in allowing the public access to information about incidents of this nature, at the appropriate time. In this case it would allow for scrutiny of whether any lessons have been learned from the November 2021 Channel crossing fatalities. It would also show exactly what happened on the day and allow the public to better understand the actions taken. However, the Commissioner does not consider the appropriate time is when there are still ongoing hearings and inquiries.
42. In conclusion, the Commissioner has recognised public interest factors on both sides of the balance. In correspondence with the Commissioner, MCA indicated that once the Coroner's inquiry has been concluded some information may be placed into the public domain and in any event any later request for information would be considered based on the situation at that time.
43. A decision in this notice to withhold the information now will not necessarily mean that this information will be permanently withheld. A decision in favour of disclosure at the time of the request may have resulted in prejudice to the ongoing proceedings that would not be in the public interest.
44. As a result, the Commissioner's view is that the public interest in avoiding prejudice to the active proceedings at the time of the request tips the balance of the public interest in favour of maintaining the exemption and withholding the requested information. The Commissioner finds MCA has correctly withheld the information under sections 31(1)(b) and (c) FOIA.

Right of appeal

45. 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

46. 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.
47. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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