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19 November 2020

Dear Mr Kennacott

Freedom of Information Act (FOIA) Outcome of Internal Review – 201023026

Thank you for your Internal Review request dated 23 October regarding FOI request 200928016 in which you asked for the following information from the Ministry of Justice (MoJ):

Please provide:

- a. The ethnic split of the HM Prison & Probation Executive Management Committee.**
- b. The ethnic split of the HM Prison & Probation Executive Management Committee in May 2018.**

And a second request sent from a different What Do They Know address received on the same day:

Please provide:

- a. The ethnic and gender split of the Management Board of the Youth Custody Service.**
- b. The ethnic split of the Management Board of the Youth Custody Service in May 2018.**

In your request for an Internal Review you stated:

I am writing to request an internal review of Ministry of Justice's handling of my FOI request 'Statistical Data'. I have asked for straightforward information which is specific. Aggregating my request with those of others no get out of providing straightforward information undermines the purpose of Fols. Please provide the information I has sought.

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.

Statutory deadline

The statutory deadline for your request was 26 October 2020 and the response was provided on 14 October 2020. The response was therefore compliant with the timeliness requirements of the FOIA.

Outcome

During my review I have considered whether section 12(4) of the FOIA was applied correctly in this case.

As was explained to you in our original response, section 12(4)(b) of FOIA and s5(2)(b) of the Fees Regulations allow us to aggregate requests from different people, that ask for the same or similar information, (received within sixty working days), who appear to us to be acting in concert or in pursuance of a campaign.

Decision to aggregate requests

In our response to you we stated that we believed your request, together with those of Harry Shaw and Henry Smith met these criteria. The requests from Mr Smith and Mr Shaw were as follows:

Mr Smith – FOI 200917017; received in the Ministry of Justice on 17 September 2020

Please provide the ethnic composition of Board/Committee responsible for each of the four Youth Offender Institutes run by the Ministry of Justice:

a) At present; and

b) Please provide the ethnic composition of Board/Committee responsible for each of the four Youth Offender Institutes run by the Ministry of Justice at May 2018

and a second request sent from a different What Do They Know address on the same day:

Please provide the ethnic and gender composition of Board/Committee responsible for Medway Secure Training Centre run by the Ministry of Justice:

a) At present; and

Please provide the ethnic and gender composition of Board/Committee responsible for Medway Secure Training Centre run by the Ministry of Justice at May 2018

Mr Shaw – FOI 200916010, received in the Ministry of Justice on 16 September

Please provide the ethnic and gender composition of Youth Custody Service England and Wales Board/Committee:

a) At present; and

b) Please provide the ethnic and gender composition of Youth Custody Service England and Wales Board/Committee in May 2018

and a second request sent from a different What Do They Know address:

Please provide the ethnic composition of the Boards/Committee which are responsible for the 8 Secure Children's Homes which are commissioned by the Ministry of Justice:

a) At present; and

b) Please provide the ethnic composition of the Boards/Committee which are responsible for the 8 Secure Children's Homes which are commissioned by the Ministry of Justice in May 2018

In order to determine whether or not we applied section 12(4) correctly, during my review, I referred to the guidance provided by the Information Commissioner for *"Requests where the cost of compliance exceeds the appropriate limit"*, which is available using the following link:

https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

In particular, paragraph 39 on page 12 of the guidance says the following in relation to "aggregation of requests", which is the relevant section in this case.

"When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied. Those conditions require the requests to be:

- made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;*
- made for the same or similar information; and*
- received by the public authority within any period of 60 consecutive working days".*

It goes on to say that *"44. Regulation 5(2) of the Fees Regulations requires that the requests which are to be aggregated relate "to any extent" to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement. 45. A public authority needs to consider each case on its own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested"*.

I am satisfied that the six requests for information have a common thread in that they are seeking information on protected characteristics as defined by the Equality Act 2010. I am also satisfied that the manner in which each request was asked: through "What Do They Know" and by asking one question and then another through a different "What Do They Know" address on the same day, provides evidence of what the Information Commissioner describes as requests made *".....by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign"*. Therefore, I am satisfied that the decision to aggregate the six requests was correct.

Application of section 12(2) of the FOIA

We confirmed that we were unable to confirm if the MoJ holds the information you have requested within the cost limit. Section 12(2) of the FOIA means public authorities are not obliged to comply with an aggregated request for information if it estimates the cost of complying would exceed the appropriate limit. The appropriate limit for central government it is set at £600. This represents the estimated cost of one person spending 3.5 working days determining whether the department holds the information.

We further explained that to determine if all of the information requested was held we would be required to obtain the membership lists of the management committees and boards included in the request and then attempt to locate the staff records on our HR system to identify gender and ethnicity. This process may take longer if we did not have all staff identifiers available and if there were staff with similar names on the HR system.

We explained that, although we could not answer the requests at the moment, we may be able to answer a refined request within the cost limit saying *“You may wish to consider, for example, reducing the scope to a much smaller number of HMPPS groups of staff. Please note that individual young offender institutions and secure training centres do not have executive ‘Boards’ or ‘Committees’; they are run by Governors or Managers. Please also be aware that we cannot guarantee at this stage that a refined request will fall within the FOIA cost limit, or that other exemptions will not apply. Please note that any refined enquiry may still engage s40(2) of the Act, which relates to the personal data of individuals”.*

Duty to provide advice and assistance

Under the FOIA, public authorities have a duty to provide requesters with advice and assistance under section 16(1), ‘in so far as it would be reasonable to expect the public authority to do so’. Having reviewed the response, I am satisfied that we have provided advice and guidance on how future requests could be made so that they fall within the cost threshold and therefore have complied with section 16(1) of the FOIA.

For the reasons set out above, I find that the original response received on 2020 was compliant with the FOIA in that section 12(4) of the FOIA was correctly applied.

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

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

Yours sincerely

Rob Mitchell

HM Prison and Probation Service Briefing and Correspondence Team