



Ministry of Justice

P. Winter

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Our Reference: **FOI 107353**

26 September 2016

Freedom of Information Request

Dear Mr Winter,

Thank you for your email of 1 September in which you asked for the following information from the Ministry of Justice (MoJ):

'I am formally requesting information relating to the number of incidents of disorder at HMP Humber in the last 12 months (beginning September 1 2015)

I am interested specifically in the number of incidents of violence at the prison, and a full breakdown of prisoner age, nationality, ethnicity, and whether the violence was against prison staff or fellow inmates.

I am also interested in the number of incidents of disorder which may not have been violent, but if not available, violent incidents will be sufficient'.

Your request has been handled under the Freedom of Information Act 2000 (FOIA).

I have assessed your request for information, and unfortunately I will not be able to answer it without further clarification. Section 1(3) of the FOIA does not oblige us to answer requests where we require further clarification to identify and locate the information requested. We are unable to answer your request unless you provide us with further information.

Unfortunately, I am currently unclear as to the exact scope of the information in which you are interested. In order to help ensure that I provide you with the right information, I would be grateful if you could clarify exactly what you mean by incidents of violence, are these assault incidents only?

When you refer to 'incidents of disorder', can you clarify what you mean by disorder? National Offender Management Service (NOMS) classifies disorder as: incidents at heights, concerted indiscipline, hostage, barricades.

It may be helpful if I explain that information on assaults is published annually by establishment as National Statistics. In this case, figures from 1 January 2016 onwards are exempt under section 44(1) (a) & section 22 as these are subsets of statistics in their final form due for future publication at the end of April 2017 in the Safety in Custody Statistics bulletin. As such, we may only be able to provide assault figures for the four months from September 2015 to December 2015. The number of

incidents of disorder for the whole time period is exempt as above as this data is intended for future publication as Official Statistics.

Are you asking for a full breakdown of prisoner age, nationality, ethnicity and whether the violence was against prison staff or fellow inmates per assault incident, or do you require each breakdown in aggregated format separately? If you do want all the breakdowns at once, it is important that I explain that this information would be exempt under section 40 in relation to the Data Protection Act 1998, because this could lead to the identification of individual prisoners.

If you prefer to receive the most recently available data for HMP Humber for a full 12 month period, you might want to ask for aggregated breakdowns by age bands, by race (2011 census 5+1 definitions), by nationality group (UK, EEA Foreign National, non-EEA Foreign National) separately only, for individuals involved in prisoner on prisoner assaults and assaults on staff separately during the calendar year 2015 instead. We cannot guarantee all of this information could be provided, as it is likely low numbers would be involved, which may require suppression in accordance with data protection laws.

Information and annual statistics on Safety in Custody can be found on the MoJ website at the following link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/541094/safety-in-custody-assaults-dec-15-final.xls

Table 3.3 gives assaults by age, at national level
Table 3.6 gives assaults by race, at national level
Table 3.7 gives assaults by nationality
Table 3.8 gives assaults by type
Table 3.11 gives assaults on staff by age, at national level
Table 3.14 gives assaults per prison,
Table 3.15 gives assaults on staff by prison and
Table 3.16 gives prisoner on prisoner assaults by prison.

You can find out more about section 1(3) by reading the extract from the FOIA and some guidance points we consider when applying this exemption, attached at the end of this letter.

You can also find more information by reading the full text of the FOIA, available at <http://www.legislation.gov.uk/ukpga/2000/36/section/1>.

I am currently unclear as to the exact scope of the information in which you are interested. In order to help ensure that I provide you with the right information, I would be grateful if you could clarify your request.

I am sorry I am unable to assist you further at this stage.

The link attached provides information about the agencies and organisations of the Ministry of Justice: <http://www.justice.gov.uk/information-access-rights/foi-requests>

Upon receipt of this information I will be in a position to continue with the processing of your request.

Disclosure Log

You can also view information that the MoJ has disclosed in response to previous FOI requests. Responses are anonymised and published on our on-line disclosure log which can be found on the MoJ website:

<https://www.gov.uk/government/organisations/ministry-of-justice/series/freedom-of-information-disclosure-log>

Yours sincerely

Policy and Regulation Team
Equality, Rights and Decency Group

EXPLANATION OF FOIA – SECTION 1(3) - FURTHER INFORMATION REQUIRED IN ORDER TO IDENTIFY AND LOCATE THE INFORMATION REQUESTED.

We have provided below additional information about Section 1(3) of the Freedom of Information Act. We have included some extracts from the legislation, as well as some of the guidance we use when applying it. We hope you find this information useful.

The legislation

Section 1: General right of access to information held by public authorities.

- (1) Any person making a request for information to a public authority is entitled—
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.
- (2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.
- (3) Where a public authority—
- (a) reasonably requires further information in order to identify and locate the information requested, and
 - (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

Guidance

Is the request clear and specific?

If the request is unclear or vague, the public authority is obliged to provide reasonable assistance to the person who made the request.

This means more than simply telling them that their request is not specific enough, the public authority should take reasonable steps to provide assistance to the requester. The aim should be to assist the requester to refine their request so that it becomes specific enough for the public authority to identify the information they want. Once the original request has been clarified, the public authority can continue to process the request in line with the Freedom of Information Act.

Section 44: Prohibitions on disclosure.

- (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
 - (c) would constitute or be punishable as a contempt of court.
- (2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1) (a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).

Guidance

Section 44 applies:

- where there is an existing statutory bar to disclosure
- where disclosure would be incompatible with a European Community obligation
- where disclosure would constitute contempt of court at common law

The Human Rights Act 1998 can be a statutory bar to the disclosure of information.

This exemption overrides the normal right of access to information under the Freedom of Information Act where another enactment otherwise prohibits it. In these cases, not only will the information be exempt, but the public authority will have no discretion to release voluntarily either. If the disclosure would be unlawful (regardless of whether any penalty might result) then the prohibition must be observed. This applies whether disclosure would be a criminal offence, subject to regulatory or civil law enforcement, including public law challenge.

This exemption will include prohibitions both:

- In primary legislation (i.e. Acts of Parliament). For example section 21 of the Local Government Finance Act 1992. The section makes it an offence to disclose or use certain information gathered by HM Revenues and Customs other than for the purpose of valuing property.
- In any sort of secondary legislation made on a statutory basis (e.g. orders, rules, regulations or codes) – for example, part 31.22 of the Civil Procedure Rules, which covers the use of documents disclosed in civil proceedings.

Section 22: Information intended for future publication

(1) Information is exempt information if—

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1) (a) would involve the disclosure of any information (whether or not already recorded) which falls within subsection (1).

Guidance

Section 22 exempts information requested by an applicant if it is intended for future publication. It encourages public authorities to place information in the public domain proactively.

The Freedom of Information Act recognises the desirability of information being freely available in its own right, but section 22 also acknowledges that public authorities must have freedom to be able to determine their own publication timetables. This allows them to deal with the necessary preparation, administration and context of publication. Where information is intended to be made available, individual requests for information should not determine the publication timetables of public authorities. This protection is afforded whether it is the public authority itself or another person which intends to publish – whether an individual, a company or another public authority.

The starting point for section 22 is that it exempts information which is held by a public authority with a view to its publication, by the authority or any other person, at some future date. The exact date, however, does not necessarily have to be decided already. When using the section 22 exemption, you should consider whether it is possible and appropriate to disclose the expected publication date.

Section 22 is subject to two important qualifications:

- it must be reasonable in all the circumstances to withhold the information until the date of publication
- the public interest test must be satisfied

These qualifications recognise that sometimes there will be an overriding public interest in the information being released prior to the intended publication date. Public authorities should not be able to avoid putting information in the public domain by adopting unreasonable publication timetables or an 'intention' to publish where there is little prospect of that happening within a reasonable timescale.

Section 40: Personal Information.

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is—

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

Guidance

Section 40 of the Freedom of Information Act applies to:

- requests for the personal data of the applicant him or herself
- requests for the personal data of someone else (a third party)

Personal data of a third party: Personal data of a third party is exempt under section 40(2) if its disclosure to a member of the public would contravene one or more of the data protection principles and a request must be refused.

The Data Protection Principles:

The data protection principles are a statutory code for the processing of personal data. They are set out in Part I of Schedule 1 to the Data Protection Act.

Three data protection principles require personal data to be:

- fairly and lawfully processed
- processed for specified and lawful purposes
- adequate, relevant and not excessive
- accurate, and kept up to date
- not kept longer than necessary
- processed in accordance with individuals' rights under the Data Protection Act
- kept secure
- not transferred to non-EEA (European Economic Area) countries without adequate protection

The principle most likely to be relevant to the disclosure of information under the Freedom of Information Act is the first principle. This requires personal information to be:

- processed 'fairly'
- processed 'lawfully'
- not processed at all unless one of the 'conditions' for fair processing is met

Processing in this context includes disclosure.

In most cases, personal data will be exempt if disclosure would be 'unfair'. Disclosure of personal data relating to a third party will often breach the fair processing principle if there was a legitimate expectation by a third party that this information would remain confidential.