

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 23 April 2025

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

### **Decision (including any steps ordered)**

---

1. The complainant requested the number of prisoners released on licence whose release conditions require them to wear an electronic tag who, at the time of the request, had not been fitted with one.
2. The Ministry of Justice (MoJ) denied holding the requested number.
3. The Commissioner's decision is that, on the balance of probabilities, the MoJ does hold information in scope of the request.
4. The Commissioner requires the MoJ to take the following steps to ensure compliance with the legislation:
  - issue a fresh response confirming it holds the information and either disclose it or issue a refusal notice in accordance with section 17 of FOIA.
5. The MoJ must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### **Request and response**

---

6. Following earlier correspondence, on 24 October 2024 the complainant wrote to the MoJ and requested information in the following terms:

"As a follow up request, please state, as of the date of this request, how many prisoners released on licence whose release conditions require them to wear an electronic tag, had not yet been fitted with one."

7. The MoJ responded on 21 November 2024. It explained that electronic monitoring (EM) data is stored across two systems and, therefore, the MoJ was unable to provide the requested data.
8. Following an internal review, the MoJ wrote to the complainant on 13 December 2024 maintaining its position.

## **Scope of the case**

---

9. The complainant disputes that holding the information across two systems prevents it from being disclosed.
10. Although not cited specifically by the MoJ in its correspondence with the complainant, the Commissioner progressed his investigation on the basis that the MoJ considers section 1 (general right of access to information) of FOIA applies in this case.
11. The Commissioner understands that the earlier correspondence, that gave rise to the request in this case, related to the number of prisoners released under the early release scheme since 4 July 2024.
12. He progressed his investigation in this case on the basis that the requested information in scope of the request is information from 4 July 2024 to 24 October 2024.
13. The analysis below considers whether the MoJ is correct to state that it does not hold the requested number of prisoners released on licence falling within the scope of the request.

## **Reasons for decision**

---

### **Section 1 general right of access**

14. Section 1(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."

15. Section 1(1) requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If the public authority does hold relevant information, FOIA also requires that it communicates that information to the requestor, subject to any exclusions or exemptions applying.
16. In scenarios where there is some dispute between the amount of information which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
17. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or held any at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.

### **The MoJ's view**

18. The MoJ confirmed it receives data covering those released on licence with a release condition requiring them to wear an electronic tag.
19. However, it told the complainant that it is currently transitioning from the previous EM supplier to the new EM supplier. It explained that, during this transition period, "EM data is stored and collected differently across the two different systems..." and that it is therefore unable to provide the requested data.
20. The MoJ argued that FOIA does not require a public authority to create information, such as linking the two databases, to answer a request.
21. In its submission to the Commissioner, the MoJ said that it does not hold the information in a single dataset. The MoJ also confirmed what it had told the complainant about there being two systems during the transition phase. It said that some individuals can appear in both feeds, but that without a common identifier they cannot be identified.
22. The Commissioner asked whether the MoJ is able to compile or extract the requested number from the raw data that it possesses.
23. The MoJ explained that, as there is no common identifier between the systems holding the data, it is unable to link or extract the data from them into a single source.

24. The Commissioner asked the MoJ to explain to what extent, if any, it considered compiling and disclosing a number with a disclaimer for its accuracy.
25. In response, the MoJ said that, due to the lack of a single unique identifier common to both systems, the exercise to extract and match data would require a degree of skill and judgement "which would be highly complex and be creating new data".
26. It argued that, due to the lack of a single unique identifier, any matching between the two datasets would be "highly complex and burdensome".
27. Mindful of observations made by the complainant, the Commissioner asked whether the MoJ had considered providing the individual figures from each system.
28. The MoJ argued that it would be inaccurate and misleading to add together the information from the two systems as there is duplicate data across the datasets.

### **The complainant's view**

29. The complainant considers that taking information from two systems and adding them together is not the creation of new information. They consider that it is the collation of information already held by the MoJ.

### **The Commissioner's view**

30. The Commissioner acknowledges that the MoJ confirmed that EM data is being delivered via two separate feeds and that it does not hold the information it receives in a single dataset.
31. However, he recognises that there are some circumstances where a public authority may still "hold" information, even though it does not have it immediately to hand when a request is made.
32. In that respect, his [guidance](#) states:

"If you have the "building blocks" necessary to produce a particular type of information, it is likely that you would hold that information unless it requires particular skills or expertise to put the building blocks together".
33. The Commissioner explained this to the MoJ when asking for its submissions on its handling of the request. He asked it why it was not able to compile or extract the requested number from the raw data that it possesses. He also explained that it was the MoJ's responsibility to satisfy him that it had complied with the law.

34. While the Commissioner accepts that the MoJ considers that the exercise to extract and match the data would be highly complex, it has not explained what particular skills or expertise would be required to combine information from the two systems and respond to the request.
35. Having taken all the above into consideration, the Commissioner cannot be satisfied from the evidence presented to him, that, on the balance of probabilities, the MoJ does not hold information in scope of the request.
36. The MoJ has therefore breached section 1(1)(a) of FOIA and must now take the action specified in paragraph 4.

## Right of appeal

---

37. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**