

I Hudson
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29 August 2018

Dear Sir or Madam

Freedom of Information Act (FOIA) Outcome of Internal Review – 180731007

Thank you for your Internal Review request dated 31 July 2018 regarding FOI request 180606004 in which you asked for the following information from the Ministry of Justice (MoJ):

For 2016 and 2017 can I have totals for:

- 1) Any incidents of contraband smuggling that were not done with a drone, i.e. were smuggling by staff, visitors or any other means that was not a drone.**
- 2) The totals for contraband smuggling done by a drone.**

The purpose of an Internal Review is to assess how your FOI 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.

The answer to your original request indicated that all of the information you requested is held by the MoJ but it was exempt from disclosure.

In respect of your first request, it was explained that we are not obliged to provide information if there are prohibitions on disclosure 'by or under any enactment' (Section 44(1)(a) of the Freedom of Information Act). The response indicated that the information you requested is a subset of the incidents data held in its final form which we routinely publish. This was intended for publication in Her Majesty's prison and Probation Service (HMPPS) Digest publication, to be published on 26 July 2018. As such, it was decided to consider your request in a manner compliant with the Pre-release Access to Official Statistics Order 2008 further to Sections 11 and 13 of the Statistics and Registration Service (SRS) Act 2007.

In respect of your second request, the information was exempted from disclosure under section 31(1) (a), (b), (c) and (f) of the Freedom of Information Act. The response explained that these exemptions were considered relevant and appropriate in respect of the information requested in this instance as; section 31 (1) (a) of the FOIA provides that information is exempt if its disclosure would, or would be likely to, prejudice the prevention and detection of crime; section 31(1) (b) of the FOIA provides that information is exempt if releasing the information would, or would be likely to, prejudice the apprehension or prosecution of offenders; section 31 (1) (c) of the FOIA provides that information is exempt if its disclosure would, or would be likely to, prejudice the administration of justice and; section 31 (1) (f) of the FOIA, provides that information is exempt if its disclosure would, or would be likely to prejudice the maintenance of security and good order in prisons.

After careful consideration I have concluded that this response was partially compliant with the requirements of the FOIA.

Statutory deadline

The statutory deadline for your request was 4 July 2018 and the response was provided on 2 July 2018. The response was therefore compliant with the requirements of the FOIA.

Outcome

1) In respect of your first request, the HMPPS Digest 2017-18 was subsequently published on 26 July 2018, in line with the information provided in our initial response. As indicated, this publically available report does include a subset of data relating to finds of contraband within prisons. However, I accept that the response did not make it explicit that only overall finds data is provided, and not data broken-down into the categories outlined in your request. I apologise that the original response was not clear.

However, some data is held centrally which we are now able to provide you with. Please note that we do not hold any central data on items “smuggled” into prisons by staff. It is evident that it may be misleading in some cases to report incidents in which contraband was found in the possession of staff as acts of smuggling, given that there may be legitimate reasons for staff to possess such items. However, data is held in respect of items found in the possession of visitors and items found in the mail room/within mail. I can confirm that:

- There were 508 and 612 incidents where contraband⁽¹⁾ was found in possession of visitors in prisons in England and Wales in 2016 and 2017, respectively.
- There were 501 and 941 incidents where contraband⁽¹⁾ was found in the mail room in prisons in England and Wales in 2016 and 2017, respectively.

(1) Contraband includes drugs, drug equipment, mobile phones, SIM cards, Memory cards, tobacco, alcohol, distilling equipment, weapons or other reportable items. If more than one of these items were found in a single incident the incident will be counted for all categories of item found. Tobacco has been formally recorded since September 2016.

Please note that these figures have been drawn from the HMPPS Incident Reporting System. Care is taken when processing and analysing the returns but the detail collected is subject to the inaccuracies inherent in any large scale recording system. Although the figures are shown to the last case the figures may not be accurate to that level.

2) In respect of your second request, I am satisfied that the response you received on 2 July 2018 was correct and that the relevant exemptions were applied, please see the reasons set out below

Section 31 is a qualified exemption which means that the decision to disclose the requested material is subject to the public interest test. When assessing whether or not it was in the public interest to disclose the information to you, we took into account the following factors:

Public interest considerations favouring disclosure

- We recognise that disclosure in full would provide greater transparency and enable the public to be made aware of any drone activity. This could increase the public's operational understanding of how establishments maintain good order and security in prisons.
- It is important that the public have confidence in the operation of the prison system and there is a public interest in ensuring that drone incidents are being actioned in an efficient and in an effective manner in compliance with formal operational standards and procedures.
- The public interest in maintaining public confidence in the high standards of security and good order of prisons is a key concern and one that is recognised by the MoJ. It is acknowledged that this might be enhanced by the release of the requested information insofar as this would broadly further interests of transparency and accountability.

Public interest considerations favouring withholding the information

- It is considered that on balance, the likely threat to the good order and security of prisons and the implications of this for prisoners and staff, favours non-disclosure of prison drone incidents.
- The data requested would be likely to be used to subvert the effectiveness of our current counter measures. The information is also likely to prove invaluable to those engaged in criminality within prisons.
- If detail on drone incidents detected by prison staff is released, including the actions taken during a drone incident, criminals may alter their criminal behaviour to avoid detection with the result that investigations would be likely to be frustrated and our ability to counter criminality in prisons reduced.
- Disclosure of this information could also prejudice any ongoing investigation of a drone incident and risk alerting possible suspects as well as weaken the possibilities of future arrests.

These statistics show that we are successfully stopping contraband from entering the prison estate. Better intelligence and improved security measures are allowing us to catch more illicit items than ever before.

We are taking decisive action to bolster security, including training 300 prison dogs in drugs detection, investing £7m in new measures such as airport-security style scanners, digital categorisation tool and phone-blocking technology.

We have also legislated to stop phones from being used in prisons, and invested £7m on in-cell telephones and digital kiosks to reduce demand for illicit mobile phones.

The measures are part of a much wider strategy to tackle the most pressing threats to security in prisons and backed by a strengthening of the frontline with an additional 3,111 prison officers in place by the end of the summer.

Appeal Rights

If you are not satisfied with this response you have the right to apply to the Information Commissioner's Office (ICO). The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if she considers that we have handled it incorrectly.

You can contact the ICO at the following address:

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

<https://ico.org.uk/Global/contact-us>

Yours faithfully

Operational Security Group
HM Prison and Probation Service