

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 28 March 2018

**Public Authority:** Marine Management Organisation

**Address:** Lancaster House  
Hamshire Court  
Newcastle Upon Tyne  
NE4 7YH

#### **Decision (including any steps ordered)**

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1. The complainant has requested from the Marine Management Organisation (MMO) a full copy of an investigation report into allegations of misconduct and corruption that the complainant had made against a member of MMO staff.
2. The Commissioner's decision is that the majority of the requested information can be withheld under section 40(2) of the FOIA as it is the personal data of third persons, with the remainder being exempt from disclosure under section 40(1) as it is the complainant's own personal data.
3. The Commissioner does not require MMO to take any steps.

#### **Request and response**

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4. On 7 January 2017, and as part of wider correspondence, the complainant wrote to MMO and requested information in the following terms:

*"8. A full copy of the investigation report that apparently led to the removal of [Named Person 1], [Named Person 2], [Named Person 3] and others..."*

5. MMO responded to the request on 3 February 2017. It advised that it was withholding the requested information under section 40(2) and section 41 of the FOIA, with the balance of the public interest favouring maintaining the section 41 exemption.
6. MMO provided a review on 18 May 2017. It maintained its reliance on sections 40(2) and 41 to withhold the information contained in the investigation report.

### **Scope of the case**

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7. The complainant first contacted the Commissioner on 8 June 2017 about a separate complaint associated with MMO's handling of a subject access request (SAR) he had submitted to it under the Data Protection Act (DPA). The Commissioner accepted the current FOI complaint for investigation on 26 October 2017.
8. The Commissioner's investigation has focussed, in the first instance, on whether MMO is entitled to rely on sections 40 to withhold the requested information. If necessary she has been prepared to consider MMO's application of section 41.

### **Reasons for decision**

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#### **Section 40 – personal data**

9. MMO has confirmed that when it responded to the complainant's SAR it had released an electronic copy of the preliminary report to him. This was redacted to include only the complainant's personal data and to remove the personal data of third parties referenced within the report.
10. MMO has confirmed that it considers that the final report in its entirety is exempt from release under section 40 of the FOIA. The Commissioner agrees with MMO that it would not be possible to redact the information contained in the report in such a way as to sufficiently suppress the identity of the individuals concerned. MMO has provided a copy of the report to the Commissioner; it comprises the report (dated 6 June 2013) and a series of eight annexes which include terms of reference, copies of email correspondence, witness statements, conclusion and recommendations.

11. The Commissioner has first considered whether the information the MMO has withheld is personal data; both of the complainant himself and of third party/parties.

Section 40(1) – applicant’s own personal data

12. Section 40(1) of the FOIA says that information that is the applicant’s own personal data is exempt information.
13. Although the complainant is referenced in the report, in its correspondence with the complainant and in its submission to the Commissioner, MMO appears to have categorised the entire report as the personal data of third persons because its focus is the member of staff about whom the complainant made allegations. The Commissioner disagrees with this approach and she draws MMO’s attention to section 1(1)(e) of the DPA which defines ‘data’ as ‘...any recorded information held by a public authority [that] does not fall within any of paragraphs (a) to (d)’<sup>1</sup>.
14. That said, the Commissioner considers that the information within the report that is directly associated with the complainant is exempt from release to the wider world under the FOIA under section 40(1), as it is his own personal data. How MMO might approach this particular information under the DPA is not a matter that falls within the scope of this investigation, which concerns the FOIA only. However, the Commissioner notes that it appears the complainant has already received this particular information in the preliminary version of the report he received in response to his SAR.

Section 40(2) – third person personal data

15. Section 40(2) says that information is exempt from disclosure if it is the personal data of third persons, ie someone other than the applicant, and the conditions under either section 40(3) or 40(4) are also satisfied.

*Is the information the personal data of a third party/third parties?*

16. The DPA says that for data to constitute personal data it must relate to a living individual and that individual must be identifiable.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/1998/29/section/1>

17. The report concerns an investigation into allegations the complainant had made about a member of MMO staff. In addition to referring to the complainant, which has been considered above, the report discusses the named member of staff against whom allegations were made and other named members of MMO staff, some of whom also no longer work for MMO. In its response to the complainant MMO advised that it considered that some of the information can be categorised as sensitive personal data as it consists of information relating to the alleged committing of an offence by one of the individuals concerned.
18. The Commissioner is satisfied that this information – that is, the remainder of the report – relates to those living individuals and that they can be identified from the information. She is therefore satisfied that the remainder of the report is the personal data of third persons and agrees that some of it is sensitive personal data. Sensitive personal data needs to be treated with greater care than other personal data.
19. The Commissioner has gone on to consider whether any of the conditions under section 40(3) or 40(4) of the FOIA have been satisfied.

*Is a condition under section 40(3) or 40(4) satisfied?*

20. Under section 40(3)(a) disclosing the personal data would contravene (i) any of the data protection principles or (ii) section 10 of the DPA (right to prevent processing likely to cause damage or distress).
21. MMO's position is that disclosing the information in question would not be fair or lawful and would therefore contravene the first data protection principle.
22. In assessing fairness, the Commissioner considers whether the information relates to the public or private life of the individual; whether the individual has consented to their personal data being released, their reasonable expectations about what will happen to their personal data and the consequence of disclosure on the individual concerned.
23. The information in question relates to the public life of the individuals concerned. However, MMO says that there is no evidence that the individuals concerned in this case have previously given consent for the withheld information to be released to a wide audience under the FOIA.
24. Given the sensitivity of the report – it discusses individuals' behaviour and allegations of criminal behaviour – MMO considers that those individuals would have the reasonable expectation that their personal data would not be released into the wider world under the FOIA. MMO says that those employees would feel that a clear expectation of confidentiality would exist between themselves and the MMO, and that

associated correspondence and conversations would be treated in the strictest confidence during and after the investigation.

25. The Commissioner agrees with MMO that, given the nature of the allegations and resulting report, the individuals concerned would have the reasonable expectation that their personal data, and their sensitive personal data, would be treated confidentially and would not be released to the wider world under the FOIA. However despite this, the withheld information may still be disclosed if there is a compelling public interest in doing so that outweighs the legitimate interests of the data subjects; that is, the individuals concerned in this case.
26. As previously stated, the matter investigated through the report in question concerned allegations of misconduct and possible criminal behaviour that the complainant made about a member of MMO staff. The report was produced in 2013 and included a number of recommendations which the Commissioner assumes MMO considered and acted on as necessary. MMO has told the Commissioner that the outcome of the investigation was ultimately disclosed to the complainant.
27. The Commissioner is aware that the complainant has his own personal interest in having access to the report in its entirety. The complainant has not, however, presented the Commissioner with any wider public interest arguments that are of such significance that they outweigh the interests of the individuals concerned not to have their personal data released. Indeed, the complainant has not provided any wider public interest arguments. In the absence of any such arguments, the Commissioner's view therefore is that it would not be fair to release the withheld information under the FOIA: the individuals concerned have not consented to the release of their personal data, they would have the reasonable expectation that their personal data would not to be released and there are no strong public interest arguments for disclosure that would override those individuals' rights and freedoms. Disclosing the information would contravene the first data protection principle and therefore a condition under section 40(3) has been met.
28. The Commissioner is satisfied that MMO is correct to withhold the remainder of the disputed information under section 40(2). It is the personal data of third persons and a condition under section 40(3) is satisfied because releasing it would breach the first data protection principle. Because a condition under section 40(3) has been met, it has not been necessary to consider the condition under section 40(4). In addition, because the Commissioner has found that all the information can be withheld under section 40, it has not been necessary to consider whether some of the requested information is also exempt under section 41 of the FOIA.

## **Right of appeal**

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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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**