

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 22 October 2013

Public Authority: Marine Management Organisation

Address: Lancaster House
Hampshire Court
Newcastle upon Tyne
NE4 7YH

Decision (including any steps ordered)

1. The complainant made a request to the Marine Management Organisation ("MMO") for details, in relation to the processing of fishing data, of when the most recent inspections had taken place by the European Commission ("EC"), the European Fisheries Control Agency and the Court of Auditors and for copies of any reports from those inspections and also any responses to those reports. The MMO applied regulation 12(4)(a) (information not held) and 12(4)(d) (unfinished documents) to some parts of the request.
2. The Commissioner's decision is that the MMO has breached regulation 14(3)(a) of the EIR by not issuing a refusal notice stating that it did not hold any information falling within the scope of any parts of the request and citing the exception contained in regulation 12(4)(a).
3. The Commissioner does not require the MMO to take any further steps to ensure compliance with the legislation.

Request and response

4. On 15 August 2012 the complainant sent the MMO an email containing a number of requests for information about reviews of its systems and processes. This followed a previous email sent by the complainant concerning the MMO's reporting of fishing data to the EC in relation to the Western Waters fishing area and a subsequent response to that email from the MMO. The email of 15 August 2013 included the following request:

"...I was interested to read in your email that Commission staff, inspectors from the European Fisheries Control Agency, and the EC Court of Auditors have all visited to check on the UK's compliance with its obligations. I would be most interested to learn when their respective most recent inspections were and to have sight of their findings and reports. Do you publish this information? If so, perhaps you could direct me to the information or, if not, please consider this an EIR request for the reports and documents detailing their findings and the MMO/DEFRA/UK responses."

5. The MMO responded on 13 September 2012. It applied regulation 12(4)(a) (information not held) and 12(4)(d) (unfinished documents) to some parts of the request.
6. On 24 September 2012, the complainant wrote to the MMO expressing her dissatisfaction with the MMO's response.
7. On 22 October 2012, the MMO wrote to the complainant with the result of its review. It upheld its original decision.

Scope of the case

8. The complainant contacted the Commissioner on 24 November 2012 to complain about the way her request for information had been handled by the MMO, specifically, that she did not believe that it was in compliance with the EIR.
9. The Commissioner considers whether the MMO has complied with the EIR in its response to the complainant.

Reasons for decision

Information falling within the scope of the request

10. In its initial response to the complainant, the MMO confirmed that the most recent inspections were carried out by EC inspectors from the Commission's Directorate-General of Maritime Affairs and Fisheries (DG Mare). However, the final copies of any reports were held on a secure part of the EC's website and were consequently not held by the MMO. It therefore applied the exception in regulation 12(4)(a) (information not held) to the final report. In relation to an initial copy of the report provided to the MMO by the EC, it applied regulation 12(4)(d) (unfinished documents) on the basis that this was a draft report.
11. In relation to the Court of Auditors, the MMO informed the complainant that the most recent report which might be of interest to her was available on the Court of Auditor's website. With regard to the European Fisheries Control Agency, the MMO informed the complainant that it did not carry out inspection or audit visits in the UK.
12. During the course of the Commissioner's investigation, the MMO provided him with copies of the reports by the EC's Directorate-General of Maritime Affairs and Fisheries and Court of Auditors which it believed fell within the scope of the request. The Commissioner notes that the report from the Court of Auditors is an examination of EU measures for reducing fishing overcapacity, including how those measures were designed and implemented by the Commission and Member States. However, the complainant's request appeared to relate to checks on the quality of the data that the MMO collected on fishing activity in connection with the Western Waters area. The Commissioner was therefore not convinced that this report fell within the scope of the complainant's request.
13. In relation to the other report, by the Directorate-General of Maritime Affairs and Fisheries, the Commissioner notes that this relates to an audit of the MMO's electronic recording and reporting of fishing activity by UK vessels operating in the NAFO Regulatory Area, in areas covered by Fisheries Partnership Agreements and elsewhere on the High Seas. The MMO subsequently confirmed that the report did not relate to the Western Waters fishing area. The Commissioner was therefore again not convinced that this report fell within the scope of the complainant's request.
14. In relation to the issue as to whether the reports fell within the scope of the request, the MMO explained that complainant's request of 15 August

2012 was in response to an email from its Chief Executive dated 14 August 2012. Whilst the Chief Executive referred in his email to the Western Waters management regime, the intention of his response was to outline the processes and procedures in place, including inspections carried by the EU, for the systems adopted and used to collect, process and report data from fishermen by the MMO more generally, rather than those specifically relating to the Western Waters management regime. It believed that this was highlighted by the fact that the Chief Executive went on to confirm that the European Commission had been contacted to specifically seek their comments on the systems and procedures used to produce the data on UK vessel activity under the Western Waters regime and that they were content with the UK's procedures in this area. This was as a result of the concerns raised and to ensure that its customers were assured as to the MMO's processes and procedures with regards the collection, processing and reporting of data.

15. The MMO went on to explain that the complainant's request, received as a direct response to the Chief Executive's email, did not refer to the Western Waters management regime specifically, but asked for the most recent inspection reports in which the various EC bodies mentioned had visited the UK to check compliance with its obligations. As such, the MMO believed that it was correct to state that, whilst the reports provided to the Commissioner did not specifically relate to the Western Waters area, they did fall within scope of the complainant's request for information, given they were the most recent reports held by the MMO at the time the request was received.
16. The Commissioner notes the MMO's arguments as to the scope of the complainant's request. However, he also notes that the email sent by the MMO's Chief Executive on 14 August 2012 was a response to an email from the complainant dated 10 August 2012. This email from the complainant details her concerns about the monitoring and reporting to the EU of fishing data related to the Western Waters area. In addition, the complainant's email of 24 September 2012 expressing her dissatisfaction with the MMO's response to her request, again emphasises on a number of occasions that her concerns relate to the processing of data in respect of the Western Waters fishing area.
17. In light of the above, the Commissioner has determined that the scope of the complaint's request was limited to information concerning the Western Waters fishing area. As neither of the reports identified by the MMO related to the Western waters area, they do not, in the Commissioner's view, fall within the scope of the request.
18. The MMO has confirmed to the Commissioner that it held no further information falling within the scope of the request. Consequently, the Commissioner believes that the MMO should have issued a refusal notice

to the complainant stating that it did not hold any information falling within the scope of any parts of the request and citing the exception contained in regulation 12(4)(a). By failing to do so it breached regulation 14(3)(a).

Right of appeal

19. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

20. 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.
21. 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

Rachael Cragg
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