

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 January 2015

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information about HMP Northumberland, including monthly data relating to violent incidents since October 2011. The Ministry of Justice (MoJ) confirmed it held the requested information. It provided some relevant information but refused to disclose the remainder citing section 22 of FOIA (information intended for future publication).
2. The Commissioner has investigated MoJ's application of section 22 to the information it withheld relating to violent incidents. His decision is that MoJ incorrectly applied section 22 to that information. The Commissioner requires the MoJ to disclose the information relating to violent incidents in 2014 withheld under section 22 of the FOIA.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 15 September 2014 the complainant made the following request for information under the FOIA:

"I would like to request figures for the number of violent incidents at HMP Northumberland for each individual month since the prison was formed from the merger of HMP Acklington and HMP Castington in October 2011, under the Freedom of Information Act 2000. I understand that although the prison is now run by a private firm, Sodexo, they report all violent incidents to the National Offender Management Service.

I would also like to request the number of inmates housed at HMP Northumberland, again for each month since its formation".

5. MoJ responded on 16 October 2014. With regard to the first part of the request, it told him that it interpreted 'violent incidents' as relating to assault incidents. MoJ provided this information for the period October 2011 to December 2013. With regard to the second part of the request (numbers of inmates), MoJ refused to provide that information on the basis that it is exempt under section 21 of FOIA (information accessible to applicant by other means). It provided a link to the published information, namely weekly and monthly population bulletins. It explained that the monthly bulletins include a breakdown by individual prison establishment, up to 26 September 2014.
6. With respect to the remaining information it held that falls within the scope of the request, namely information on assault incidents at establishment level in 2014 and information on population at establishment level for the period after 26 September 2014, MoJ refused to provide that information. It cited the section 22 exemption as its basis for doing so – information intended for future publication.
7. The complainant requested an internal review of the decision to withhold the data on violent incidents at HMP Northumberland after December 2013, on the grounds that it is intended for future publication.
8. Following an internal review MoJ wrote to the complainant on 5 November 2014. It upheld its application of section 22 in respect of information on assault incidents at establishment level in 2014 and information on population at establishment level for the period after 26 September 2014.

Scope of the case

9. The complainant contacted the Commissioner on 13 November 2014 to complain about the way the first part of his request for information had been handled. He told the Commissioner that he considered that violence at HMP Northumberland "*is already a matter of public debate and concern*", hence the release of information relating to the occurrence of violent incidents at the prison is in the public interest.
10. The Commissioner considers the scope of his investigation to be MoJ's application of section 22 to the information relating to data on violent incidents at HMP Northumberland after December 2013 withheld by virtue of that exemption.

Reasons for decision

Section 22 information intended for future publication

11. Section 22(1) of FOIA states that information is exempt if, at the time a public authority receives a request for it:
 - the public authority holds it with a view to its publication;
 - the public authority or another person intends to publish the information at some future date, whether determined or not; and
 - in all the circumstances it is reasonable to withhold the information prior to publication.
12. For the exemption to be engaged, the Commissioner therefore first needs to be satisfied that the information is held with the intention of being published, whether by the public authority or by any other person. Secondly, section 22 requires that this intention must have existed at the time of the request, and thirdly, it must be reasonable in all the circumstances that the information should be withheld from disclosure until the intended date of publication.
13. This exemption is also qualified by the public interest, meaning that the information should be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.

Information held at the time of the request

14. On 16 October 2014 MoJ told the complainant:

"I can confirm that the department holds information that you have asked for".

15. The Commissioner is therefore satisfied that the information requested was held at the time of the request.

Did MoJ intend to publish the information at some date in the future?

16. Section 22(1) applies only when the information is held with a view to publication at the time the request for it was received.

17. MoJ told the complainant:

"Information on assault incidents at establishment level in 2014 for part 1 of your request is exempt from disclosure because it is intended for future publication".

18. It explained that information on assaults at prison establishment level in 2014 is due to be published in April 2015. It also said that the release of detailed information at establishment level of assault incidents is *"part of an agreed publication schedule of National Statistics"*.

19. In order to engage section 22, a public authority must be able to show clearly which information within the scope of a request it intends to publish. During the course of his investigation, the Commissioner asked MoJ to confirm that the information due to be published is the same as that requested. In other words, that figures for each individual month, at prison establishment level will be published.

20. While MoJ confirmed that figures are due to be published at establishment level, it told the Commissioner:

"... there are no plans to publish establishment figures for each individual month; the relevant published table (3.14) will give an annual total for each establishment in line with our standard practice".

Is the exemption engaged?

21. As the MoJ has stated that it is not going to publish the specific information requested, it follows that the Commissioner does not find the exemption engaged.

22. As he has not found section 22 engaged, the Commissioner has not gone on to consider the public interest test in relation to that exemption.

Right of appeal

23. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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

Jon Manners
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