



Ministry of JUSTICE

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Our Ref: FOI/108670

23 January 2017

Dear Ali McGinley,

Freedom of Information Request

Thank you for your email dated 14 November 2016 in which you requested the following information from the Ministry of Justice (MoJ):

I am seeking disclosure of the number of individuals detained under Immigration Act powers only in each of the prisons and young offender institutions (YOIs) in England and Wales, listing the total number for each prison and YOI individually, at the end of: July 2016, August 2016 and September 2016.

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

I can confirm that the MoJ holds the information that you have asked for which is provided in the accompanying excel sheet.

Please note that table 1 shows data on individuals, who have been detained under the Immigration Act Powers only in the National Offender Management Service (NOMS) operated establishments and excludes those being held in Immigration Removal Centres. It shows the number of detainees as at 31 July, 31 August and 30 September 2016 by prison establishment in England and Wales.

As the number of detainees is very low in some prison establishments, values of two or fewer have been suppressed. This is because this information, if released, could lead to the identification of 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 which govern how we handle personal data.

We are not obliged, under section 40(2) of FOIA, to provide information that is the personal information of another person if releasing would contravene any of the provisions in the DPA.

If a request is made for information and the total figure amounts to two 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 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 to suppress figures of two or less.

The terms of this exemption in the FOIA mean that we do not have to consider whether or not it would be in the public interest for you to have the redacted information.

You can find out more about section 40(2) by reading the extract from FOIA and some guidance points we consider when applying the 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/contents>, and further guidance <http://www.justice.gov.uk/guidance/freedom-of-information.htm>.

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.

Yours sincerely

Justice Statistics Analytical Service

How to Appeal

Internal Review

If you are not satisfied with this response, you have the right to an internal review. The handling of your request will be looked at by someone who was not responsible for the original case, and they will make a decision as to whether we answered your request correctly.

If you would like to request a review, please write or send an email to the Data Access and Compliance Unit within two months of the date of this letter, at the following address:

Data Access and Compliance Unit (10.34),
Information & Communications Directorate,
Ministry of Justice,
102 Petty France,
London
SW1H 9AJ

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

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://ico.org.uk/global/contact-us/>

EXPLANATION OF FOIA - SECTION 40(2) – INFORMATION RELATING TO THIRD PARTIES

We have provided below additional information about Section 40(2) 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: 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.

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 M1Data 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 M2Data 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.

