

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

### **Decision notice**

**Date:** 6 September 2023

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

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

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1. The complainant has requested information about the interception, by French authorities, of migrants trying to cross the English Channel illegally. The Home Office confirmed that it held some of the requested information, which it said was exempt from disclosure under sections 27(1)(a) (International relations) and 31(1)(a), (b) and (e) (Law enforcement) of FOIA. It said that it did not hold the remaining information.
2. The Commissioner's decision is that the Home Office was entitled to rely on sections 31(1)(a), (b) and (e) of FOIA to withhold the information specified in part (1) of the request. He finds that, on the balance of probabilities, it does not hold the information specified in parts (2) and (3).
3. The Commissioner does not require any steps as a result of this decision.

#### **Request and response**

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4. On 14 April 2023, the complainant wrote to the Home Office and requested information in the following terms:

**"My question, my 'Request for Information' is, in the same period, 1 - 10 April 2023:**

1. How many migrants were turned back on the beaches of northern France, on each day?
  2. How many inflatable boats were destroyed on a beach in northern France on each day?
  3. How many outboard motors were confiscated on a beach in northern France on each day?"
5. The Home Office responded on 11 May 2023. It confirmed that it held some of the information, but said that it was exempt from disclosure under sections 27(1)(a) and 31(1)(a), (b) and (e) of FOIA.
6. Following an internal review, the Home Office wrote to the complainant on 14 July 2023. It maintained that sections 27 and 31 had been correctly applied to withhold the information requested in part (1) of the request. It explained that the Home Office does not routinely collect the information requested in parts (2) and (3).

### **Scope of the case**

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7. The complainant contacted the Commissioner on 20 July 2023 to complain about the way his request for information had been handled. He disagreed with the Home Office's response to each part of the request.
8. The analysis below considers whether the Home Office was entitled to rely on any of the exemptions cited to withhold the information specified in part (1) of the request. The Commissioner will also consider whether, on the balance of probabilities, the Home Office holds the information specified in parts (2) and (3).

### **Reasons for decision**

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#### **Section 31 – Law enforcement**

9. The Home Office is relying on sections 31(1)(a), (b) and (e) of FOIA to withhold the information specified in part (1) of the request. The Commissioner has viewed the withheld information.
10. Section 31 of FOIA allows a public authority to withhold information which, if disclosed, could harm its own, or another public authority's ability to enforce the law.

11. Sections 31(1)(a), (b) and (e) of FOIA apply where disclosure would, or would be likely to, prejudice:

- (a) the prevention or detection of crime;
- (b) the apprehension or prosecution of offenders; and
- (e) the operation of the immigration controls.

12. In order for the exemption to apply, it must be the case that if the withheld information was disclosed, it would, or would be likely to, cause prejudice to the matters referred to in subsections (a), (b) and (e). Three criteria must be met:

- the actual harm which the Home Office envisages must relate to the applicable interests within the exemptions it has cited;
- there must be a causal relationship between disclosure and prejudice to those interests. This prejudice must be real, actual or of substance; and
- the Home Office must show that the level of prejudice it envisages is met – ie it must demonstrate why disclosure 'would be likely' to result in prejudice or, alternatively, why disclosure 'would' result in prejudice.

13. The Home Office told the Commissioner that organised criminal gangs are heavily involved in small boat crossings by migrants. Such crossings are therefore a law enforcement issue, as well as an immigration issue:

"Any information about measures to prevent small boat crossings, and their effectiveness, is of value to the criminal gangs which organise them. These gangs will time and plan crossings to minimise the chance of detection and interception and will use any information about counter measures to modify their tactics accordingly. In this case, the requested information is highly specific in relation to both date and location and relates to specific dates this year. Disclosure would indicate a willingness on the part of the Home Office to disclose similar information about any specified date, so that a significant body of information might be built up from which inferences about levels and patterns of law enforcement measures could be made.

Disclosure of information about interceptions at specific types of location on a daily basis would allow inferences to be drawn about sensitive operational data such as patrol patterns, relative strength of law enforcement at different types of location and hence would assist organised criminal gangs to identify of [sic] advantageous launching points and crossing methodologies to maximise the chances of successful launch.

As the original response suggested, disclosure would thus help the organised criminal gangs seeking to facilitate and profit by these dangerous small boat crossings by placing in the public domain information about the countermeasures being deployed against them, enabling them to develop countervailing activity to increase their likelihood of success, support their planning and inform new tactics and routes. The original response used the word 'could', but this was clarified in the internal review to 'would'. I confirm that the limb we rely on is 'would', as we consider that it is more likely than not that the prejudice would occur.

In terms of the FOIA exemptions, the prejudice as described above would be to the prevention or detection of crime (section 31(1)(a)) and the apprehension or prosecution of offenders (section 31(1)(b)).

Anything which assists the organised criminal gangs running small boat crossings would have a knock-on effect on the immigration controls, as would any damage to co-operation with the French authorities, because illegal entry to the UK would be made more difficult to prevent. Section 31(1)(e) is therefore also engaged."

14. The withheld information in this case is a daily break-down of the number of migrants turned back "on the beaches of northern France" between 1 – 10 April 2023. The Home Office has argued that disclosure would interfere with and undermine joint French and UK attempts to prevent illegal crossings to the UK. These are clearly matters which relate to the prevention or detection of crime, the apprehension or prosecution of offenders and the operation of the immigration controls.
15. As regards a causal relationship between disclosure and prejudice to the above matters, the Commissioner is satisfied that disclosure of this information would allow criminal gangs to build up a picture of French law enforcement practices and capabilities in a particular geographical area. They will be able to compare the numbers intercepted on particular days, against the numbers they believe to have attempted the journey on those days. He is satisfied that this is information which would assist criminal gangs to plan crossings at times, in locations and even in weather conditions, where the data suggests a greater chance of evading detection.
16. The test that the Commissioner applies when considering whether prejudice "would" occur is that there must be a more than 50% chance of the disclosure causing the prejudice, even though it is not absolutely certain that it would do so; it must be more probable than not that prejudice would occur as a result of disclosure.
17. The Commissioner has previously been presented with credible evidence that illegal migrant crossings to the UK are run by sophisticated

organised crime groups, which operate their criminal enterprises mimicking the models of legitimate business<sup>1</sup>. Much like a legitimate market appraisal, the gangs facilitating illegal crossings of the English Channel will analyse their market to maximise success which will fuel future business. As such, the withheld information would undoubtedly be of assistance, when pieced together with other information, to their planning of further, illegal crossings.

18. The Commissioner is therefore satisfied that the higher threshold of "would prejudice" is met in this case.
19. As the three criteria set out in paragraph 12 are satisfied, the Commissioner considers that sections 31(1)(a), (b) and (e) of FOIA are engaged.

### **Public interest test**

20. The exemption is subject to a public interest test. This means that the information must be disclosed if the public interest in disclosing the information is equal to, or greater than, the public interest in protecting the matters referred to in subsections (a), (b) and (e).

### **Public interest arguments in favour of disclosing the information**

21. The complainant has argued that as the UK is partly funding certain French operations to prevent illegal migrant crossings, there should be transparency about how successful those operations are. He referred the Commissioner to media reports (apparently sourced from figures supplied by French authorities)<sup>2</sup> which suggested that fewer migrants were being intercepted than in previous years:

"Every 24 hours the Home Office publishes a report with the number of migrants who have been landed in the UK, after crossing the English Channel, together with the number of boats used (www.gov.uk publications - 'Migrants detected crossing the English Channel in small boats') This report is freely available to anyone who wishes to be informed, in France as well as in the UK. Therefore, as this is now a

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<sup>1</sup> See the Maritime & Coastguard Agency's comments in <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025721/ic-230053-k1d3.pdf>

<sup>2</sup> Daily Telegraph 17 August 2023 "France stops fewer migrants despite £480m aid" <https://www.telegraph.co.uk/news/2023/08/17/france-stops-fewer-channel-migrants-480m-funding-from-uk/>

joint operation, it would seem reasonable to be also informed of the success of our French colleagues in 'stopping the boats'."

22. The Home Office acknowledged the general public interest in providing information about immigration enforcement activity and cross channel collaboration regarding small boat crossings. It also acknowledged the general public interest in transparency and accountability, and in enabling the public to understand decisions which may affect them.

### **Public interest arguments in favour of maintaining the exemption**

23. The Home Office said that the requested information was highly specific: the number of migrants who were "turned back on the beaches of northern France". It disagreed with the complainant that there was a public interest in the disclosure of such specific information, over and above the level of general public interest in disclosure of information about small boat crossings. It considered that this public interest was largely met by the Home Office's publication of the numbers of small boat crossings and migrants intercepted in the Channel. It said it understood that French authorities have published press releases about their prevention rates, focusing more on prevention in terms of proportion of boats rather than proportion of crossing attempts.
24. The Home Office concluded:

"The main consideration in favour of maintaining the exemptions is avoiding the prejudice which we consider would be caused by disclosure. It is clearly not in the public interest to disclose information which would assist criminals to evade detection and apprehension and would also increase the likelihood of irregular migrants circumventing UK immigration controls. This is a very strong factor and the public interest in disclosure would have to be very strong in order to outweigh it. We do not consider that any such overriding public interest consideration has been identified."

### **Balance of the public interest**

25. The Commissioner recognises that, for various reasons, the issue of migrant crossings is one which is in the public eye. He also acknowledges the complainant's position that there is a public interest in knowing the number of migrants prevented from crossing the Channel illegally, in view of the public money provided by the UK for this purpose.
26. However, he has had regard to the very strong public interest in ensuring that the disclosure of information does not materially impede the prevention and detection of crime, the apprehension or prosecution of offenders or the operation of the immigration controls. As set out

above, he is satisfied that disclosure in this case would inform criminal strategies to undermine the prevention of illegal crossings. This would render the security provisions put in place, and partly funded by UK money, less effective.

27. On balance, the Commissioner has decided that the disclosure of information that has the potential to aid the strategies of organised crime groups is not in the public interest. For these reasons, the Commissioner accepts that the public interest favours maintaining the exemptions. It follows that the Home Office was entitled to rely on sections 31(1)(a), (b) and (e) of FOIA to refuse part (1) of the request.
28. In view of this decision it has not been necessary to consider the Home Office's application of section 27 to the same information.

### **Section 1 - Information held**

29. The complainant was not satisfied with the Home Office's response that it did not hold the information specified in parts (2) and (3) of the request. The Home Office maintains that it does not hold this information as it does not collect or collate daily information on the number of inflatable boats destroyed, or outboard motors confiscated, on beaches in northern France.
30. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the 'balance of probabilities' whether the requested information is held. In deciding where the balance of probabilities lies, the Commissioner will consider the evidence and arguments of both parties.
31. The complainant has not offered any evidence that the Home Office does hold this information. Rather, he has referred to published statements by French authorities and expressed the view that the Home Office should also publish this type of information, to give the public a full picture of the effectiveness of joint UK-French operations.
32. The issue for the Commissioner to consider is whether or not the information **is** held by the Home Office. It is not whether, as a matter of public policy, it **should** be held (and published) by the Home Office. It is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its reasons for holding some types of information but not others. On this point, the Commissioner is mindful of the comments

made by the Information Tribunal in the case of Johnson / MoJ (EA2006/0085)<sup>3</sup>, that FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".

33. The Home Office told the Commissioner that any destruction of inflatable boats or confiscation of outboard motors conducted on French beaches would, by definition, be undertaken by French authorities. Information about this would therefore be held by French authorities and would only come into the Home Office's possession if it was provided to it, by them. As the Home Office had confirmed in its internal review response, this is not information which is routinely provided by French authorities to the Home Office and so it does not know the daily number of inflatable boats destroyed or outboard motors confiscated by French authorities.
34. Furthermore, the Home Office said that it had not conducted searches for the information because it knew that this was not information which was routinely provided to it by French authorities.
35. In setting out its position regarding part (1) of the request, the Home Office provided the Commissioner with an unredacted copy of the information it received from French authorities covering the period 1 – 10 April 2023. The Commissioner can confirm that it does not contain the information specified in parts (2) and (3) of the request.
36. The Commissioner considers the Home Office has provided a reasonable explanation as to why it is satisfied it does not hold the requested information and why it has not been necessary to conduct further searches for it. It has provided supporting evidence to the Commissioner in the form of the information it has received, which does not contain the requested information.
37. The Commissioner is therefore satisfied that, on the balance of probabilities, the Home Office does not hold the information specified in parts (2) and (3) of the request.

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<http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>



## Right of appeal

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38. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.

40. 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 .....**

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**Wilmslow**  
**Cheshire**  
**SK9 5AF**