

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 November 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 a copy of a document titled "Broadcast Action for Migrant Incidents". The above public authority ("the public authority") relied on sections 31 (law enforcement) and 38 (health and safety) of FOIA to withhold the information.
2. The Commissioner's decision is that the public authority has failed to demonstrate that either exemption applies and is consequently not entitled to rely on either exemption. The public authority breached section 10 of FOIA as it failed to respond to the request within 20 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose a copy of the document to the complainant.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 3 August 2022, the complainant wrote to the public authority and requested information in the following terms:
- “Please can you provide me the following under the FOI Act:
1. A copy of the document called “Broadcast action for migrant incidents”. I understand this is the name of a document which provides guidance to coastguard coordinators on how they should respond to search and rescue incidents involving small boats carrying migrants in the English Channel.
 2. If the document I have requested in point 1 has been updated or amended since the day it was created until today (04/08/2022), please provide each updated/amended version of this document within this date range.
 3. If the document I have requested in point 1 has been superseded by any new guidance documents which may have a different name, please provide a copy of the documents which have superseded it along with the date they came into effect.”
6. The public authority responded on 9 September 2022. It relied upon section 31 of FOIA to withhold the requested information. It upheld this position at internal review.
7. After the Commissioner commenced his investigation, the public authority issued a third response to the complainant. It now relied additionally upon section 38 of FOIA in order to withhold information.

Reasons for decision

8. The public authority has relied on section 31(1)(a) of FOIA to withhold the information. This limb of the exemption relates to information whose disclosure would prejudice the prevention or detection of crime.
9. The public authority has made vague references to organised crime groups and to illegal migrants, but it has been imprecise as to whether disclosure would impede attempts to stop migrants from reaching the UK coast (and hence entering the country illegally), stopping them from being exploited to the point that they reach the French coast in the first place or preventing or detecting some other unspecified crime.
10. The public authority argued in its final response that:

"The operational information contained in the requested document would be used by organised crime groups (OCGs) to inform their criminal enterprise and exploitation of vulnerable migrants crossing The Channel illegally and utilising tactics that can lead to incorrect allocation of vital lifesaving resources."

11. In submissions to the Commissioner it added that:

"We know that organised crime groups utilise information on operational response to inform their own operations, including advice to migrants making the crossing on tactics to utilise when contacting emergency services. The information contained in this document can be utilised alone or in combination with other information to aid the commission of crime, frustrate the prevention and detection of crime and through this and tactics employed is likely to add to the endangerment of migrants and those responding to incidents."

12. Putting to sea, in a vessel of dubious seaworthiness, whilst exceptionally unwise, is not, in itself, a crime. The crime is only committed when a person attempts to enter the UK illegally – whereas the withheld information concerns boats that have yet to make it to the UK. Once a boat is in the middle of the English Channel, its occupants have limited options – regardless of the information available.

13. Whilst the Commissioner recognises that people-smuggling is a crime, given that migrants are often abandoned on the French coast, it is difficult to see why disclosure of the withheld information would make people-smuggling any more likely. The Commissioner is not persuaded that this information would increase potential "pull" factors encouraging potential migrants to step into a boat in the first place and, once a person has stepped into a boat, their further options are limited.

14. The public authority has failed to explain to the Commissioner exactly what use the withheld information would be to organised crime groups and exactly why this would hinder attempts to tackle illegal migration.

15. As the Commissioner does not consider that section 31 of FOIA is engaged, it follows that the public authority is not entitled to rely on this exemption.

Section 38 – health and safety

16. Section 38 can apply in circumstances where disclosure of particular information could endanger the physical or mental health of any individual.

17. The public authority's arguments for this exemption were no better than those advanced in support of section 31 – in that they failed to spell out

exactly why the level of endangerment is likely to increase if the withheld information were to be disclosed.

18. The public authority has argued that disclosure might lead to mis-allocation of resources. In itself, that is a reasonable argument – but the public authority has not explained why this mis-allocation is likely to occur.
19. Being aboard a vessel in distress already carries a high degree of endangerment and it is difficult to see how any disclosure would be likely to have any meaningful impact on such a situation.
20. To the extent that the public authority wishes to argue that disclosure is more likely to result in fake or unnecessary distress calls, it has failed to explain why the actual content of the withheld information makes this more likely. The Commissioner is not convinced that the content of the withheld information would have a significant impact on the level of unnecessary distress calls – and it follows that any additional risk to those responding to incidents would be minimal.
21. As neither exemption is engaged, it follows that the information must be disclosed.

Procedural matters

22. As the public authority failed to respond to the request within 20 working days, it breached section 10 of FOIA.

Right of appeal

23. 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

24. 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.
25. 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
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Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF