

9 August 2023

Dear ,

ATISN 18720 Welsh Fisheries GPS outages from iVMS trackers

Information requested

Thank you for your request which I received on 12 July. You asked for:

A report detailing all GPS outages reported by all vessels fishing in the Pwllheli to Cardigan Bay area (inclusive) with iVMS trackers fitted. Details to include, preferably in spreadsheet format;

1. Redacted vessel name e.g., Vessel A, Vessel B etc etc
2. Date, time and location (co-ordinates) at the start of the outage
3. Date, time and location (co-ordinates) at the end of the outage

Six separate requests were submitted for the above data, one for each year from 2018 to 2023. These have been aggregated into one request.

Our response

A copy of the information I have decided to release is enclosed. The requested information for the years 2018 to 2020 is not held on Welsh Government systems and is therefore not provided. Within the data for 2021 to 2023 I have decided that some of the information is exempt from disclosure under section 40(2) of the Freedom of Information Act and is therefore withheld. The reason for applying this exemption is set out in full at Annex 1 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.

Annex 1

Application of exemptions

The Freedom of information Act provides 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:

The location (coordinates) of GPS outages under section 40(2) (Personal information about others) of the Freedom of Information Act.

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 2018 ('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.

The Information Commissioner Office (ICO) was consulted by Welsh Government in 2019 regarding the introduction of iVMS in Wales. In response the ICO advised that VMS would process data that falls within the General Data Protection Regulations (GDPR) definition of personal data. That definition is set out in Article 4 of GDPR as follows:

“'Personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person 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 that natural person”

When the public was consulted about the proposed introduction of iVMS in Wales a key concern raised by the fishing industry was privacy and data protection, including access to and use of data. Welsh Government responded to these concerns stating that we are committed to ensuring the privacy of fishers is protected and we strictly adhere to the provisions of all relevant data protection legislation, including the GDPR, ensuring all personal data is handled in line with the principles outlined in the

Regulation. Welsh Government committed that fishers would not be able to see the location, speed or direction of another's fishing vessel.

We have concluded that the information requested is the personal data of third parties.

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

The requester has sought the information in order to understand the reliability of the IVMS trackers in the specified general area. Disclosure of the co-ordinates where outages occurred would show that the released data on outages came from the specified area.

2. Is disclosure necessary?

As the stated purpose of the request is to understand the reliability of the iVMS trackers, we believe that the release of the number and duration of any outages will allow for the reliability of the trackers to be understood. We do not believe that the provision of the actual locality of any outages would add anything to the understanding of the reliability of the equipment.

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

On balance, Welsh Government believes that personal information about others in the form of location data should be exempt from disclosure. We are of the view that disclosure of the exact location of vessels would breach the fundamental rights and freedoms of the individuals that is enshrined in the GDPRs. Whilst disclosure would confirm that outages occurred in the specified area. As the request specified the area the requester was interested in and we have released data on outages occurring in that area, we do not believe that the exact location of any such outages is required to understand the reliability of the equipment.

Consequentially, we believe that the information is exempt from disclosure under s40(2) of the FOIA.