



Disclosure Team
Ministry of Justice
102 Petty France
London
SW1H 9AJ

Ms Ali McGinley
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5 July 2021

Dear Ms McGinley

Freedom of Information Act (FOIA) Request – 210607007

Thank you for your request dated 7 June 2021 in which you asked for 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: October 2020, November 2020, December 2020, January 2021, February 2021, March 2021, April 2021 and May 2021.

Your request has been handled under the FOIA.

I can confirm that the MoJ holds all the information that you have requested and I have provided some of it in the attached Table 1, which shows Individuals detained under Immigration Act powers only in HMPPS-operated establishments (excluding immigration removal centres), October 2020 - March 2021 (latest currently available), in England and Wales.

However, some of the information you requested is exempt from disclosure under section 40(2) of the FOIA, because it contains personal data.

If a request is made for information, 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 General Data Protection Regulation and/or the Data Protection Act 2018. We believe that the release of some of this information would risk identification of the individuals concerned. For this reason, MoJ has chosen not to provide an exact figure where the true number is one or two. However, it should not be assumed that the actual figure represented falls at any particular point within this scale; 'one or two' is used as a replacement value from which it would be difficult to isolate or extract any individual data.

Section 40(2) and section 40(3A)(a) of the FOIA taken together mean that personal data can only be released if to do so would not contravene any of the principles set out in Article 5(1)

of the General Data Protection Regulation (GDPR) and section 34(1) of the Data Protection Act 2018.

Individuals have a clear and strong expectation that their personal data will be held in confidence and not disclosed to the public under the FOIA. Also, although s40 is an absolute exemption, we have considered whether there is a wider public interest in disclosing this personal information, that would override the fundamental rights of those concerned. We have concluded there is no such public interest in this instance.

We believe releasing the requested information into the public domain would be unlawful; the personal information is therefore exempt from disclosure under section 40(2).

This is an absolute exemption and does not require a public interest test under the FOIA.

The figures you requested covering April and May 2021 are exempt from disclosure under 44(1)(a) of the FOIA. We are not obliged to provide information if there are prohibitions on disclosure 'by or under any enactment' (Section 44(1)(a) of the FOIA). Disclosure of this information is prohibited by the Statistics and Registration Services Act 2007 and the Pre-release Access to Official Statistics Order 2008.

This information is intended for future publication as part of the MoJ *Offender Management Statistics Quarterly* bulletin. As such we are required 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.

The MoJ is obliged under section 13 of the SRS Act to continue to comply with the Code of Practice for Official Statistics (the Code for National Statistics. Section 11(3) of the SRS Act regards the Pre-Release Access to Official Statistics Order as being included in the Code. Protocol 2 of the Code reflects the requirements of the Pre-Release Access to Statistics Order. Specifically, it requires producers of official statistics to ensure that no indication of the substance of a statistical report is made public, or given to the media or any other party not recorded as eligible for access prior to publication. I can confirm that the MoJ does publish data on the prison population for the specified periods of time as part of National Statistics. Therefore, to now disclose its full or sub-set as part of your FOI request would violate the provisions of Section 13 of the SRS Act and the Pre-Release Access Order to Official Statistics 2008 and as such engages the exemption under section 44(1)(a) of the FOIA.

The terms of this section 44 exemption mean that we do not have to consider whether or not it would be in the public interest for you to have the information.

Almost without exception, the immigration detainees held by HMPPS will be Foreign National Offenders who have completed their prison sentences and been assessed as posing too high a risk to be held in an Immigration Removal Centre or released into the community while Home Office Immigration Enforcement pursues deportation action.

Appeal Rights

If you are not satisfied with this response you have the right to request an internal review by responding in writing to one of the addresses below within two months of the date of this response.

data.access@justice.gov.uk

Disclosure Team, Ministry of Justice, 10.25, 102 Petty France, London, SW1H 9AJ

You do have the right to ask the Information Commissioner's Office (ICO) to investigate any aspect of your complaint. However, please note that the ICO is likely to expect internal complaints procedures to have been exhausted before beginning their investigation.

Yours sincerely

**Data and Evidence as a Service (DES),
Ministry of Justice**