

Dear

ATISN 18614 – Inshore Vessel Monitoring Systems

Information requested

Thank you for your request which I received on 19 June 2023. You asked for:

- Letters, emails or other correspondence between the Welsh Government and the Marine Management Organisation (MMO) regarding I-VMS between 01/11/2022 and 19/06/23.
- Internal Welsh Government emails, memo, drafts and notes relating to Maritime Systems Ltd or its I-VMS device, the MS-44, between 01/11/2022 and 19/06/23.

Our response

A copy of the information I have decided to release is enclosed. A list of the documents is provided in Annex I.

I have decided that some of the information is exempt from disclosure under sections 31(1)(a), 40(2) and 41(1) of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex II to this letter.

Next steps

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit,
Welsh Government,
Cathays Park,
Cardiff,
CF10 3NQ

or Email: Freedom.ofinformation@gov.wales

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:

Information Commissioner's Office,
Wycliffe House,
Water Lane,
Wilmslow,

Cheshire,
SK9 5AF.

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely

Annex I - Document list

1. Letters, emails or other correspondence between the Welsh Government (most likely from the Marine and Fisheries Division) and the Marine Management Organisation (MMO) regarding I-VMS between 01/11/2022 and today, 19/06/23.

- 1.1. RE: Another beacon for REDACTED...?
- 1.2. 20230518 - MMO notification of planned comms
- 1.3. Confidential: IVMS PDG Update 06/04/2023
- 1.4. iVMS Units In Operation
- 1.5. Maritime Systems - Independent Test Reports
- 1.6. Maritime Systems data transmissions
- 1.7. RE: [OFFICIAL:SENSITIVE IVMS testing results
- 1.8. Official Sensitive- I-VMS
- 1.9. RE: Comms
- 1.10. RE: I-VMS Update - WG-MMO - short term loan of iVMS devices
- 1.11. RE: ivms – Maritime
- 1.12. RE: iVMS test results
- 1.13. RE: iVMS testing report
- 1.14. Re: Maritime Systems device testing
- 1.15. RE: Official Sensitive- I-VMS
- 1.16. RE: Official Sensitive- I-VMS
- 1.17. RE: One last question...
- 1.18. Re: Protect

2. Internal Welsh Government emails, memo, drafts and notes relating to Maritime Systems Ltd or its I-VMS device, the MS-44, between 01/11/2022 and today, 19/06/23

- 2.1. RE: Maritime Systems beacon email to REDACTED 9-2-23
- 2.2. RE: Maritime Systems; IVMS Installation - REDACTED - revised installation report
- 2.3. Exempt s31(1)(a)
- 2.4. RE: Welsh vessels with Maritime Systems unit orders
- 2.5. RE: UK vessels in Welsh waters need merging
- 2.6. RE: Maritime Systems; IVMS Installation - REDACTED
- 2.7. RE: Maritime Systems; IVMS Installation - REDACTED
- 2.8. RE: Maritime Systems beacon
- 2.9. RE: iVMS unit for REDACTED
- 2.10. Maritime Systems Installation reports
- 2.11. Maritime Systems Beacon REDACTED
- 2.12. FW: Maritime Systems; IVMS Installation - REDACTED
- 2.13. FW: I-VMS on REDACTED
- 2.14. C20230110 CCP notes of meeting - Maritime market share
- 2.15. 20230202 I-VMS Wales retraction request - internal discussion
- 2.16. 20230202 I-VMS Wales retraction request - internal request to distribute to MEOs
- 2.17. 20230206 : I-VMS Wales retraction request to Maritime and internal circulation

- 2.18. 20230518 : IVMS Maritime Systems Removal from MMO approved list
- Internal note of next steps
- 2.19. 20230518 MMO IVMS device testing results - notification to AST
- 2.20. 20230518 Note to DD of short notice meeting with MMO re Maritime
and MMO news update
- 2.21. 20230519 Notification to fishers re under 12m MMO announcement -
internal note
- 2.22. 20230523 Maritime Systems device not acceptable in Wales -
notification to IVMS and REM working group
- 2.23. 20230619 IVMS under 12m results of MMO device testing - Internal
notification
- 2.24. Briefing on the use of Maritime Systems iVMS devices in Wales
- 2.25. Briefing regarding the use of Maritime Systems iVMS devices in Wales
- 2.26. call from REDACTED Maritime Systems
- 2.27. Ministerial Briefing - Maritime Systems iVMS devices
- 2.28. RE: While I'm on leave...
- 2.29. RE: COMMERCIAL IN CONFIDENCE - Draft iVMS briefing for review
- 2.30. RE: I-VMS follow up from MMO
- 2.31. RE: Maritime Systems - call from REDACTED
- 2.32. RE: MMO Independent assurance testing results - WFA
correspondence
- 2.33. RE: Urgent Internet Update Announcement for Under 12m vessel
monitoring

Annex II

Application of exemptions

The Freedom of information Act provide a right for anyone to ask a public authority to make requested information available to the wider public. As the release of requested information is to the world, not just the requester, public authorities need to consider the effects of making the information freely available to everybody. Any personal interest the requester has for accessing the information cannot override those wider considerations.

I have decided to withhold the following information:

- Information relating to the prevention of crime
- Personal information
- Independent Testing Report for the Maritime Systems MS44 device and the associated IP67 Test Report.

This information is being withheld under sections 31(1)(a), 40(2) and 41(1) of the Freedom of Information Act.

This Annex sets out the reasons for the engagement of sections 31(1)(a), 40(2) and 41(1) of the Freedom of Information Act and our subsequent consideration of the Public Interest Test for information under section 31(1)(a).

Engagement of section 31(1)(a) (Law enforcement) of the Freedom of Information Act

Information exempt as it relates to fishing activities while in the process of replacing an iVMS device.

Public Interest Test

In order to satisfy the public interest test in relation to the exemption in section 31(1)(a), it is necessary to conclude that the public interest arguments in favour of withholding the information are sufficient to *outweigh* the public interest arguments in favour of release.

Public interest arguments in favour of disclosure

Legislation makes it an offence to fish without an operating iVMS device on board but loss of days at sea could impact a fishers ability to earn a living. Fishers wanted to operate legitimately while in the process of replacing their iVMS device. There is public interest in knowing Welsh Government's consideration of this issue.

Public interest arguments in favour of withholding

A very small number of Welsh fishers were directly impacted by the issue and needed to obtain a replacement iVMS device. Welsh Government supported these fishers to source an alternative device quickly to minimise disruption. The issue is

now resolved. Disclosure would divulge Welsh Government's consideration of the situation in relation to the law enforcement duty of fisheries control and enforcement.

Balance of public interest test

There may be public interest in understanding Welsh Government's stance on enforcing the Welsh iVMS Order. However, disclosure could affect the delivery of the statutory law enforcement duty for fisheries. On balance we have concluded that the public interest in favour of withholding the information is greater and the information has not been released.

Engagement of section 40 (2) (Personal information about others) of the Freedom of Information Act

Section 40(2) together with the conditions in section 40(3)(a)(i) or 40(3)(b) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

'Personal data' is defined in sections 3(2) and (3) of the Data Protection Act 1998 ('the DPA 2018') and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, the information requested contains third party personal data.

Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

“processed lawfully, fairly and in a transparent manner in relation to the data subject”

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:-

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

1. Legitimate interests

We are not aware of any legitimate interest in accessing the personal data that was caught by the request.

2. Is disclosure necessary?

We do not believe that it is necessary to release the personal data in order to follow the discussions contained in the email chains, etc.

3. The balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

As we are unable to identify any legitimate interest in the release of the personal data and as we believe it is possible to follow the conversations and deliberations from the information we have released, we are of the view that disclosure would breach the fundamental rights of the data subjects and consequently the information is exempt from disclosure.

Engagement of section 41 (Information provided in confidence) of the Freedom of Information Act

The Welsh Government believes the Independent Testing Report for the Maritime Systems MS44 device and the associated IP67 Test Report should be exempt from disclosure. A duty of confidence was explicitly in place when the information was shared with Welsh Government. The information possesses a quality of confidence as it details assurance testing. This was used to inform a decision on whether the MS44 device met the requirements of the Welsh 2022 iVMS Order. The information is not a matter of public record and is not available by other legitimate means.

This exemption is an absolute exemption, that is it is not subject to the public interest test.