

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 February 2015

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested various information from the Ministry of Justice (MoJ), including information about the cleanliness of the prison wing kitchen. MoJ responded, providing some information but citing section 40 (personal information) in respect of the remainder. During the course of the Commissioner's investigation, MoJ revised its position and stated that it did not hold some of the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the MoJ does not hold further relevant information. The Commissioner finds, however, that in failing to respond to the complainant's request within the statutory timescale MoJ breached section 10(1). He requires no steps to be taken.

Request and response

3. On 17 June 2014 the complainant wrote to the MoJ as follows:

"(1) Since learning about my mother's GP stating 'she requires 24 hour care and that I should be returned home to provide such', and being aware of a psychiatric report which concluded I was low risk [written by an eminent academic of Oxford University who is much more qualified than the prison's staff who only have BASIC training], what efforts has the Governing Governor made to recommend my release to the Secretary of State?"

(2) Has the Governing Governor felt pressurised by Supervisors 'not' to recommend my release?"

(3) Does the prison 'generally' reduce risk based on the longevity of a sentence?

(4) On 17/6/2014, I showed [redacted] a whole cooked tray of pasta (at lunch time) which had been left in the servery from the night before. [It is illegal to keep cooked food in the servery overnight]. [Name redacted] (prison cleaner) has NOT used liquid cleaner/disinfectant on the two's landing for the last 27 days. Can the Governor advise on what days the 'Cleaning Officers' have inspected the wing kitchen or the work of [redacted] in the last 2 months?

(5) Approximately 1% of my sentence will have been rehabilitative 'Offender Behaviour Programme', the other 99% has been spent in an environment with Abusive Language & Anti-Social behaviour which I'm not accustomed to. Why does the prison publish a behaviour policy & not enforce it, and do you consider that 99% of my time is productive for my future career in such an environment?

(6) Despite me warning the prison over 3 months ago, why was [redacted] recently eating Salt & Vinegar crisps (in one hand) whilst serving salad? What action have you taken & when to address this?

(7) Would the Governing Governor confirm if censors destroyed a letter I wrote to the Health & Safety Executive dated 25/2/2014, which tried to report that our servery has no hand soap; servers that eat whilst serving food; the lack of 'food safety Level 1 or 2' certification; the uncleanliness?

(8) Does the Governor/Prison receive intelligence about my mum's vulnerability from phone monitoring & mail interception, or does the system consider such information irrelevant."

4. Following the Commissioner's intervention, MoJ responded on 5 September 2014. MoJ said that the response to the request only dealt with question 4 under the FOIA: all the other questions were responded to as 'business as usual' correspondence.
5. With respect to point 4 MoJ confirmed that it held some relevant information. It withheld information relating to the individual named in the request, citing section 40(2) (personal information). However it provided the remaining relevant information - about the inspections of the wing kitchens and the standards by which the prison operates to ensure that the cleaning is adequate and safe.
6. Following an internal review, MoJ wrote to the complainant on 20 October 2014 upholding its original position. MoJ confirmed that, with the exception of point 4, it considered the request to be queries about

policy or decisions that are subjective, rather than requests for recorded information under the FOIA.

Scope of the case

7. The complainant provided the Commissioner with the relevant documentation on 27 October 2014 to complain about the way his request for information had been handled.
8. He told the Commissioner that he did not consider that MoJ's reply had answered some of the questions properly, namely questions 2, 3, 4, 5 and 8.
9. The FOIA concerns recorded information held by public authorities. While under the FOIA one has the right to request any recorded information held by a public authority, FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
10. In light of the above, and having considered the wording of the request, the Commissioner focussed his investigation on whether MoJ handled point 4 of the request in accordance with the FOIA. The remaining questions quoted above are not requests for recorded information and so do not engage the FOIA.
11. With respect to that part of point 4 about the days on which the wing kitchen was inspected, the Commissioner acknowledges that the MoJ told the complainant:

"Inspections of the wing kitchens at HMP Swaleside are carried out everyday. In accordance with the current Prison Service Order (PSO), Governing Governors have arrangements in place for adequate, safe cleaning in prisons. Arrangements include training for staff who routinely supervise cleaners and prisoners who carry out cleaning to the British Institute of Cleaning Science's standard"
12. With respect to that part of point 4 about the inspection of the work of the named individual, the Commissioner asked MoJ to provide him with further explanation about its citing of section 40(2). He also asked to be provided with a copy of the withheld information.
13. Although both of MoJ's responses to the complainant about this aspect of the request had relied on section 40(2) of the FOIA, during the Commissioner's investigation MoJ reconsidered its position. MoJ

confirmed that while checks are carried out on the wings and kitchens, there were no specific checklists for individual prisoners.

14. As a result of this submission, the analysis below covers whether the MoJ was correct when it said that it did not hold the requested information – about the inspection of the work of the named individual.

Reasons for decision

Section 1 general right of access

15. Section 1 of FOIA states that:

"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."

16. In scenarios where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the Commissioner must decide, on the balance of probabilities, whether a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
17. For clarity, the Commissioner is not expected to prove categorically whether the information was held, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
18. In correspondence to the Commissioner, MoJ confirmed that prison staff carry out daily checks on the wings and kitchens. However it explained that, rather than inspecting the work of an individual, the prison officers would be assessing the standard of all prisoners' work.
19. MoJ's failure to identify that this was the case when providing its initial response to the request or during its internal review suggests that, prior to the Commissioner's involvement, adequate searches may not have been made.

20. In conclusion however, given the explanation provided by MoJ, the Commissioner does not consider that there is any evidence that would justify refusing to accept its position that it does not hold any relevant information about the named individual in question 4. The Commissioner is therefore satisfied that on the balance of probabilities, the information is not held by MoJ. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.

Section 10 time for compliance

21. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "*no later than the twentieth working day following the date of receipt*".
22. In this case MoJ breached section 10(1) by failing to respond to the request within 20 working days.

Right of appeal

23. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
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