

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 November 2024

Public Authority: Yarl's Wood Immigration Removal Centre
Independent Monitoring Board

Address: c/o Independent Monitoring Boards
10 South Colonnade
London
E14 4PU

Decision (including any steps ordered)

1. The complainant requested information from Yarl's Wood Immigration Removal Centre Independent Monitoring Board (the IMB), namely guidance and other information available in the members' section of the Independent Monitoring Boards website.
2. During the course of the Commissioner's investigation, the IMB stated that it does not hold the requested information for the purposes of FOIA, under the provisions of section 3(2)(a) (public authorities).
3. The Commissioner's decision is that the requested information is not held by the IMB for the purposes of FOIA.
4. The Commissioner requires no steps to be taken as a result of this decision.

Background

5. The Prison Act 1952 and the Immigration and Asylum Act 1999 require the Secretary of State for Justice and the Home Secretary to appoint

independent Boards to monitor prisons and places of immigration detention, from members of the local community¹.

6. Under the IMB National Monitoring Framework² agreed with ministers, each IMB is required to:
 - make frequent visits
 - have access to the records of the establishment
 - inform ministers immediately of any abuse
 - hear complaints and requests
 - produce an annual report.
7. The Commissioner recognises that the IMBs are staffed by volunteers, referred to as 'members'. He also acknowledges that IMB members are supported by a small central team (known as the IMB Staff Group or Secretariat). For the purposes of this decision notice, they will be referred to as the Secretariat.
8. The Commissioner understands that the Secretariat is the identified resource for assisting individual IMBs in handling FOI requests. Therefore, regardless of which individual IMB a request for information is addressed to, requests are handled administratively by the Secretariat. He recognises that, in this case, the Secretariat provided submissions on behalf of the IMB to which the request was made.
9. The National Monitoring Framework is agreed with ministers by the National Management Board. The National Chair and Management Board provide leadership for IMB members³. They are responsible for planning the overall strategic direction of the IMB, and for developing the processes and procedures that support the work of the members.
10. The National Chair is a Ministerial appointment. The Commissioner understands that the National Chair appoints the Management Board.
11. Neither the IMB Management Board, the Secretariat or the National Chair are statutory entities and are not listed within Schedule 1 of FOIA.

¹ <https://imb.org.uk/national-imb-priorities/>

² <https://imb.org.uk/document/imb-national-monitoring-framework/>

³ <https://imb.org.uk/about-us/>

Nor is the Commissioner aware that they have been designated as public authorities by an order under section 4 or 5 of FOIA.

12. IMBs are included in Schedule 1, Part VI of FOIA:

"Any Independent Monitoring Board established under section 6(2) of the Prison Act 1952".

13. Accordingly, individual IMBs are public authorities for the purposes of FOIA by virtue of section 3(1).

Request and response

14. On 25 April 2024, the complainant wrote to the IMB and requested information in the following terms:

"Please provide an electronic copy of the guidance (and other material) held on the password-protected IMB members' website. If that isn't practical then instead please provide a list or index of the material."

15. The IMB responded on 26 April 2024. It refused to comply with the request, citing section 14(2) (repeated request) of FOIA.

16. Following an internal review, the IMB wrote to the complainant on 15 May 2024 maintaining its position.

Scope of the case

17. The complainant contacted the Commissioner to complain about the handling of their request for information, namely that section 14 applies.

18. While they acknowledge that they have made an identical, or substantially similar request previously, they dispute that the request is repeated, on the basis that the previous request was made to the Secretariat which is not a public authority.

19. From the context they provided in their correspondence with the IMB, the Commissioner recognises that the complainant considers that the requested information is held by the IMB for the purposes of FOIA.

20. During the course of the Commissioner's investigation, the IMB revised its response to the request. While it confirmed that it was no longer relying on section 14 of FOIA, it refused the request on the grounds that the requested information is not held by a public authority.

21. The Commissioner recognises that the complainant may not be aware of this change of position. However, given the history of the request and in light of the reasons put forward by the complainant for making their complaint, the Commissioner continued his investigation.
22. The analysis below considers whether the IMB holds information within the scope of the request for the purposes of FOIA (section 3(2) of FOIA).
23. The Commissioner acknowledges that, at the date of the request, it was visible to the public that there was an area of the Independent Monitoring Boards website accessible to members only. For the purposes of this notice, this will be referred to as 'the members section'. He also accepts that, at the time of writing this notice, the existence of the members' section is no longer visible to the public.

Reasons for decision

Section 1 general right of access to information held by public authorities

24. Section 1 of FOIA states:

"(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 3(2) – information held by a public authority

25. Section 3(2) sets out the two legal principles that establish whether information is held for the purposes of FOIA:

"For the purposes of this Act, information is held by a public authority if—

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

26. This sets out a two-part definition. Information is held by the public authority:

- if the authority holds it (but not if it holds it only on behalf of another person), or
 - if another person holds it on behalf of the authority.
27. The Commissioner's guidance⁴ 'Information you hold for the purposes of FOIA' explains the circumstances in which information is considered to be held by a public authority for the purposes of FOIA.
28. His guidance also makes it clear that, whether information is held by a public authority, or is held on behalf of a public authority, depends on the facts of the case.

The IMB's position

29. The Secretariat, making submissions on behalf of the IMB, explained to the Commissioner that, rather than each individual IMB having its own website, there is a generic IMB website. Within that, there is a members' section which is not publicly accessible. Only IMB members can access this part of the site by using their log-in credentials. The request in this case relates to the information held in that part of the website.
30. In its submission, the Secretariat, on behalf of the IMB, denied that information within the scope of the request is held by any of the IMBs for the purposes of FOIA. In support of that argument, it told the Commissioner that the content of the website is created and maintained by the IMB Management Board.
31. As noted above, the IMB Management Board is not a public authority.
32. In other correspondence, the Secretariat told the Commissioner that the information held on the website was only accessible to view by IMB members and they could not contribute to, alter, add or remove anything held on the site.
33. They described the website as something to be used as an 'aide memoir' rather than an obligatory standard for monitoring for the Boards to use. They described the information as being placed in one location "to act similarly to a reference library for FAQ's".

⁴ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/information-you-hold-for-the-purposes-of-foia/>

34. In its submission the Secretariat explained that the information provided in the members' section "is there to be of guidance and assistance to members".
35. It explained that none of the information specifically relates to the way that a Board monitors, or to the role that it undertakes.
36. Noting the different nature of the establishments monitored by the individual IMBs, the Secretariat told the Commissioner that monitoring is necessarily tailored to each specific location:
- "Monitoring at HMP Lincoln for example, would be very different from HMP Styal, and equally different from monitoring aspects of the Short-Term Holding Facility at Heathrow airport".

37. Furthermore, it told the Commissioner:

"... whilst information is on the website to assist members in making their role easier; through ancillary administration or a localising of already published principles of monitoring, it is certainly not the case that the website is a requirement to perform the role, and it is not fundamental to a Board being successful in its statutory duties".

The Commissioner's view

38. The Commissioner recognises that the effect of section 3(2) and the meaning of 'held' in the context of FOIA were clarified through case law, in the landmark decision of University of Newcastle upon Tyne v Information Commissioner and BUAV⁵, a decision that was upheld by the Upper Tribunal on appeal.

39. His guidance states:

"The BUAV case means that – to decide if you 'hold' the information for the purposes of FOIA – you need to establish if there is an 'appropriate connection' between the requested information and **your role and functions as a public authority** [emphasis added]".

40. In that respect, his guidance states:

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[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i459/BUAV v IC & Newcastle University \(0064\) PI Decision 10-11-10 \(w\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i459/BUAV v IC & Newcastle University (0064) PI Decision 10-11-10 (w).pdf)

“Several factors can help you decide the extent to which you hold information for your purposes as a public authority. These factors include:

- the extent to which you have access to the information,
- the degree of control you have over the information, including controlling who has access to it and how it is used,
- the extent to which you use it for your own purposes, regardless of whether it was created by a third party,
- the extent to which you had an input in its creation or alteration,
- the extent to which you retain ultimate responsibility over the management of the information, including its retention and deletion, and
- whether you are merely providing storage, either on your physical premises or on your electronic and cloud systems.

This is not an exhaustive list and the weight attached to each factor varies depending on the circumstances of each case”.

41. The Commissioner understands that all IMB Members have access to the website as a 'read only' user function: this allows them to view the contents of the website, but not to add, create, amend, or delete content.
42. From the evidence he has seen, the Commissioner is satisfied that, while IMB members have access to the information contained in the members' section, it is the IMB Management Board that is responsible for the content and for all the decisions relating to the information.
43. However, FOIA is legislation applying to the information held by public authorities for their public authority functions. Notwithstanding that the ownership and control of the material belongs to the Management Board, the Commissioner must consider whether there is an “appropriate connection” between the requested information and the role and functions of the public authority – the IMB.
44. While he recognises that the requested information is created and maintained by the IMB Management Board, he considers the key issue to determine is to what extent this content can be linked back to the IMBs themselves and whether the IMB members use it to properly discharge their statutory role.

45. The Commissioner has had the opportunity to view a representative sample of the information available within the members' section of the website.
46. He accepts that the members' section provides members with access to a source of useful advice and information.
47. However, he must be satisfied that there is an appropriate connection between the information requested and the role and functions of an IMB as a public authority. In other words, he must be satisfied that IMB members use the requested information to properly discharge their role and core functions as a public authority.
48. The Commissioner accepts that IMB members are a regular presence in prisons and places of immigration detention, reporting on the conditions in detention and the treatment of prisoners and detainees.
49. He also recognises that, as IMBs cover a wide range of establishments, monitoring differs from IMB to IMB because of the differences between establishments and of specific issues existing at each establishment.
50. He therefore accepts that, while the role of an IMB is to monitor the establishment, the way in which it undertakes that role will necessarily be flexible and tailored to the particular risks and concerns the establishment poses.
51. The role and core functions of an IMB are noted above and include making frequent visits, accessing records and hearing complaints and requests from those in detention.
52. Having considered the sample of information from the members' section of the website, the Commissioner has not been able to find a link between the information and the role and functions of the IMB.
53. Notwithstanding the important statutory role undertaken by IMBs, the Commissioner has seen no evidence that the requested information is held by the IMB, to any extent, for its own purposes as a public authority.
54. As he cannot be satisfied that there is an appropriate connection between the information requested and the role and functions of an IMB as a public authority, it follows that the information falls outside the definition of information held for the purposes of FOIA under section 3(2).
55. The request in this case was made to Yarl's Wood IRC IMB. Given his conclusion that there is not an appropriate connection between the information requested and the role and functions of the IMB as a public

authority, the Commissioner finds that the requested information is not held by the IMB for the purposes of FOIA.

Other matters

56. As the regulator of FOIA legislation, the Commissioner's remit is to determine a public authority's compliance regarding requests for information.
57. It is not the Commissioner's role to make changes to the legislation.
58. It is the Cabinet Office who is responsible for updating Schedule 1 of FOIA. Amendments are made via statutory instruments at the back of an order with the Cabinet Office updating the Schedule following those. Any queries regarding the Schedule should be directed to the Cabinet Office.

Right of appeal

59. 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

60. 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.
61. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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