

4 March 2021

Siobhan Jolliffe
Head of the Single Competent Authority
Home Office
2 Marsham Street
London
SW1P 4DF

Dear Siobhan

I am writing to you in relation to the identification of potential victims of modern slavery among those arriving in the UK either via small boats or clandestine entry via lorry drops. Over recent months I have had various discussions with ministers, officials, law enforcement and the wider anti-slavery sector on these issues and wish to make a formal data request to better understand the extent to which potential victims of modern slavery are among those arriving via small boats and lorries, and to seek further assurance that the identification of potential victims is taking place.

The Data Sharing Protocol¹ between the Office of the Independent Anti-Slavery Commissioner and the Home Office stipulates that in making a data request I set out the following information:

a) Why she considers that the information is necessary for the exercise of her functions as set out in the section 41(1) of the Act;

Section 41 (1) of the Modern Slavery Act 2015 requires the Independent Anti-Slavery Commissioner to encourage good practice in the identification of victims, including the provision of assistance and support to victims of slavery and human trafficking offences.

On small boats

I am aware that the number of people arriving in the UK via small boats has increased exponentially and that in the first nine months of 2020, 6901 individuals had crossed the Channel by small boats compared to 299 individuals in 2018².

Towards the end of last year, colleagues in the sector raised concerns with me regarding the extent to which potential victims of modern slavery arriving in the UK via small boats are being identified and referred into the NRM. They highlighted how the use of the abridged asylum screening process which was being used at the time, along with limited or delayed access to legal advice can result in missed opportunities to identify potential victims.

¹ Home Office and Office of the Independent Anti-Slavery Commissioner [2020] [Data Sharing Protocol between Home Office and the Independent Anti-Slavery Commissioner](#)

² House of Commons [2020] [Home Affairs Committee Oral evidence: Channel crossings, migration and asylum-seeking routes through the EU](#), HC 705

I have since visited Tug Haven at Dover and have had subsequent discussions with both the Minister for Immigration Compliance and the Courts, Chris Philp MP, and Abi Tierney, Director General of UKVI, who have assured me that there are appropriate mechanisms in place to identify potential victims. I have requested data on the referrals made into the NRM that are linked to small boats, but I understand that this information is not held in a single dataset.

I am aware that the Modern Slavery and Exploitation Helpline have recently published a report³ which provides an analysis of cases between August 2020 and January 2021 relating to individuals who had reported crossing the Channel to reach the UK using a small boat or dinghy.

On clandestine entry

The Grays tragedy in 2019 illustrated the perilous nature of the journeys vulnerable migrants make to the UK. We also know that someone beginning their journey as a smuggled migrant may become exploited at any point. Some may be trafficked or exploited during transit, whilst others may become trapped in exploitative work in the UK owing thousands of pounds for artificially inflated travel costs.

I am aware of good work being undertaken by forces, including Essex Police, to develop response plans and that the Modern Slavery and Organised Immigration Crime Unit is refreshing policing's national organised immigration crime response plan. However, I remain concerned that the approaches may vary across the country and that there is no consistent approach to identifying who could be potential victims of trafficking among those arriving by in-country clandestine arrivals.

We must be satisfied that every effort is being made to identify potential victims of trafficking among migrant groups entering the UK and that this is done at the earliest stage. I am therefore formally requesting data on these issues to ensure that I take an evidence based approach to the areas of concern, as required by the independent nature of my role. The data will allow a better understanding of the number of individuals arriving in the UK via small boats or via clandestine means in lorries who are potential victims of modern slavery, as well as providing further reassurance that the current processes for identifying potential victims are effective.

b) What information is being requested;

Between 1 January 2020 and 31 December 2021, the total number of referrals made either through the NRM or the Duty to Notify (MS1) process that are linked to i) small boats and ii) clandestine entry in lorries cases to include the following breakdowns:

- Nationality of potential victims identified;
- Age of potential victims identified – if they are an adult or a child;
- Gender of potential victims identified;
- The First Responder agency making the referral including location where possible, i.e. Kent Intake Unit, Immigration Removal Centre, police custody etc. to help understand at which stage of the process the referral was made upon the individual arriving in the UK.

³ Modern Slavery and Exploitation Helpline [2021] [Report on potential modern slavery victims reporting the use of small boats to cross the English Channel](#)

c) The purpose for which it will be used;

This data will be used to provide assurance to myself, and the wider sector, that potential victims of modern slavery who are arriving in the UK via small boats or lorries are being identified and referred into the NRM at the earliest stage.

d) Whether she intends to publish the information;

My preference would be to be able to publish this data on my website and in my Annual Report 2020-2021. If this is not possible, I would still welcome any data that is available for internal use within the IASC office.

I would also like to note the commitment within the Data Sharing Agreement that the Home Office will as far as reasonably practicable comply with requests made to it, via this process and in the spirit of Section 43 of the Act.

I look forward to receiving your response. In the interests of transparency, I request that you respond in a way that enables me to publish your letter on my website.

Yours sincerely,



Independent Anti-Slavery Commissioner



Home Office

Home Office
2 Marsham Street
London
SW1P 4DF

www.gov.uk/home-office

Dame Sara Thornton
Independent Anti-Slavery
Commissioner
5th Floor, Globe House
89 Eccleston Square
London, SW1V 1PN

24 November 2021

Dear Dame Sara,

I am writing with regard to your request for data about potential victims of modern slavery among those arriving in the UK either via small boats or clandestine entry routes. The full text of your request is copied directly below for ease of reference.

Between 1 January 2020 and 31 December 2020, the total number of referrals made either through the NRM or the Duty to Notify (MS1) process that are linked to i) small boats and ii) clandestine entry in lorries cases to include the following breakdowns:

- *Nationality of potential victims identified;*
- *Age of potential victims identified – if they are an adult or a child;*
- *Gender of potential victims identified;*
- *The First Responder agency making the referral including location where possible, i.e. Kent Intake Unit, Immigration Removal Centre, police custody etc. to help understand at which stage of the process the referral was made upon the individual arriving in the UK.*

Please accept my sincere apologies for the amount of time it has taken to respond to you formally on this request. Although we have regularly discussed this request since it was submitted, I had hoped to be able to respond to you formally and definitively much sooner.

Unfortunately, the Home Office is not able to provide you with the data requested. I note that your request for this data was with a view to gaining assurance that potential victims of modern slavery (who are arriving in the UK via small boats or lorries) are being identified and referred into the National Referral Mechanism at the earliest stage. The *Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern*

Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland clearly sets out the functions of First Responder Organisations who are authorised to make referrals into the NRM. The Government is committed to ensuring these organisations have the tools and training they need to enable them to quickly identify victims, and there are ongoing discussions about this work through the FRO Forum which I know your office are part of. Your recent correspondence with Minister Pursglove and Minister Maclean, as well as with Matthew Rycroft in the summer, has hopefully also provided you with further detail and assurance around some of your concerns in this space.

Following your recent discussions with Joanna West regarding the wider picture around modern slavery data, we look forward to discussing the topic with you in more detail in the coming weeks.

Kind regards,

Siobhan Jolliffe
Head of the Single Competent Authority

Dame Sara Thornton DBE QPM

5th Floor, Globe House
89 Eccleston Square
London, SW1V 1PN

Tel: +44 (0) 20 3513 0477

Email: shelley.perera@iasc.independent.gov.uk

14 December 2021

Freedom of Information requests
Direct communications unit
2 Marsham Street
London
SW1P 4DF
United Kingdom

To whom it might concern,

This is a request for information under the Freedom of Information Act (FOIA).

I request that you provide me with data on the total number of referrals made either through the National Referral Mechanism (NRM) or the Duty to Notify (MS1) process for those that have arrived in the UK via small boats crossings between 01 January 2021 and 10 December 2021.

The following information should also be provided for each of the referral within this category:

- Nationality of the potential victim identified;
- Whether the potential victim was an adult or a child;
- Gender of potential victims identified;
- The First Responder agency making the referral;

I look forward to reading your response.

Yours sincerely,



Dame Sara Thornton



Home Office

Public Safety Group,
2 Marsham Street
London
SW1P 4DF

Tel: 020 7035 4848
Fax: 020 7035 4745
www.homeoffice.gov.uk

Dame Sara Thornton

Sara.Thornton@iasc.independent.gov.uk

20 December 2021

Dear Dame Sara Thornton

Freedom of Information Request reference: 67495

Thank you for your e-mail of 14 December 2021. Your request has been handled as a request for information under the Freedom of Information Act 2000. Please see **Annex A** for a copy of your request in full.

I can confirm that the Home Office holds the information that you have requested. However, after careful consideration we have decided that the information is exempt from disclosure under section 31 of the FOIA. This provides that information can be withheld if its disclosure under this Act would, or would be likely to, prejudice — (a) the prevention or detection of crime, (b) the apprehension or prosecution of offenders, and the public interest falls in favour of maintaining the exemption.

Arguments for and against disclosure in terms of the public interest, with the reasons for our conclusion, are set out in the attached **Annex B**.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to foirequests@homeoffice.gov.uk, quoting reference **67495**.

If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

As part of any internal review the Department's handling of your information request would be reassessed by staff who were not involved in providing you with this response. If you were to remain dissatisfied after an internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the FOIA.

A link to the Home Office Information Rights Privacy Notice can be found in the following link. This explains how we process your personal information:

<https://www.gov.uk/government/publications/information-rights-privacy-notice>

Yours sincerely,

The Single Competent Authority



Annex A

FOI 67495

This is a request for information under the Freedom of Information Act (FOIA).

I request that you provide me with data on the total number of referrals made either through the National Referral Mechanism (NRM) or the Duty to Notify (MS1) process for those that have arrived in the UK via small boats crossings between 01 January 2021 and 10 December 2021.

The following information should also be provided for each of the referral within this category:

- Nationality of the potential victim identified;
- Whether the potential victim was an adult or a child;
- Gender of potential victims identified;
- The First Responder agency making the referral;

I look forward to reading your response.

Annex B

The information is exempt from disclosure under section 31 of the FOI Act. Section 31 provides that information can be withheld if its disclosure under this Act would, or would be likely to, prejudice —

(a) the prevention or detection of crime,

(b) the apprehension or prosecution of offenders, and the public interest falls in favour of maintaining the exemption.

Public interest test in relation to section 31

Some of the exemptions in the FOIA, referred to as ‘qualified’ exemptions, are subject to a public interest test (PIT). This test is used to balance the public interest in disclosure against the public interest in maintaining the exemption. We must carry out a PIT where we are considering using any of the qualified exemptions in response to a request for information.

The ‘public interest’ is not necessarily the same as what interests the public. In carrying out a PIT we consider the greater good or benefit to the community as a whole if the information is released or not. Transparency and the ‘right to know’ must be balanced against the need to enable effective government and to serve the best interests of the public.

The FOIA is ‘applicant blind’. This means that we cannot, and do not, ask about the motives of anyone who asks for information. In providing a response to one person, we are expressing a willingness to provide the same response to anyone, including those who might represent a threat to the UK.

Considerations in favour of disclosing the information

There is a general public interest in openness and transparency in government, which will serve to increase public trust. There is a public interest in members of the public being aware of whether we hold information relating to individuals who reached the UK by small boat and were suspected as being victims of modern slavery and referred to the National Referral Mechanism.

Considerations in favour maintaining the exemption

We have considered the public interest test for section 31 of FOIA, which provides that information may be withheld if its disclosure would or would be likely to prejudice the prevention or detection of crime.

It has been considered that releasing the information requested, when combined with other information available to the public, would be likely to prejudice the prevention and detection of crime with regard to the activities of people smugglers.

Conclusion

We conclude that the balance of the public interest lies in maintaining the exemption and withholding the information.

13 January 2022

Freedom of Information requests
Direct communications unit
2 Marsham Street
London
SW1P 4DF
United Kingdom

To Whom it May Concern,

Freedom of Information Request reference 67495

I write to request an independent internal review of the handling of my recent request for information under the Freedom of Information Act 2000. I attach a copy of my original request and would clarify that this request is for aggregate data, not per individual. I also attach a copy of the response. This confirmed that the Home Office holds the information requested, but concluded that it was exempt from disclosure under Section 31 of the FOIA. I set out below why I am dissatisfied with this.

The prejudice test

ICO Guidance¹ stipulates that 'information can only be withheld if its disclosure would, or would be likely to, prejudice one of the activities listed in subsection 31(1) or (2),' and the public interest falls in favour of maintaining the exemption. The response references Section 31(1)(a) the prevention and detection of crime and Section 31(1)(b) the apprehension or prosecution of offenders.

The consideration in favour of maintaining the exemption simply states that 'releasing the information requested, when combined with other information available to the public, would be likely to prejudice the prevention and detection of crime with regard to the activities of people smugglers.' No consideration in favour of maintaining the exemption was stated for Section 31(1)(b) the apprehension or prosecution of offenders.

The response does not articulate the potential harm that would be caused by the release of the information, nor how such harm would be caused. ICO Guidance states that the prejudice claimed must be real, actual or of substance, that the authority must be able to demonstrate a causal link between disclosure and claimed harm, and what the likelihood is of the harm actually occurring.¹ On the latter, I note the use of 'would be likely to prejudice...' Separate ICO Guidance on the prejudice test stipulates that if an authority claims that prejudice 'would be likely to occur,' as is the case here,

¹ ICO, Law Enforcement (Section 31) V1.0: [law-enforcement-foi-section-31.pdf \(ico.org.uk\)](https://ico.org.uk/for-organisations/data-protection-and-privacy/law-enforcement-foi-section-31.pdf) pp.7 – 8

they need to establish that there is a plausible causal link, that this should not be purely hypothetical, and that the opportunity for prejudice is not so limited that the chance is remote.²

Furthermore, the consideration in favour of maintaining the exemption is based on a general argument about combining the requested information with other information in the public domain. Whilst a 'mosaic argument' may be used to satisfy the conditions of prejudice, ICO Guidance is clear that 'it will be necessary to point to specific information already in the public domain, explain why it is likely that they will be combined, and explain how additional prejudice is likely to result from the combination.'³

I request that you provide information about the perceived prejudice and causal link to the release of the information in relation to both Section 31(1)(a) and Section 31(1)(b).

The public interest test

The consideration in favour of disclosing the information cites a general public interest in openness and transparency in government. I would argue two further points on this. Firstly, ICO Guidance states that, balanced against the need to protect law enforcement work, is a public interest in disclosing information which holds these bodies to account and increases transparency about how they perform their functions.⁴ Secondly, there is currently a serious public debate around the impact of provisions in the Nationality and Borders Bill on the identification of potential victims of modern slavery. I would argue that there is a substantial public interest in informing this debate.

Yours sincerely,



Independent Anti-Slavery Commissioner

² ICO, The prejudice test, Freedom of Information Act V1.1: [the_prejudice_test.pdf \(ico.org.uk\)](#) pp.9 – 10

³ ICO, Information in the public domain V1.0: [information-in-the-public-domain-foi-eir-guidance.pdf \(ico.org.uk\)](#) p.18

⁴ ICO, Law enforcement (Section 31) V1.0 [law-enforcement-foi-section-31.pdf \(ico.org.uk\)](#) p.29