

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 May 2016

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

#### Decision (including any steps ordered)

---

1. The complainant requested information relating to prison officer dismissals, broken down by reason for dismissal, within a specified timeframe.
2. The Ministry of Justice (MoJ) provided some information but refused to provide the remainder citing sections 40(2) (personal information) and 44(1) (prohibitions on disclosure) of the FOIA.
3. The Commissioner's decision is that neither exemption is engaged in this case.
4. The Commissioner requires the MoJ to disclose the information withheld by virtue of those exemptions.
5. The MoJ 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.

#### Background

---

6. The Statistics and Registration Services Act 2007 (SRSA) (also referred to below as the SRS Act) is:

*"An Act to establish and make provision about the Statistics Board; to make provision about offices and office-holders under the Registration Service Act 1953; and for connected purposes<sup>1</sup>".*

## Request and response

---

7. On 7 September 2015 the complainant made the following request for information under the FOIA:

*"1. How many prison officers in the public sector Prison Service were dismissed in (i) 2013 and (ii) 2014? Please breakdown the type of offences for which these officers were dismissed and the number dismissed against each sub-category.*

*2. For each of the following calendar years (i) 2013 and (ii) 2014 please state how many prison staff were dismissed solely for having an inappropriate relationship with a prisoner.*

*3. Please provide me with a table showing how many of these relationships were between (i) male staff and female prisoners, (ii) female staff and male prisoners, (iii) female staff and female prisoners and (iv) male staff and male prisoners".*

8. The MoJ responded on 16 October 2015, confirming it held information within the scope of the request. The figures it provided were rounded to the nearest 10, with suppressed values of five or fewer represented in the response as '~' 'in accordance with NOMS rounding policy'.
9. The MoJ provided an internal review on 7 January 2016 in which it maintained its original position. The MoJ clarified that it considers that the rounded and suppressed data in scope of the request for information engage the exemptions under sections 40 (personal information) and 44 (prohibitions on disclosure) of the FOIA.

## Scope of the case

---

10. The complainant contacted the Commissioner on 19 January 2016 to complain about the way his request for information had been handled. He told the Commissioner:
- 

<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2007/18/contents>

*"I am surprised at their decision given their previous releases and also given that the ICO's own guidance suggests a number fewer than five rather than ten may be suppressed where appropriate".*

11. During the course of the Commissioner's investigation, MoJ advised that, on examining the raw data in more detail, it had found some errors. As a result, the MoJ provided the complainant with a revised response in relation to the number of prison staff dismissed, in a table entitled *"Revised Information on Officers Dismissed (by gender of officer) following Inappropriate Relationship with Prisoner or Ex-Prisoner 2013 and 2014"*.
12. In its submission to the Commissioner the MoJ also confirmed that it considers that sections 40(2) and 44(1)(a) apply in this case.
13. The Commissioner has considered the application of section 44(1) by the MoJ to personal information on a previous occasion<sup>2</sup>. While acknowledging the existence of other similar cases having been investigated, the Commissioner's duty is to decide, on a case-by-case basis, whether a request for information has been dealt with in accordance with the FOIA.
14. The analysis below considers MoJ's application of sections 40 and 44 of the FOIA to the withheld information. That information comprises the number of staff dismissed in public sector prisons, broken down by reason for dismissal.

## Reasons for decision

---

### Section 44 prohibitions on disclosure

15. Section 44 of the FOIA provides that:

*"(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –*

*(a) is prohibited by or under any enactment,*

*(b) is incompatible with any Community obligation, or*

---

<sup>2</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1623828/fs\\_50587771.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1623828/fs_50587771.pdf)

*(c) would constitute or be punishable as a contempt of court."*

16. In this case the MoJ told the complainant:

*"We are not obliged to provide information if there are prohibitions on disclosure. In relation to the numbers provided to you for the different prison officer dismissals rounded to the nearest 10 and the withheld 'five or fewer' data, I can confirm that this is a method of statistical disclosure control adopted by NOMS further to our obligations under the Statistics and Registration Services (SRS) Act 2007.*

*Section 39(3c) of the SRS Act focuses on the confidentiality of personal data. .... Essentially, this provision of the SRS Act maintains the confidentiality of individuals across the spectrum of all data available in the public domain which as a legislative provision engages the FOIA s.44 (1) exemption".*

17. The Commissioner asked the MoJ to explain why it considers that SRSA prohibits disclosure by MoJ in this case.
18. As noted above, the Commissioner has considered the application of section 44(1) FOIA by the MoJ to withheld information about staff numbers on a previous occasion<sup>3</sup>.
19. As he found in that case, the Commissioner is satisfied that the SRSA 2007 constitutes an enactment and that section 39 SRSA relates to the confidentiality of personal information.
20. However, having due regard to its submissions, the Commissioner considers that MoJ failed to explain why disclosure of the information at issue in this case would be prohibited by the SRSA 2007. It follows that the Commissioner has concluded that section 44 FOIA is not engaged.
21. The MoJ also cited section 40(2) in relation to the information it considered exempt by virtue of section 44. The Commissioner has next considered MoJ's application of section 40(2) to that information.

#### *Section 40 personal information*

22. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the

---

<sup>3</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1623828/fs\\_50587771.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1623828/fs_50587771.pdf)

requester and where the disclosure of that personal data would be in breach of any of the data protection principles.

*Is the requested information personal data?*

23. The first step for the Commissioner to determine is whether the requested information constitutes personal data, as defined by the Data Protection Act 1998 (DPA). If it is not personal data, then section 40 cannot apply.
24. The definition of personal data is set out in section 1 of the DPA. This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.
25. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
26. In the Commissioner's view, it is clear that the withheld information 'relates' to a living person. It is linked to those prison officers who have been dismissed.
27. The second part of the test is whether the withheld information identifies any individual.
28. With respect to the requested numeric information, the MoJ told the complainant:

*"In this instance, the data 'five or fewer' has been broken down by offence type and is the personal information of the dismissed prison officers to which it relates. This data stated in the table as '~' and in relation to the second and third parts of your request as 'five or fewer', represents very low numbers which if disclosed risk identifying the prison officers to which it relates ...".*

29. In its revised response it said:

*"Some of the items in the table are suppressed for the reason that if a request is made for information and the total figure amounts to five people or fewer, the MoJ must consider whether this could lead to the identification of individuals and whether disclosure of this information would be in breach of our statutory obligations under the Data Protection Act (DPA). We believe that the release of some of this information would risk identification of the individuals concerned, and therefore be unlawful under the DPA as it would be in breach of one or more of the Data Protection Principles. For this*

*reason, MoJ has chosen not to provide an exact figure in cases where the true number falls between one and five.....”.*

30. The Commissioner acknowledges the sensitivity of the subject matter of the requested information – prison staff dismissed, for example as a result of having an inappropriate relationship with a prisoner or ex-prisoner. He accepts that this would lead to the MoJ being cautious.

31. He also accepts, as the MoJ stated in its response to the complainant, that the number of instances within the scope of the request is low.

32. In correspondence with the complainant, the MoJ said:

*“In this case, the withheld data contains the professional attributes and information about the specific area of public service as well as the offence type which the owner/s of the withheld data have committed. As such, any disclosure of the withheld data will through a jig-saw approach and using other relevant information already in the public domain, potentially result in their identification...”.*

33. For the purposes of considering the application of section 40(2) the Commissioner must establish if the disclosure of the withheld information could reasonably lead to the identification of a person by another individual.

34. Accordingly the Commissioner invited the MoJ to explain how, given the number of individuals employed in the public sector prison service in the years specified in the request, and the turnover of prison service staff in that timeframe, disclosure of the requested information would lead to the identification of individuals.

35. The Commissioner considers that the MoJ, in its submission, failed to address how, in the context of the request, the withheld numbers could be used to identify individuals.

36. The Commissioner acknowledges that, by its very nature, the requested information involves individual circumstances and outcomes. He also recognises that at the heart of each case is an individual.

37. Having considered the withheld information and the MoJ's arguments, the Commissioner is not satisfied that the MoJ has demonstrated how disclosure of the requested information makes it likely that the individual prison officer or officers could be identified from that information together with other information that is already in the public domain.

38. He therefore considers that, in the circumstances of this case, the information at issue is not personal data and thus can be disclosed without reference to the DPA.

## Right of appeal

---

39. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

40. 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.
41. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**