

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

Decision notice

Date: 20 November 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 information about scrutiny by the European Commission ("EC") of its data reporting systems, including copies of any relevant reports and responses to reports. The MMO applied regulation 12(4)(a) (information not held) and 12(4)(d) (unfinished documents) to documents it believed fell within the scope 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 the request and citing the exception contained in regulation 12(4)(a) to the entirety of the request.
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 made a number of requests for information to the MMO about reviews of its systems and processes, including those carried out by the European Commission ("EC"). This included the following request:

"You state that EC scrutiny regarding data reporting systems has included working through from the initial raw data on activity right through to the detail reported to the Commission to ensure completeness and accuracy in the capture, processing and final reporting of data. I would be grateful to know when this was most recently done, which raw data were looked at and sight of the Commission reports to which they related. Do you publish these reports? If so could you please direct me to them, if not please can you consider this an EIR request for the reports and documents detailing their findings and the MMO/DEFRA/UK responses. I assume that none of this related to Western Waters, but I would be happy to be advised otherwise."

5. The MMO responded on 13 September 2012. It applied the exception in regulation 12(4)(a) to the final version of a report from the EC and regulation 12(4)(d) to a draft version of that report.
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 had not been provided with the information that she had requested.
9. The Commissioner considers whether the MMO has complied with EIR in its response to the complainant.

Reasons for decision

Information falling within the scope of the request

10. The MMO initially informed the complainant that the most recent inspection carried out by the EC that fell within the scope of her request took place in June 2012. This was carried out by the EC's Directorate-General of Maritime Affairs and Fisheries. The MMO received a draft report in July 2012 which it believed was exempt from disclosure under the exception in regulation 12(4)(d) (unfinished document). It received the final report in September 2012. It argued that this was exempt from

disclosure under the exception in regulation 12(4)(a) (information not held) on the basis that it could only be accessed on a secure area of the EC's website and so was not held by the MMO.

11. During the course of the Commissioner's investigation, the MMO accepted that the report did not fall within the scope of the request as the inspection carried out by the relevant EC officials did not include "... *working through from the initial raw data on activity right through to the detail reported to the Commission...*" as was referred to in the request.
12. However, the MMO subsequently identified another report which it believed fell within the scope of the request. This report followed inspections from the European Court of Auditors carried out in 2006. The MMO explained that the inspections covered a full work through and reconciliation of data reported to the Commission for quota uptake linked back to logbook returns. It confirmed that the final report was available on the European Court of Auditors website.
13. The Commissioner notes that the report by the European Court of Auditors identified as falling within the scope of the request was prepared in 2007, following inspections that took place in 2006. At this time responsibility for the collection and processing of fishing data in England lay with the Marine Fisheries Agency. The MMO did not takeover responsibilities for this work until it began operating in 2010.
14. After reviewing the email in which the complainant made her request and the chain of emails between the MMO and the complainant, of which the email containing the request formed a part, it is clear that the complainant made her request in the context of concerns that she raised about the MMO's collection and processing of fishing data. In the Commissioner's view, she was seeking to obtain information held by the MMO about EC scrutiny and reports on the MMO's collection, processing and reporting of fishing data rather than information of a similar nature related to its predecessor. Consequently, the Commissioner has determined that the report from the European Court of Auditors, identified by the MMO, did not fall within the scope of the complainant's request and that the MMO should have informed her that it did not hold any relevant information.
15. As a result of the above, 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 the complainant's request and citing the exception contained in regulation 12(4)(a) to the entirety of the request. The Commissioner does not require the MMO to take any further steps to ensure compliance with the legislation

Right of appeal

16. 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

17. 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.
18. 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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