

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 May 2024

Public Authority: Department of Justice (Northern Ireland)

Address: Knockview Buildings
Stormont Estate
Upper Newtownards Road
Belfast
BT4 3SJ

Decision (including any steps ordered)

1. The complainant made a request to the Northern Ireland Prison Service (NIPS), which is an agency within the Department of Justice (Northern Ireland) (DoJ). DoJ is the relevant public authority for this case.
2. The complainant's request comprised three questions about the use of x-ray body scanners on prisoners, the internal concealment of "contraband" and the recovery of any contraband concealed internally.
3. DoJ provided a figure for one of the questions, but refused to disclose any other information, citing section 31 of FOIA (law enforcement) as its basis for doing so.
4. The Commissioner's decision is that DoJ was correct to rely on section 31 of FOIA and refuse to disclose information within scope of the second and third questions in the request.
5. The Commissioner doesn't require further steps.

Request and response

6. On 26 October 2023, the complainant wrote to NIPS and requested “answers along with any relevant documents” in respect of the following three questions:

“1. On how many occasions have X-Ray Body Scanners been used on prisoners throughout the entire prison estate since the commencement of use of these scanners?

2. Of the total number in the answer to 1 above, in how many cases did the operator conclude the prisoner was internally concealing contraband (ie, how many 'positive' scan images resulted)?

3. Of the total number in answer to 2 above, in how many cases (ie, in relation to how many prisoners) was internally concealed contraband actually recovered ...? ...”.

7. DoJ responded on 30 November 2023. It stated that between March and October 2023, 5,866 scans were completed. However it cited sections 31(1)(a) – (f) of FOIA and refused to disclose any further information.

8. DoJ also directed the complainant to documents published on DoJ’s website, setting out how NIPS deploys and operates x-ray body scanners¹ and how it manages prisoners who may be concealing items internally².

9. The complainant requested some clarification in respect of the second and third questions, and a copy of DoJ’s public interest considerations.

10. Following an internal review, DoJ wrote to the complainant on 5 January 2024. DoJ’s internal review confirmed that it was withholding the information requested in the second and third questions, on the basis of section 31 of FOIA.

11. DoJ also explained:

¹ <https://www.justice-ni.gov.uk/publications/nips-deployment-and-operation-x-ray-body-scanners>

² <https://www.justice-ni.gov.uk/publications/managing-internal-secretion-guidance>

“A copy of the full public interest test cannot be provided but NIPS can confirm that there is a strong public interest in NIPS having success in stopping contraband entering prison establishments and the information requested was withheld as its release would provide insight into the effectiveness of NIPS strategies to stop contraband”.

Scope of the case

12. The complainant contacted the Commissioner on 17 January 2024 to complain about the way their request for information had been handled.
13. They complained that NIPS “refused to provide answers” to their second and third questions.
14. The complainant said that in their experience, “prisoners are being routinely searched when returning to the prison estate”, and that this is contrary to relevant policies, which require a basis for suspicion before an x-ray body scan is carried out. They said they want the requested information so as to assess whether such suspicions are well-founded.
15. The Commissioner notes that, according to the ‘Deployment and Operation of X-Ray Body Scanners’ document that DoJ has cited (see paragraph 8 above), prisoners must only be scanned where there’s intelligence or reasonable suspicion that they’re internally concealing contraband (see eg paragraphs 6.5 and 6.62 of that document), among other conditions.
16. The Commissioner considers that the scope of this case is to decide whether DoJ was correct to withhold the information that the complainant requested in their second and third questions of 26 October 2023.

Reasons for decision

17. The Commissioner asked DoJ to confirm which subsection(s) of section 31 it’s relying on to refuse to disclose the requested information. DoJ explained that it’s relying on sections 31(1)(a), (b) and (f). Those sections respectively provide that information is exempt if its disclosure would, or would be likely to, prejudice (harm) “the prevention or detection of crime”, “the apprehension or prosecution of offenders”, and

"the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained".

18. Section 31, if engaged, is subject to the public interest test.
19. First, the Commissioner is satisfied that the envisaged harm relates to the law enforcement interests protected by sections 31(1)(a), (b) and (f) and stated at paragraph 17 above. DoJ has expressed concerns about contraband entering prisons, and about disclosure providing insight into the effectiveness of strategies to prevent this. The documents that DoJ cited in its responses to the complainant note that items entering prisons by internal secretion:

"can include very significant quantities of drugs which, as well as being potentially extremely harmful to the individuals, have an injurious impact upon safe, decent and secure custody for people in custody and for staff ..."3.
20. Disclosure under FOIA is 'to the world', and clearly, providing criminals with the type of insight outlined has implications for the smuggling of drugs and the law enforcement interests protected by the exemptions in question.
21. The Commissioner is satisfied that the envisaged harm is real, actual or of substance, and not trivial. Prisoners taking prohibited items like drugs into prisons is a serious matter.
22. He's also satisfied that there's a causal link between disclosure and the envisaged harm, and that disclosure 'would be likely to' cause the envisaged harm, as he explains further in the following paragraphs.
23. The Commissioner has considered the lower level of likelihood, namely that disclosure of the requested information 'would be likely to' harm the interests in question.
24. This means that the risk of harm occurring must be a real and significant one.

³ <https://www.justice-ni.gov.uk/publications/nips-deployment-and-operation-x-ray-body-scanners> at paragraph 3.1.

25. Based on the type of information requested and the comments in the internal review (quoted at paragraph 11 above) alone, the Commissioner is satisfied that there's a real and significant risk of disclosure harming the law enforcement interests DoJ has referenced.
26. DoJ's confidential submissions to the Commissioner further satisfied him that the exemptions cited are engaged. The Commissioner is unable to include DoJ's confidential submissions in a published decision notice.
27. The Commissioner also directs readers to his guidance on the prejudice test and the 'mosaic effect', in respect of section 31⁴. This explains that the prejudice test isn't limited to the harm that the requested information could cause on its own – public authorities can take account of any harm likely to arise if someone pieced together the requested information with other information to form a broader picture. In addition, complying with one request can make it more difficult to refuse requests for similar information in future – public authorities are therefore entitled to consider any harm that could be caused by combining the requested information with the information they could subsequently be required to provide, if the current request was complied with.
28. The mosaic effect is clearly relevant to disclosures providing insight into the effectiveness of NIPS strategies to stop contraband entering prisons.

Public interest test

29. The Commissioner recognises that there is a general public interest in promoting transparency and accountability, which must always be given some weight in the public interest test.
30. He appreciates that the general issue of x-ray body scanners was a fairly current one, at the time of the request. The request was made approximately seven months after DoJ began using x-ray body scanners in prisons.

⁴ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-31-law-enforcement/how-should-we-apply-the-prejudice-test/>

31. The Commissioner also acknowledges that the complainant has said they're concerned about whether x-ray body scans are being carried out in compliance with relevant DoJ policies.
32. However, the Commissioner notes that when expressing their concern about prisoners being "routinely searched" (see paragraph 14 above), the complainant's words make it clear that this concern is based on what they claim to be **their experience** only.
33. The Commissioner hasn't seen any indication of wider concerns or evidence about whether DoJ is complying with policies on the use of x-ray body scanners.
34. The Commissioner also highlights that there's a process in place for complaints about NIPS – further details can be found on DoJ's website⁵.
35. As the Commissioner's guidance on the public interest test⁶ explains, a requester's private interests aren't in themselves relevant to the public interest test. As an example, a requester may have a grievance and think the information they want will help them, but this in itself isn't a relevant factor. There's only a public interest argument if the requester can show a wider public interest that would be served by disclosing the information.
36. In this instance, the Commissioner sees no compelling wider public interest that would be served by disclosing the requested information.
37. DoJ is concerned about contraband entering prisons, and disclosure providing insight into the effectiveness of NIPS strategies against smuggling. In the Commissioner's view, those are valid and weighty considerations against the disclosure of the requested information.
38. The Commissioner agrees with DoJ's comment at internal review, that there's a strong public interest in stopping contraband entering prisons.

⁵ <https://www.justice-ni.gov.uk/articles/northern-ireland-prison-service-complaints-policy-and-procedure>

⁶ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/the-public-interest-test/#pit10>

39. He emphasises that there's a very strong public interest in protecting the ability of public authorities to enforce the law, as his guidance says⁷.
40. The Commissioner considers that on balance, the factors against disclosure have greater weight and the public interest lies in maintaining the exemptions.

⁷ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-31-law-enforcement/how-should-we-apply-the-public-interest-test/>

Right of appeal

41. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

42. 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.
43. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Daniel Kennedy
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