

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 June 2023

Public Authority: Ministry of Justice
Address: 102 Petty France
London SW1H 9AJ

Decision (including any steps ordered)

1. The complainant has requested information in respect of the prison early release scheme.
2. The Ministry of Justice ("MOJ") cited section 22 of FOIA and refused to provide the requested information because it was intended for future publication.
3. The Commissioner's decision is that the MOJ breached section 10(1) of FOIA by failing to issue a response within 20 working days of the request and that the MOJ was correct to apply section 22 of FOIA in this case at the time of the request.
4. The Commissioner does not require further steps.

Request and response

5. On 12 December 2023, the complainant wrote to the MOJ and requested information in the following terms:

"Please state the number of persons released early from prison under the early release scheme since 16 October 2023 as of the date of this request.

Please provide this figure broken down by the offence with which the person released early had been convicted. Please provide data by the most granular offence code available within the cost limit that is

- centrally held in electronic form (e.g. 5A Wounding with intent to cause grievous bodily harm)...”
6. The MOJ responded on 8 January 2024 informing the complainant that it needed more time to conduct the public interest test.
 7. On 10 January 2024, the complainant added to the request as follows:
“If you do seek to use the section 22 exemption, I would be grateful if you could provide any evidence of a settled decision to publish this information, and any information on timing, with your response.”
 8. On 8 April 2024, the MOJ responded to the complainant. It refused to provide the requested information, citing section 22 of FOIA (information intended for future publication), and provided evidence of intention to publish in Autumn 2024.
 9. Following an internal review, the MOJ wrote to the complainant on 6 June 2024. It acknowledged that it had failed to provide a response within the statutory deadline of 20 working days. It also reiterated its position that the section 22 exemption applied and that evidence of intention to publish had also been provided to the complainant.

Reasons for decision

Section 22 – information intended for future publication

10. Section 22(1) of FOIA says that information is exempt information if:
 - (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not)
 - (b) the information was already held with a view to such publication at the time when the request for information was made, and
 - (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in (a).
11. Section 22 is a qualified exemption which means it is subject to the public interest test.
12. In this case the MOJ has clearly explained in its responses to the complainant that it intends to publish the requested information in Autumn 2024.

13. The Commissioner considers that the requested information was clearly held by the MOJ and, at the time the request was made, the information was intended for future publication as communicated to the complainant.
14. The MOJ has explained that there are reasonable grounds to maintain the orderly publication of information as planned, as early piecemeal disclosure of some information without analysis and the wider context would be likely to create reputational damage and unnecessary public concern.
15. The Commissioner therefore also accepts that in all the circumstances it was reasonable to withhold the information under section 22 FOIA until the publication date.

Public interest test

16. As the Commissioner is satisfied the exemption was applied correctly in this case, he has next considered the balance of the public interest test.

Public interest in disclosing the information

17. The complainant has argued that there is a public interest in knowing the effect of the Government's early release policy before the General Election on 4 July 2024 so that the public can understand the effects of the policy before casting their votes.
18. The MOJ acknowledged that disclosure would improve transparency in the operations of Government and would improve awareness of the early release scheme.

Public interest in maintaining the exemption

19. The MOJ argued that:

"It is in the public interest that any information published is accurate, verified, and all members of the public have easy and equal access to the information. Disclosure of this information prior to the proper verifications and consultations are carried out would increase the risk that inaccurate or incorrect information was released.

As the information is of interest to the wider public it is important it can be accessed simultaneously by the general public rather than piecemeal by disclosure to a small number of individuals under the FOIA.

Therefore, it is in the wider interest that information is accessible to the wider public adhering to the publication schedule.

Managing the availability of the information by planning and controlling its publication would ensure that the information is quality assured before it is released into the public domain and allow us to respond more readily to future requests for data on this subject. It is also in line with accepted practices not to give advance information which we intend to publish.”

Balance of the public interest

20. The Commissioner accepts there is a general public interest in openness and transparency.
21. Whilst the Commissioner accepts that there is a public interest in openness and transparency, he is satisfied that if the withheld information were to be published before it had been verified and put into context, that it could potentially cause distress to the public and reputational damage to the stakeholders involved in the scheme.
22. The Commissioner is also satisfied by the evidence provided by the MOJ that, when the request was made, there was an intention to publish the information.
23. Without any strong countervailing arguments, the Commissioner considers that the balance of the public interest favours maintaining the exemption in this case.

Procedural matters

Section 10: time for compliance

24. Section 1(1)(a) of FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority, it must be disclosed to the complainant unless a valid refusal notice has been issued.
25. Section 10(1) requires that the public authority comply with section 1 promptly, and in any event no later than 20 working days after the date of receipt of the request.
26. In this case the Commissioner has concluded that the MOJ breached section 10(1) of FOIA as it did not provide the complainant with a response within the statutory deadline.

Right of appeal

27. 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

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

Michael Lea
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