

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 January 2023

Public Authority: Maritime and Coastguard Agency
(Department for Transport)

Address: Spring Place
Commercial Road
Southampton
SO15 1EG

Decision (including any steps ordered)

1. The complainant has requested audio recordings of distress calls made from the English Channel and transcripts of those recordings. The above public authority ("the public authority") relied on a number of different exemptions as its reasons for not providing the information.
2. The Commissioner's decision is that it would not be reasonably practicable in the circumstances to expect the public authority to provide the information as transcripts and therefore it has complied with its obligations under section 11. The Commissioner considers that the public authority is entitled to rely on section 40(2) of FOIA to withhold the audio recordings. The public authority breached section 17 of FOIA in responding to this request.
3. The Commissioner does not require further steps.

Request and response

4. On 12 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 recorded audio of all calls between people at sea in the English Channel and HM Coastguard between 00:01am on 15 November 2021 and 23:59pm on 22 November

2021...Please provide as many of these recordings as is [sic] retrievable within the cost limit.

- [2] If retrievable within the cost limit, for each audio recording disclosed in response to point 1 - please specify which HM Coastguard control room handled the distress call (eg Dover Maritime Rescue Coordination Centre).
 - [3] If retrievable within the cost limit, please also provide a transcript of audio recording of all calls requested in point 1.
 - [4] For each call requested in point 1, please provide the HMCG GIN incident number it relates to."
5. The public authority responded on 25 October 2022. It relied on section 40(2) of FOIA to withhold the audio recordings, in respect of the transcripts, it stated that providing transcripts would "create a new dataset and would exceed the cost cap."
 6. Following an internal review the public authority wrote to the complainant on 24 October 2022. It upheld its position in respect of the audio recordings. In respect of the transcripts, it now considered that they were also personal data and it was therefore not required to provide them.

Scope of the case

7. The complainant contacted the Commissioner on 20 September 2022 to complain about the way his request for information had been handled.
8. At the outset of the investigation, the Commissioner wrote to the public authority to set out his initial view of the complaint. He explained that he considered it likely that, as a transcript can be created entirely from an audio recording, the public authority would hold this information for the purposes of FOIA – and therefore it was obliged to give effect to the complainant's request to have the information communicated to him in this way, unless it was not reasonably practicable in the circumstances.
9. The public authority provided its submission on 18 January 2023. In respect of the audio recordings, its position was that:
 - The information was exempt under section 40(2),
 - "In the alternative" it could rely on either section 12 (costs) or section 14(1) (vexatious) of FOIA to refuse that element of the request,

- “In the alternative” if none of the above exemptions applied it could rely on sections 31 (law enforcement) and 38 (health and safety) to withhold the requested information,
10. In respect of the transcripts, its new position was that:
- these were also exempt under section 40(2) of FOIA,
 - that it was not reasonably practicable to provide the information in the circumstances or,
 - alternatively, that complying with the request would either exceed the cost limit (section 12 of FOIA) or impose a grossly oppressive burden (section 14(1) of FOIA),
 - Or alternatively that sections 31 or 38 of FOIA would apply.
11. Given that sections 12 and 14 allow a public authority to refuse a request in its entirety (ie. without considering what relevant information it holds or whether any of the held information is otherwise exempt from disclosure), the Commissioner would normally look at these exemptions first and, if they were found not to apply, order a fresh response to be provided – giving the public authority the opportunity to identify the information that it held and determine whether any was subject to one or more of the exemptions in Part II of FOIA (which allow for particular types of information to be withheld from disclosure).
12. However, in this case, the public authority clearly holds the recordings and has done a considerable amount of work already to determine the extent to which Part II exemptions would apply. In the interests of resolving the underlying request efficiently, whilst it makes for a longer decision notice, the Commissioner will depart from his usual approach and, if he finds that neither section 12 nor section 14 applies to the request for audio recordings, he will then go on to consider the application of the Part II exemptions to this information immediately.
13. In the case of the transcripts, the Commissioner notes that the public authority’s arguments rely on the burden that would be incurred if it were required to carry out the work of transcribing the audio recordings. Therefore, the Commissioner considers that, before he can decide whether the request is burdensome, he must first decide whether the public authority is obliged to communicate the information in this manner. If it is not obliged to communicate the information in this form, there would be no burden as the request could be dismissed out of hand. Therefore the Commissioner will consider the application of section 11 of FOIA first, before going on to consider sections 12 and 14. If the public authority is obliged to communicate the information in this format and the Commissioner considers that neither section 12 nor 14

applies, he will finally consider whether any of the Part II exemptions apply.

Reasons for decision

The transcripts

14. The Commissioner recognises that there is a circularity to the arguments presented here. The public authority has argued that it need not consider whether it is required to communicate the information that it holds (the audio recordings) in the form of a transcript as that information would be subject to at least one exemption from disclosure (and would thus not require communicating to the complainant). It need not cite an exemption from disclosure though, if it can demonstrate that it is not required to comply with this part of the request – however whether or not the request should be complied with is determined by whether or not it is required to communicate the information in the manner requested by the complainant. And so on, and so forth.
15. The Commissioner could arguably have started anywhere within this circle. However, the issue of whether the public authority is required to communicate information in this manner is a novel one (the Commissioner has issued decision notices where a requester sought an audio recording, but was given a transcript instead – but not the other way around) and would benefit from a regulatory decision.
16. Section 11 of FOIA allows a requester to ask for the recorded information a public authority holds to be communicated to them in a particular form or format. They can, for example, ask for emails to be printed off, or for data to be provided in a spreadsheet.
17. Where a preference is expressed, the public authority must give effect to that preference – unless it is not reasonably practicable to do so in the circumstances.
18. The public authority holds each audio recording, but has not transcribed any that fall within the scope of the request. It originally claimed that it did not hold transcripts for the purposes of FOIA and that producing transcripts would amount to the creation of new information. The public authority stepped back from this stance during the course of the investigation and the Commissioner considers that it was right to do so.
19. A transcript is a verbatim written record of a conversation. It will record (as best it can) the words that were spoken and the person that uttered them.

20. The Commissioner has recognised, in previous decision notices, that an audio recording will, by its very nature, contain more information than a transcript. A transcript cannot effectively convey a person's tone of voice or the speed of their delivery – which, in some cases, can change the meaning of the words considerably.
21. However, whilst a transcript cannot contain all the information within an audio recording, it will only contain information that is also contained within the recording.
22. Therefore creating a transcript from an audio recording does not require the creation of new information. It is simply the process of taking information held in one form (audio) and converting it into another (a written document). Whilst some of the original information will not be transferred, no new information is added.
23. Thus, in principle, the Commissioner accepts that a requester has the right to ask for an audio recording to be communicated to them in the form of a transcript and that section 11 requires the public authority to communicate the information in that form – unless it is not reasonably practicable.
24. The public authority argued that it was not reasonably practicable to provide the information to the complainant in this format because of the amount of work involved.
25. The public authority noted that, based on previous experience, it took, on average, around 45 minutes to produce an accurate transcript of one call. Given that the request encompasses 55 calls, communicating all the information in this format would require more than 41 hours of staff time.
26. In addition, the public authority noted that many of the calls are quite distressing to listen to and that transcribing such a large amount of calls would be likely to have an adverse impact on the wellbeing of the staff assigned to such a task.
27. Having given consideration to the matter, the Commissioner is of the view that, in the circumstances of this case it was not reasonably practicable for the public authority to give effect to the complainant's preference to have the information communicated to him in this form.
28. The Commissioner has given consideration to the nature of a transcript, compared to an audio recording. The key difference between the two is that the audio recording contains the tone of the caller's voice which – as the Commissioner will go on to explain below – makes the recording difficult to anonymise. A transcript does not contain this feature and the conversation itself is only likely to contain a relatively small amount of

identifiable information – which can be easily redacted. The Commissioner considers that it will generally be more reasonable to give effect to a requester's preference if doing so results in the disclosure of information which might otherwise have been exempt.

29. The complainant's request covers a large number of distress calls. Had it been for just one or two, then it would have been more reasonable to expect the public authority to give effect to this preference, but the public authority is entitled to take account of the amount of time it would need to spend in order to give effect to the complainant's preference.
30. The Commissioner accepts that 45 minutes is a robust estimate for the time needed to transcribe a single phone call – given that it is based on previous experience. He also notes that, given the potential for such calls to involve sections that are either in a foreign language, heavily accented or barely audible due to the environment or the quality of the phone line, the process needs to be carried out by individuals with a certain amount of skill and experience – meaning that the burden would be concentrated on a relatively small number of the public authority's staff.
31. The Commissioner is not wholly persuaded by the public authority's arguments on staff welfare. Given that the original calls are also likely to have been handled by its staff, the public authority should already have training and support available for those listening to such calls. The Commissioner sees no reason why such resources could not be made available to those assigned the task of transcribing.
32. That being said, the Commissioner does accept that such resources will be finite and that, in dealing with the request, the public authority will be having to divert them away from its frontline services. Therefore the Commissioner recognises that this does have a small amplifying effect on the burden as a whole – which, as he has outlined above, is already considerable.
33. For these reasons, the Commissioner considers that, in the circumstances, it was not reasonably practicable for the public authority to communicate the requested information in the format sought by the complainant.

The audio recordings

34. In this case, the Commissioner considers that both the section 12 and section 14 arguments can be dismissed relatively easily.

35. Section 12 does not apply in this scenario because the public authority has failed to demonstrate that it would need to spend in excess of 24 hours of staff time (which is the appropriate limit under FOIA for this public authority) on permissible activities in order to comply with the request.
36. A public authority is only entitled to consider the costs it expects to incur (or time it expects to spend) in determining whether the requested information is held and in retrieving, locating and extracting any information that is held.
37. The public authority, in its submission, has explained that it takes five minutes to locate and retrieve each individual recording. As 55 calls fall within the scope of this request, that would indicate that retrieving all the relevant audio recordings would take around four and a half hours.
38. The public authority considers that it is entitled to aggregate this request with another request for audio calls and transcripts the complainant had made within 60 working days of the present request. It stated that it had spent almost 31 hours processing that previous request and therefore the combined cost of dealing with both requests must exceed the appropriate limit.
39. Whilst the Commissioner accepts that the public authority is entitled to aggregate the two requests, its estimate of the combined burden has been inflated by adding in the time spent converting the previous audio recordings into transcripts (and the time it anticipates spending on the same activity in relation to the current request). Converting information from one format into another is not an activity the public authority is entitled to consider when estimating the cost of complying.
40. The public authority noted that the previous request sought recordings of 41 calls. Therefore, using the public authority's own estimate of five minutes to retrieve a call, retrieving the 96 calls sought in total by the two requests would take around eight hours to complete: well within the appropriate limit.
41. The Commissioner therefore takes the view that the request could be complied with without breaching the appropriate limit and thus section 12 of FOIA does not apply.
42. Section 14 equally does not apply to this request because, for the reasons given above, the Commissioner does not consider that the burden of transcribing the audio recordings is one the public authority is required to incur.

Personal data

43. Given that the Commissioner considers that the public authority was required to comply with this element of the request, he will now go on to consider whether the information should be disclosed.
44. A public authority can withhold information which is the personal data of a third party and where no lawful basis exists for that information's disclosure to the world at large.
45. The public authority has argued that the call recordings themselves contain a considerable amount of personal data, including special category data. The fact that someone is calling from a small boat gives a likely indication of their immigration status and their ethnicity (at least to the extent that they are not British), the public authority explained that such calls would often provide health information about either the caller themselves, or other people in the boat, as well as general biographical information about the occupants of that boat. Finally, the caller would often be asked to provide their phone number so that they could be called back or identified if necessary.
46. However, more broadly, the public authority argued that the mere sound of the recording itself was the personal data of both the caller and the call handler and that both could be identified by the sound of their voice – even if specific names were removed.
47. The complainant argued that the recording could be run through specialist software to obscure the voices and that, once this had been done and any names removed, the recording would not be personal data as it would be impossible to identify the individuals concerned. He pointed to one piece of free software which he said could do the job – though noted that more advanced software was on sale.
48. The public authority explained that it did not possess software capable of this sort of manipulation and that it had no business need to possess any. It was concerned that the free software the complainant had suggested did not conform to government security standards.
49. Having considered the matter, the Commissioner is of the view that the audio recordings are the personal data of both the caller and call handler.
50. Whilst some voices are more easily-recognisable than others, the Commissioner considers that there is a high probability that both caller and call handler can be identified from the original recording – particularly by those who know the individuals concerned. In the case of the call handler, anyone who can identify that person will also find out that they were a call handler – which they might not know. In the case of the caller, anyone able to identify them would also learn that the

caller had made a distress call – as well as any other information that was revealed during the course of that phonecall.

51. The Commissioner recognises that those most likely to be able to identify the caller or call handler are also those most likely to know the other information that the recording would reveal – but this will not exclusively be the case and there is a realistic probability that someone listening to the original recording would find out something they did not already know, about an individual they can identify.
52. The Commissioner turns next to the issue of redaction. Whether the public authority ought to possess such software is not for the Commissioner to determine. The fact is that it did not when it responded to the request.
53. Whilst the complainant has suggested software that could be acquired for free, the public authority has explained that, at present, this particular software does not meet the required security standards and so could not be installed on its systems without a full risk assessment. The Commissioner accepts that it would be unreasonable to expect a public authority to expose itself to a security risk merely to comply with a request for information. In any case, the Commissioner is not fully convinced that the recording could be manipulated, by this software, in a way that is completely irreversible.
54. The Commissioner is thus satisfied that the recordings do identify individuals and are personal data. He has therefore gone on to consider whether there is nonetheless a lawful basis on which this can be disclosed.
55. As far as the Commissioner is aware, none of the data subjects has given their consent for the information to be disclosed to the world at large. Therefore, the only lawful basis on which this information could be disclosed would be if it was necessary to satisfy a legitimate interest which outweighed the rights of the data subjects.
56. The Commissioner recognises that the issue of Channel crossings is one that has been controversial for some time. Both British and French authorities have been accused of being both too tough on those making illegal crossings and too soft. The Commissioner recognises that there is a legitimate interest in understanding how the public authority is dealing with such calls and whether it is directing an appropriate response.
57. There is also a legitimate interest in examining such calls to determine their legitimacy. In previous cases, the public authority has explained to the Commissioner that migrants attempting to cross the Channel will often make false distress calls once they believe those calls are likely to

be dealt with by British authorities. They will sometimes make fake claims that their vessel has got into difficulty or that one of the passengers is having a medical emergency – in order to provoke a faster response. The Commissioner therefore accepts that there may be a legitimate interest in making calls available to expert analysts to assist the public authority in identifying fake distress calls more effectively – allowing it to prioritise resources to genuine emergencies.

58. However, the Commissioner does not consider that disclosure to the world at large is necessary to satisfy either legitimate interest. The public authority does not need to make the recordings available to the world in order to seek expert advice: it could bring in experts and allow them access if it considered that such an exercise would be valuable.
59. The Commissioner does not consider that disclosing an audio recording is necessary to allow for scrutiny of the public authority's handling of calls. As has been discussed above, a transcript can be much more easily anonymised and would provide the majority of the information that would be contained in an audio recording.
60. The Commissioner therefore considers that disclosure is not necessary and thus no lawful basis exists for disclosure. The Commissioner would also note that, even if he were persuaded that disclosure to the world at large were necessary, he does not consider that the legitimate interests identified would outweigh the rights of callers to not have a phone call, that they had made at a desperate moment in their lives, replicated for the world at large to listen to.
61. As no lawful basis for disclosure exists, disclosure would be unlawful and therefore the public authority was entitled to rely on section 40(2) of FOIA to withhold this information.

Procedural matters

62. The public authority did not issue a refusal notice in response to this request within 20 working days. Its reason for doing so was that it claimed it needed additional time to consider where the balance of the public interest lay in respect of a qualified exemption (section 36).
63. Given that its refusal notice stated that it did not hold transcripts and was relying on section 40(2) of FOIA to withhold audio recordings, the Commissioner does not consider that the public authority was entitled to award itself extra time in which to deal with this request. He therefore records a breach of section 17 of FOIA in the way that the public authority dealt with this request.

Right of appeal

64. 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

65. 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.
66. 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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