

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 May 2023

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 information from the Maritime and Coastguard Agency ("the MCA") in relation to its control system, which is used to log distress calls. The MCA refused the request on the grounds that compliance would exceed the appropriate cost limit, under section 12 of FOIA.
2. The Commissioner's decision is that the MCA was entitled to rely on section 12(1) to refuse the request and also met its obligations under section 16 to provide advice and assistance to the complainant
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 18 August 2022, the complainant wrote to the MCA and requested information in the following terms:

"I understand from FOI ID 3950 that HMCG has a Command and Control System called Vision, which records the following:

- a) HMCG Global Incident Number (GIN)
- b) Incident date and time

- c) Initial incident type
- d) Revised incident type
- e) Latitude
- f) Longitude
- g) Free text boxes then allow an operator to add additional information which is then displayed in an incident log - a chronological list of messages.

Please provide me with:

1. A copy of all information, including that listed in the background section above, which was entered into Vision for migrant vessel incidents that took place in the Channel between 00:00 on 19 November and 23:59 on 20 November 2021.}

I understand these incidents had the following HMCG GIN numbers:

A) 19 November 2021: 40867, 40872, 40913 B) 20 November 2021: 40924, 40929, 40931, 40934, 400935 [or 40935], 40938, 40940, 40941, 40942, 40946, 40943, 40944, 40945, 40947, 40949, 40950, 40951, 40952, 40954, 40955, 40958, 40956, 40960, 40962, 40963, 40964, 40965, 40971, 40968, 40978, 40967, 40969, 40970, 40974, 40975, 40976, 40977, 40981, 40984, 40979, 40980, 40982, 40985, 40987, 40986, 40989, 40990, 40988, 40993, 40996, 40997, 40998, 40999, 41002, 41004, 41001, 41005, 40994, 41007, 40892, 41013, 41012, 41015, 41024, 41019, 41018, 41026, 41027, 41028, 41029, 41031, 41032, 41034, 41033, 41035, 41036, 41037, 41038, 41040, 41041, 41043, 41020, 41047, 41046, 41048, 41053, 41051, 41055, 41057, 41059, 41064, 41063, 41071, 41086, 41087, 41093, 41100, 41101, 41103, 41104, 41102, 41113, 41117, 41118, 41105, 41089, 41073, 41069, 41061, 41146

I understand these Vision logs may be redacted for personal information, but I ask that you redact only exempted information and justify the use of those exemptions. I also kindly remind you that the time taken for redactions does not usually contribute towards the cost cap under FOI.

2. If retrievable within the cost limit, please specify the total number of migrant vessels that were detected in the English Channel on 19 and 20 November 2021 and specify which of the above HMCG GINs refer to each vessel.

I understand that these GINs I have listed in point 1 will have been generated each time a call comes in about a vessel and that, since

multiple calls can come in about the same vessel, a vessel may have multiple GINs.”

5. The MCA responded on 16 September 2022. It stated that it was refusing to comply with the request, citing section 14(1) of FOIA – vexatious or repeated requests.
6. Following an internal review the MCA wrote to the complainant on 23 September 2022. It stated that it upheld its original position.
7. On 24 November 2022, the Commissioner issued a decision notice, which found that the MCA was incorrect to apply section 14(1) of FOIA and a new response was required.¹
8. On 10 January 2023, the MCA provided a new response, advising that it was relying on section 12(1) of FOIA – cost of compliance exceeds the appropriate limit.

Scope of the case

9. The complainant contacted the Commissioner on 21 February 2023 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of the investigation is to determine if the MCA is entitled to rely on section 12(1) of FOIA to refuse the request.

Reasons for decision

Section 12(1) – cost of compliance exceeds the appropriate limit

11. Section 12(1) states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
12. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are:
 - (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,

¹ IC-192546-J0C8

- (c) retrieving the information, or a document which may contain the information, and
(d) extracting the information from a document containing it.
13. The cost limit in this case is £600, which is equivalent to 24 hours' work.
 14. Section 12 of FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the MCA was reasonable; whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £600, that section 12(1) therefore applied and that it was not obliged to comply with the request.
 15. MCA has explained to the Commissioner that to comply with the first part of the complainant's request, it would require 25 hours and 40 minutes of staff time, at a cost of £642.
 16. MCA explained that it has conducted a sampling exercise to estimate the average time required to provide the information in relation to a single incident log within its system. It advised that it involved accessing the system in order to ascertain the time taken to search for and determine if the information is held, to locate the information requested, and to extract the information requested. MCA also explained that the length and complexity of incident logs varies greatly and so the estimate is based on an assessment of time to complete the task for a log of average length.
 17. MCA advised that based on the sampling exercise, it estimates that it would take approximately 14 minutes on average to provide the information for one incident. It says that the complainant's request is for 110 incidents, and therefore, the estimated time for providing the information is 1540 minutes, or 25 hours and minutes.
 18. MCA also explained that the estimate does not include the time estimate for the second part of the request. It estimates to locate, retrieve and analyse the information sought in the second part of the request would be a further two hours.
 19. The Commissioner notes that the time and cost limit for the MCA would only be over the cost/time limit by a minimal amount. However, MCA has also made the Commissioner aware of other similar requests that the complainant has made.
 20. The MCA says that the costs of compliance with the request must be considered in the context of the costs that have already been incurred

by it, in complying with requests made by the complainant for the same or similar information within the previous 60 days of the request.

21. MCA explained that the complainant had made 5 requests for similar information within the 60 working days prior to the request of 18 August 2022.
22. MCA has explained that for some of the requests, exemptions were applied and for some of them, the information was released, even though it exceeded the appropriate limits. It explained that in total, it had spent 59 hours and 10 minutes, at an estimated cost of £1495, in responding to the other 5 requests made for the same or similar information.
23. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") can be satisfied. This is specified under section 12(4) of FOIA.²
24. The Commissioner acknowledges the complainant's concerns and reasons for wanting the information. However, he is satisfied that from the information provided, the MCA has already spent 60 hours responding to similar requests from the complainant, within the 60 working days prior to this request. If the request of 18 August 2022 was responded to, it would take approximately 84 hours in total for the responses.
25. As the requests have been made within 60 working days of each other, the MCA is entitled to aggregate them under section 12(4) of FOIA and, as such, he is satisfied that the appropriate limit has been exceeded. Even if the MCA had only taken half the amount of time to locate the information for the request dated 18 August 2022, once aggregated with the costs of their previous, similar requests, the cost and time have been exceeded.
26. The Commissioner's decision is that the MCA is entitled to rely on section 12(1) of FOIA to refuse to comply with this request.

Section 16

27. Section 16 of FOIA places a duty on a public authority to provide "reasonable" advice and assistance to those making and wishing to make information requests. A public authority will have complied with its

² <https://www.legislation.gov.uk/ukpga/2000/36/section/12>

section 16 duty where it has followed the Code of Practice issued under Section 45 of FOIA

28. In the circumstances of this case, the Commissioner does not require the MCA to provide further advice and assistance as it has already provided a significant amount of information to the complainant. It has also explained the nature of how information is held and the complainant is aware of the potential to refine his request. The Commissioner is also aware that the complainant has made a revised request for some of the information requested within this request.

Right of appeal

29. 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

30. 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.
31. 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

Michael Lea
Team Manager
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Wycliffe House
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