

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

Decision notice

Date: 17 July 2013

Public Authority: Marine Management Organisation

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

Decision (including any steps ordered)

1. The complainant requested copies of correspondence between the Marine Management Organisation ("MMO") and the European Commission ("EC") about reviews of the MMO's systems for producing fishing data. The MMO provided a copy of a letter but withheld the name of an EC official under regulation 13 (personal data).
2. The Commissioner's decision is that regulation 13 does not apply to the name of the EC official and that it should have been disclosed.
3. The MMO has now disclosed the name of the official to the complainant and so the Commissioner does not require it to take any further steps to comply with the legislation.

Request and response

4. On 17 August 2012 the complainant requested information in relation to the MMO's invitation to the EC to review the systems it had in place for producing fishing data for the Western Waters area off the UK's coast. As part of the request, she requested that the MMO send her "*... a copy of the correspondence between the MMO and the EC.*"

5. On 17 September 2012, the MMO provided a copy of a letter sent by the MMO to the EC. The name of the EC official, to whom the letter was addressed, was redacted in the copy provided to the complainant.

Scope of the case

6. The complainant contacted the Commissioner on 24 October 2012 to complain about the way her request for information had been handled by the MMO, specifically, that the MMO had withheld the name of the EC official in the copy of the letter that she had received.
7. The Commissioner has considered whether the MMO has complied with EIR in withholding the name of the EC official.
8. The Commissioner considered this complaint without requiring the complainant to request an internal review due to the overlap with another very similar request made by the complainant.

Reasons for decision

Regulation 13 – Personal information

9. The MMO informed the Commissioner that the name of the EC official was withheld under regulation 13 of the EIR.
10. Under regulation 13, to the extent that the information requested includes personal data of which the applicant is not the data subject, a public authority should not disclose the personal data if it would breach any of the data protection principles under the Data Protection Act ("DPA").

Does the withheld information constitute personal data?

11. In this case the withheld information is the name of an EC official contained in a letter written to the EC by the MMO. The Commissioner considers that the withheld name is personal data from which the data subject would be identifiable. He therefore went on to consider whether disclosure would breach any of the data protection principles.

Would disclosure breach one of the data protection principles?

12. The Commissioner considered whether the disclosure of the withheld information would breach the first principle of the DPA. The first data protection principle requires that any disclosure of information is fair and lawful and that at least one of the conditions in Schedule 2 is met.

13. The Commissioner initially considered whether the disclosure of the withheld information would be fair. In doing this he took into account the following factors:

- (i) the individual's reasonable expectations of what would happen to their information;
- (ii) whether disclosure would cause any unnecessary or unjustified damage or distress to the individuals concerned; and
- (iii) whether the legitimate interests of the public were sufficient to justify any negative impact to the rights and freedoms of the individuals concerned.

Reasonable expectations of the individuals concerned

14. The official whose name was withheld was the Head of a unit within the EC. The Commissioner notes that her name was available on the EC's website identifying her as the Head of the relevant unit, although the MMO has informed him that it was not aware of this at the time that it issued its response to the complainant. In these circumstances, the Commissioner does not believe that she would have a reasonable expectation that her name would have been withheld from a letter that was addressed to her in her official public capacity as the Head of an EC unit.

Consequences of disclosure

15. Given the nature of the letter that fell within the scope of the request, the Commissioner does not believe that disclosure would be likely to cause distress or damage to the official concerned if her name were to be released.

Balancing the rights and freedoms of the data subjects with legitimate interests of the public

16. The Commissioner accepts that in considering legitimate public interests that these interests can include broad general principles of transparency and accountability. In this particular case, the disclosure of the name of the EC official to whom the MMO wrote its letter, may serve the public interest in the scrutiny and accountability of the public authority. For example, the disclosure of the name may have assisted people within the fishing industry, with detailed knowledge of the issues about which the MMO had contacted the EC, to be able to identify the person within the EC to whom they should initially direct any representations they wished to make. Given the seniority of the official concerned, that her name was already in the public domain, that disclosure would be unlikely to cause her distress or damage and taking into account the

legitimate public interest in disclosure, the Commissioner has determined that it would be fair for the MMO to disclose the official's name. Having determined that this would be fair, the Commissioner went on to consider whether a condition in Schedule 2 of the DPA was met.

Is one of the conditions in Schedule 2 of the DPA met?

17. In relation to the conditions in Schedule 2 of the DPA, the Commissioner believes that the most appropriate condition in this case is the sixth condition which states that:

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms of legitimate interests of the data subject".

18. The Commissioner has identified in the section above, why he believes that the disclosure of the withheld information would serve a legitimate public interest. As a result he is satisfied that a condition in Schedule 2 is met and that regulation 13 is not applicable to the name of the EC official. The MMO should therefore have disclosed this information.

Procedural issue

19. Under regulation 5 of the EIR, a public authority must make information available within 20 working days of a request. By not disclosing the name of the EC official within this timeframe, the MMO breached regulation 5.

Other matters

20. The Commissioner would expect the MMO in future, when determining whether the disclosure of personal data, such as the name of a public official, might constitute a breach of the first data protection principle, to ensure that it has regard to the extent to which that information is already officially in the public domain.

Right of appeal

21. 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

22. 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.
23. 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

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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