



Ministry of JUSTICE

Ms Ali McGinley

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Our Ref: FOI/103188

Dear Ms McGinley

Freedom of Information Request

Thank you for your email dated 8 February 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: October 2015, November 2015, and December 2015.

Your request has been handled under the Freedom of Information Act 2000 (FOIA). As you are aware, under the FOIA, the MoJ was required to provide you with a written response within 20 working days; in your case by 7th March 2016 and I am sorry we were not able to do so on this particular occasion.

I can confirm that the MoJ holds the information that you have asked for and I am pleased to provide the majority in the accompanying table.

The table provides information on non-criminal prisoners held under the Immigration Act by prison establishment as at the end of each month of October, November and December 2015. Please note that the information excludes offenders held in Immigration Removal Centres (IRCs) operated by the National Offender Management Service (NOMS) on behalf of the Home Office since your request has specified prisons and Young Offender Institutions (YOIs).

Whilst I have provided you with the bulk of this information, some of it is exempt from disclosure. This is because this information, if released, could lead to identification of the 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 the Act, 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 five 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 not to provide an exact figure in cases where the true number falls between one and five. However, it should not be assumed that the actual figure represented falls at any particular point within this scale; 'five people or fewer' is used as it represents an amount from which it would be difficult to isolate or extract any individual data.

The vast majority of people held in prisons under immigration powers are time served foreign national offenders. These are foreign individuals who have been convicted of a criminal offence and are subject to deportation action or who have no basis for remaining in the UK. They have completed their custodial sentence but have been risk assessed as being unsuitable to be held in an immigration removal centre (IRC), or are awaiting the completion of a suitability risk assessment to allow a transfer to an IRC.

A small number of individuals who have been charged with a criminal offence and were remanded in custody but whose case has either been dropped or no further action taken will remain in prison for a short time following their court hearing while a decision is made on their onward destination. These people will be subject to an authority to detain document (IS91 form) being issued and are referred to as sole detainees

It is right that foreign criminals who break our laws are properly punished but this shouldn't be at the expense of the British taxpayer.

This Government has a longstanding policy to negotiate prisoner transfers wherever possible. Prisoner Transfer Agreements are just one way the Government can remove foreign national offenders. It is right that we exploit all available options for the removal of those who have abused our hospitality.

You can find out more about Section 40(2) by reading the extract from the Act 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 Act (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.

Disclosure Log

You can also view information that the Ministry of Justice has disclosed in response to previous Freedom of Information requests. Responses are anonymised and published on our on-line disclosure log which can be found on the MoJ website:

<http://www.justice.gov.uk/information-access-rights/foi-requests/latest-moj-disclosure-log>

The published information is categorised by subject area and in alphabetical order.

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://www.ico.gov.uk/Global/contact_us.aspx

EXPLANATION OF INFORMATION HELD FOR THE PURPOSES OF THE ACT

We have provided below additional information for information held for the purposes of the Freedom of Information Act. We have included some of the guidance we use when considering requests for information. I hope you find this information useful.

Is the information 'held' for the purposes of the Act?

A person may request any information 'held' in any recorded form by a public authority (or held by another on behalf of a public authority).

If the requester is asking for an opinion on an issue or asking for information that is not already held to be created, this is not a Freedom of Information Act request.

Information covered by the Act

All recorded information 'held' by a public authority is within the scope of the Freedom of Information Act. It includes files, letters, emails and photographs and extends to closed files and archived material.

Recorded information

The right of access applies to information recorded in any form. This includes:

- information that is held electronically (such as on a laptop computer or an electronic records management system)
- information that is recorded on paper (such as a letter, memorandum or papers in a file)
- sound and video recordings (such as a CD or videotape)
- hand-written notes or comments, including those written in note pads or on Post-it notes

Is the information 'held' under the Freedom of Information Act?

'Holding' information includes holding a copy of a record produced or supplied by someone else. However, if a public authority only holds information on behalf of someone else, for example a department holding trade union information on their computer system, then that public authority may not have to provide the information in response to a Freedom of Information Act request.

In some cases, it may not be clear whether information which is physically present on your premises or systems is properly to be regarded as 'held' by your public authority, for the purposes of the Freedom of Information Act. Examples include:

- private material brought into the office by ministers or officials
- material belonging to other people or bodies
- trade union material
- constituency material
- material relating to party political matters.

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.