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12 September 2019

Dear Mr Elahi

**Freedom of Information Act (FOIA) Outcome of Internal Review – 190820006 (Internal review of 190701002)**

Thank you for your Internal Review request dated 20 August 2019 regarding FOI request 190701002 in which you asked for the following information from the Ministry of Justice (MoJ):

- (i) Can you please provide me with the yearly statistics on the number of convicted criminals who have been sentenced 12 months or more since 2007?**
- (ii) Can you please provide me with the yearly statistics on the number of convicted foreign national criminals who have challenged the deportation decision by the way of an appeal since 2013/14?**
- (iii) Can you please provide me with the yearly statistics on the number of convicted foreign national criminals whose appeal against the deportation decisions were successful following an appeal since 2013/14?**

This was a refinement of your previous request, dealt with as FOI 190606001, in which you asked:

- (i) Can you please provide me with the yearly statistics on the number of convicted foreign national criminals who have been sentenced 12 months or more since 2007?**
- (ii) Can you please provide me with the yearly statistics on the number of convicted foreign national criminals who have challenged the deportation decision by the way of an appeal since 2007?**
- (iii) Can you please provide me with the yearly statistics on the number of convicted foreign national criminals whose appeal against the deportation decisions were successful following an appeal since 2007?**
- (iv) Can you please provide me with the yearly statistics on the number of convicted foreign national criminals whose appeal against the deportation decisions were**

## **purely successful under the human rights ground/under the provision of the Human Rights Act 1998/ECHR?**

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 response to your original request confirmed the information requested is held, but that to provide it as the request current stands would exceed the cost limit set out in the FOIA. 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 29 July 2019 and the response was provided on 23 July 2019. The response was therefore compliant with the requirements of the FOIA.

### **Outcome**

The response sent to you explained that Section 12(1) of the FOIA means public authorities are not obliged to comply with a request for information if it estimates the cost of complying would exceed the appropriate limit. The appropriate limit for central government is set at £600. This represents the estimated cost of one person spending 3.5 working days determining whether the department holds the information, and locating, retrieving and extracting the information.

The response stated that the requested information on the outcome of deportation appeals is not centrally collated and that to obtain this information would require the manual examination of case files at the tribunals in order to identify an outcome. It was estimated that to carry out this work would exceed the appropriate limit.

I have reviewed this advice and concluded that it was incorrect. The information on the outcome of deportation appeals is available on central systems. However, there is no existing report with which to extract the requested information and to write and run such a report would take one person in excess of 3.5 days of work. I therefore agree with the conclusion that to provide you with a response to your request would exceed the cost limit of the FOIA.

However, I note that the inclusion of this question in your request was as a result of a previous request (FOI 190606001) in which you were advised to submit a revised request asking for this information from 2013/14 onwards, rather than from 2007 as requested in FOI 190606001. Given the information above, I view that the response you received to FOI 190606001 did not comply with the requirements under Section 16 of the FOIA to provide appropriate advice and assistance to help you refine your request. This is because you were advised to ask for information which it is not possible to provide within the cost limit of the FOIA. While the response to FOI 190606001 included the caveat that "we cannot guarantee at this stage that a refined request will fall within the FOIA cost limit", I believe that the specificity of the refinement advice gave the impression that this information would be available to you within the cost limit and was therefore misleading.

Notwithstanding the non-compliance with Section 16 of the FOIA, it remains the case that Section 12 was correctly applied to both FOI 190606001 and FOI 190701002 and that to provide the information requested in either case would exceed the cost limit under the FOIA. In view of the non-compliance with Section 16 of the FOIA, I have reviewed the latest advice given to you and can confirm that it was correct. Namely, that to refine the request to attempt to bring it within the cost limit you may wish to consider replacing questions (ii) and (iii) with a request for the number of HMP Foreign National Offender deportation appeals disposed in the First-Tier Upper Tribunal (Immigration and Asylum Chamber).

However, as advised in the response to FOI 190701002, information on appeals in the First-Tier Upper Tribunal (Immigration and Asylum Chamber) is published by MoJ in the main tables of Tribunal Statistics Quarterly publication (Tables UIA\_1 to UIA\_3) at the link below. You may find that these tables contain either the same or sufficient information to satisfy the suggested refinement above without requiring you to submit an additional request.

<https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-january-to-march-2019>

In addition, regarding question (i), the below link to the criminal justice statistics publication includes information on sentencing and sentence lengths in the **Outcomes by Offence data tool**:

<https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2018>

In conclusion I have concluded that the exemption applied was correct and that to provide the information requested would exceed the cost limit under the FOIA, however I judge that the response sent to you for FOI 190606001 was not compliant with the MoJ's requirements under Section 16 of the FOIA. However, I confirm that the more recent advice on how to refine your request given in response to FOI 190701002 was correct.

## **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 sincerely

Philip Hall  
Justice Statistics, Analytical Services