



Ministry of Justice

Mr David Mery
By email to : request-280699-
c3f7e1e0@whatdotheyknow.com

Data Access & Compliance Unit
Information Directorate
Ministry of Justice
10th floor, Postal Point 10.34
Zone B
London SW1H 9AJ

E: data.access@justice.gsi.gov.uk

www.gov.uk

Our Ref: 99649

Date: 14 September 2015

Dear Mr Mery,

Freedom of Information Act 2000 (FOIA) – Outcome of Internal Review

Thank you for your Internal Review request dated 14 Aug 2015 regarding a Freedom of Information request in which you asked for a range of information regarding the CJS Autism Group.

The purpose of an Internal Review is to assess how your Freedom of Information request was handled in the first instance and to determine whether the original decision given to you was correct. This is an independent review: I was not involved in the original decision.

I have reassessed your case and after careful consideration I have concluded that the initial response that was sent to you was **compliant** with the requirements of the FOIA. An explanation of my decision follows. This is an independent review: I was not involved in the original decision.

I have copied below your original request.

The Ministry of Justice leads a cross Criminal Justice System group focusing on Autism ('CJS Autism Group') that was set up following publication of the 2014 revised Strategy 'Think Autism - Fulfilling and Rewarding Lives, the strategy for adults with autism in England'.

Please provide:

- 1) the date the CJS Autism Group came into existence,
- 2) the CJS Autism Group's primary goals and role,
- 3) the composition of the CJS Autism Group, indicating any member that identifies himself or herself as autistic,
- 4) the annual funding the CJS Autism Group receives and where does this funding come from,

5) the minutes of the last three meetings and the agenda for the next meeting of the CJS Autism Group,

6) any other information you hold about the proposed autism marker on the Police National Computer (PNC), and

7) a list of FoIA requests made related to this group.

The MoJ's original response:

In a letter dated 13 August Sarah Smith responded to your request.

The response from Ms. Smith confirmed to you that the Ministry of Justice (MoJ), held the information you had requested in parts 1-4 of your request above, and provided this information to you. With regards to part 5 of your request, Ms. Smith confirmed that the department held information which fell within the scope of your request, but that the exemption at s. 35 (1) (a) (information regarding the formulation of government policy) was engaged, and therefore the information was exempt from disclosure. Ms. Smith went on to explain that this exemption was subject to the public interest test, and set out the factors she had taken into consideration in favour of both disclosing and withholding the information, before explaining that her conclusion was that the public interest favoured withholding the information. Ms Smith went on to confirm that this department does not hold the information you requested at points 6-7.

You then submitted your internal review request by an email dated 14 August.

Compliance with section 10 (1) of the Act:

Ms Smith's letter to you was dated 13 August. The statutory 20 day deadline for issuing a response expired on 17 August, and therefore I am satisfied that the response complied with the statutory deadline as set out in the Act.

Information disclosed:

I can confirm that a thorough search of our electronic records database was carried out to locate any information which fell within the scope of your request.

As part of your review you have queried the response that you were provided to part 3 of your request

'the composition of the CJS Autism Group, indicating any member that identifies himself or herself as autistic'

Ms Smith's response to you detailed the organisations which were represented at the meetings, and included reference to the fact that the group contained a number of individuals who described themselves as self-advocate carers.

The number of delegates attending these meetings fluctuates, but the minimum number attending is 12. You have asked for us to provide a greater breakdown as to how this is constituted.

While your original request asked for the composition, the Department's interpretation of your question in the original response did not break this down further, but to address your question for a more specific breakdown I am afraid that I am unable to provide you with some of this information. This is because this

information, if released, could lead to identification of the individuals concerned. This would be unlawful under the Data Protection Act 1998 (DPA) as it would be in breach of one or more of the Data Protection Principles. We are not obliged, under section 40(2) of the Act, to provide information that is the personal information of another person if releasing would contravene any of the provisions in the Data Protection Act 1998 (DPA)

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. However, it should not be assumed that the actual figure represented falls at any particular point within this scale; 'five or fewer' is used as a replacement value from which it would be difficult to isolate or extract any individual data.

The application of s. 35 (1) (a) – the formulation of government policy

Although you have not explicitly challenged the decision to withhold information the department holds, as part of my review, and in the interests of fairness, I have re-examined the exemptions and the related public interest arguments. I have reached the conclusion that the material that this department holds does fall within the scope of this exemption, and therefore that it has been correctly applied.

In her letter of 13 August Ms. Smith explained that she had considered the following arguments in favour of disclosing and those in favour of withholding the material.

Public interest considerations favouring disclosure of the information

- Greater accountability makes government more accountable to the electorate and increases trust.
- As knowledge of the way government works increases, the public contribution to the policy making process could become more effective and broadly based.
- The public interest in being able to assess the quality of advice being given to ministers and subsequent decision making.

Public interest considerations favouring withholding the information

- These meetings are held across a number of departments and agencies as well as private individuals where, in order to understand problems and develop solutions, there needs to be a free space for discussion without fear that policy proposals will be disclosed and held up to ridicule.
- Publication may have a deterrent on members of the group who might be reluctant to provide advice because it might be disclosed.
- Good government depends on good decision-making and this needs to be based on the best advice available and a full consideration of all the options without fear of premature disclosure.

- Ministers and officials also need to be able to conduct rigorous and candid risk assessments of their policies and programmes including consideration of the pros and cons without their being premature disclosure which might close off better options.

I have re-considered the arguments cited, and have reached the conclusion that Ms. Smith's original response correctly identified the various competing public interest considerations, and agree with her conclusion overall that when weighing these the public interest favours withholding the material over its disclosure.

As part of your request for a review, you specifically query our response to part 6 of your original request

'any other information you hold about the proposed autism marker on the Police National Computer (PNC)'

Ms. Smith's original response to you informed you that this department does not hold this information, and under s.16 of the Act (duty to provide advice and assistance), suggested that you contact the Home Office and Association of Chief Police Officers to see if they held this information, and provided the relevant contact details for doing so. I can confirm that a thorough search of our electronics records database using relevant search terms was carried out for this information, and it was determined that no information fell within the scope of your request. I can confirm that a discussion took place at a CJS cross autism group as to whether group members would find the development of such a marker desirable, if it were possible. However, this department does not hold any information on work to develop such a marker, as the MoJ is not responsible for the operation of the Police National Computer, or for policing policy which is a matter for the Home Office.

In conclusion, in carrying out this review I have found the response you received from Ms Smith dated 13th August to be fully compliant with the terms of the Act.

You have the right to appeal our decision if you think it is incorrect. Details can be found in the 'How to Appeal' section attached at the end of this letter.

Disclosure Log

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

<http://www.justice.gov.uk/information-access-rights/latest-disclosure-log>

The published information is categorised by subject area and in alphabetical order.

Yours sincerely

Guy Flitton

How to Appeal

Information Commissioner's Office

If you remain dissatisfied after an internal review decision, you have the right to apply to the Information Commissioner's Office. The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if he considers that we have handled it incorrectly.

You can contact the Information Commissioner's Office at the following address:

Information Commissioner's Office,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire
SK9 5AF

Internet address: https://www.ico.org.uk/Global/contact_us