

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

### **Decision notice**

**Date:** 14 January 2025

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

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

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1. The complainant requested supporting documentation related to three specified prison models, following publication of a bulletin detailing prison population projections for England and Wales 2023 to 2028. The Ministry of Justice (the 'MOJ') initially relied on a number of FOIA exemptions to refuse the request. However, during the course of the Commissioner's investigation, the MOJ revised its position and said it was no longer relying on any of the previously cited exemptions. It provided the information held in full, namely a document "CJS [Criminal Justice System] Demand Modelling Documentation". The MOJ subsequently provided further information outside the scope of FOIA by way of advice and assistance. The complainant remained dissatisfied.
2. The Commissioner's decision is that, on the balance of probabilities, the MOJ does not hold any further requested information than has already been provided to the complainant.
3. No steps are required as a result of this notice.

#### **Request and response**

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4. On 11 June 2024, the complainant wrote to the MOJ and requested information in the following terms:

"In your '**Prison Population Projections 2023 to 2028, England and Wales**' bulletin, available online, there is reference to three models - see Figure TG3.1 (page 22): 'Key components of the prison projections modelling system'. In this diagram and

the document, there is allusion to the 'Prison Population Stock-Flow Model', the 'Courts and Sentencing Model', the 'Demand Projections Model'.

I would like to request any supporting documentation used by officials to prepare this modelling, including instruction manuals, guidance, and in-house evaluation reports about the method and methodology of this modelling.

I would like to request any further MOJ documentation that explains and inputs and calculations built into these three sub-models ('Prison Population Stock-Flow Model', the 'Courts and Sentencing Model', the 'Demand Projections Model')."

5. Following an extension to consider the public interest test, the MOJ provided its substantive response on 3 September 2024. It refused to provide the requested information citing the following FOIA exemptions:
  - Section 35(1)(a) – the formulation or development of government policy
  - Section 35(1)(b) – ministerial communications
  - Section 40(2) – personal information
6. The complainant requested an internal review on 4 September 2024. He acknowledged that some personal information may need to be withheld.
7. The MOJ provided its internal review outcome on 23 September 2024 in which it maintained its original position.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 30 September 2024 to complain about the way his request for information had been handled. He submitted the following grounds of complaint in relation only to section 35 of FOIA, which the Commissioner asked the MOJ to consider:

"I disagree with the application of an exemption from disclosure under section 35(1)(a) and (b) of the FOIA for my request. My request concerned the release of technical documentation for preparing published government statistics. The requested technical documentation (including evaluation reports) would provide the public with information about the methodology used to prepare these statistical outputs rather than ministerial decision-making. This factor is considered in the MOJ's response (letter dated 3 September 2024). However, the MOJ's use of FOI exemption suggests that this technical documentation is related

to policy formulation, policy implications and holding discussions about the prison population. In my opinion, the statistical outputs are separate matters from policy formulation. The requested information concerns the statistical methodology for producing statistical data and the MOJ analytical outputs. I did not explicitly request copies of documents related to policy formulation. Instead, I requested materials prepared by civil servants who would be involved in preparing the statistical outputs. Therefore, treating my request for the former (i.e., technical documentation) as the latter (i.e., documents related to policy formulation, such as meeting notes or correspondence), seems an inappropriate use of the section 35(1)(a) and (b) exemptions."

9. During the Commissioner's investigation, the MOJ issued a revised response, and wrote to both parties on 11 November 2024. The MOJ said that it had noted that the complainant had specified (at internal review), that he did not require any personal information or the information broken down to a level that would allow identification of specific individuals. The MOJ explained that it no longer wished to rely on any of the previously cited FOIA exemptions and said it held some information in scope of the request. It now disclosed a document entitled "CJS [Criminal Justice System] Demand Modelling Documentation" in full.
10. The Commissioner sought the complainant's view of the MOJ's revised response and disclosure.
11. The complainant told the Commissioner he remained dissatisfied, submitting the following concerns:

'I asked for "any supporting documentation used by officials to prepare this modelling, including instruction manuals, guidance, and in-house evaluation reports about the method and methodology of this modelling."

Notably, this is not a document that can be reasonably "used by officials to prepare" the models.

As the MOJ response states, this is a document used to "*assist with running/explaining the model*".

This does not provide a reasonable level of technical detail that would be required to prepare the model.

This is not an evaluation report about the method/methodology

This is not an instruction manual, or guidance related to preparing the models.

The MOJ letter suggests that this is the only document that exists related to the Ministry's modelling.

It is not credible to claim that this is the only document in the whole of the MOJ related to preparation or evaluation of the model.'

12. The MOJ responded on 18 November 2024 and maintained that it held no further information in scope of the request. It told the Commissioner:

"Given his [the complainant's] criticism of a lack of detail in our response we have also attached some modelling notes which we considered to be out of scope of the original FOIA request because they were prepared for the National Audit Office (NAO) and are not used routinely to prepare MOJ projections, but as they are available to officials running the model may help to provide [the complainant] with information he is seeking. The MOJ is happy to provide such information to the requester, for his advice and assistance, even though it is out of scope of the original FOIA request."

13. Subsequently, on 25 November 2024, the MOJ disclosed the out of scope modelling notes outside of FOIA, by way of advice and assistance.

14. On 27 November 2024, the complainant submitted further comments relating to the out of scope modelling notes, including his view that further information must be held.

15. There followed further exchanges in which the MOJ provided additional explanations and responses to the complainant's concerns, which the Commissioner has not replicated here as both parties have written copies.

16. The MOJ maintained that no further information was held relevant to the request. It said:

"The MOJ have committed wholeheartedly to supporting this FOI request and have devoted a substantial amount of time to search for any wider documentation that might have been used within the team that could assist [the complainant]. The MOJ believe that we have gone beyond the scope of the FOI to provide [the complainant] with model notes that we hoped might be of use to him."

17. The complainant remained dissatisfied. Therefore, the Commissioner has considered, on the balance of probabilities, whether any further recorded information in scope of the request is held by the MOJ.

18. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA.
19. FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. 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.

## **Reasons for decision**

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

20. 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."

21. The Commissioner is mindful that when he receives a complaint alleging that a public authority has stated incorrectly that it does not hold any further requested information, it is seldom possible to prove with absolute certainty whether the requested information is held. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the 'balance of probabilities' whether more information is held.
22. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether any further information is held and any other reasons offered by the public authority to explain why no further information is held. He will also consider any reason why it is inherently likely or unlikely that additional information is not held. For clarity, the Commissioner is not expected to prove categorically whether any further information is held; he is only required to make a judgement on whether further information is held on the civil standard of proof of the balance of probabilities.

23. Accordingly, the Commissioner asked the MOJ to explain what enquiries it had made in order to reach the view that it did not hold any further information. It said:

"We have engaged directly with the relevant modelling teams. These teams have searched extensively through shared and individual folders and inboxes and have discussed anything that could be of relevance. We have individuals who have been in these teams for several years and who regularly run the models, so we are acutely aware of the documentation used to support this modelling and have provided everything we have. We would additionally add that this model was part of an NAO audit within the past 6 months as part of which we again searched extensively for all relevant information to assist with their process. It is also worth noting that given the corporate history of the teams involved, a lot of handover and instruction is given orally via on-the-job training, and as a result we do not hold anything that could be considered as in scope of the original request."

24. The MOJ said any information held would be held electronically and provided the Commissioner with details of the searches it had undertaken in order to respond to this request, namely:

"The search terms and words used to check what information is held were: prison projection documentation, projection instruction manuals, projection guidance, prison stock-flow model documentation, prison stock-flow model instruction manuals, prison stock-flow model guidance, courts and sentencing model documentation, courts and sentencing model instruction manuals, courts and sentencing model guidance, prison population model notes, courts model notes, microsim model documentation, remand model documentation.

I can confirm that we have consulted with both the prison projection teams and court projection teams who have searched extensively through shared and individual folders alongside inboxes and have discussed anything that could be of relevance.

As [the complainant] requested, we have searched for documentation, instruction manuals, guidance, and evaluation reports for the methodology of this modelling. Team members, some of whom have been in this area for several years, run these models on a regular basis and so we have also been pragmatic and have discussed with all relevant teams whether there is anything of tangential relevance that we might be able to provide to [the complainant]. These team members have all

searched for relevant information and we have provided everything we hold to [the complainant].”

25. The MOJ also advised:

“We can confirm that no recorded information relevant to the FOIA request was deleted or destroyed.

The MOJ can confirm to the ICO that we do have a formal record management policy which suggests that background information relevant to analytical publications should be held for seven years which might apply to the information if it existed, but it does not.”

26. In reply as to whether there is a business purpose as to why the requested information is held, the MOJ said:

“More in-depth modelling documentation might help with the onboarding of new analytical staff who will be responsible for running the model. However, given the complexity of the modelling to upskill new staff we opt for direct handover between individuals alongside the documentation we have provided to the requester. The MOJ believe this to be an effective approach.”

27. The Commissioner asked the MOJ whether there are any statutory requirements upon it to retain the requested information. In response, the MOJ said:

“Not specifically. The projections are a National Statistic and The Statistics and Registration Service Act 2007 asks the UK Statistics Authority to promote and safeguard the quality of statistics which they do via the Statistics Code of Practice. This code of practice asks that related guidance should be easily accessible to users of National Statistics which is why we put extensive documentation on the modelling into the public domain as part of the regular publication (for example: Prison\_Population\_Projections\_2023\_to\_2028.pdf). We have provided any additional guidance held internally in response to [the complainant’s] request.”

## **Conclusion**

28. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed all the information that a complainant believes it must hold, it is seldom possible to prove with absolute certainty that it holds no further relevant information. However, as set out in the paragraphs above, the Commissioner is required to make a finding on the balance of probabilities.



29. Whilst the complainant believes that further information 'must' be held, he has not submitted any supporting evidence beyond his assertion. The Commissioner has noted that the MOJ voluntarily provided the 'out of scope' modelling notes in a bid to assist the complainant. This generated further questions and concerns from the complainant, all of which the MOJ responded to.
30. While appreciating the complainant's frustration that the MOJ does not hold information within the scope of his request, the Commissioner is mindful of the comments made by the Information Tribunal in the case of Johnson / MOJ (EA2006/0085)<sup>1</sup> which explained that FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".
31. The Commissioner considers that the MOJ contacted the relevant staff to consider whether or not any information was held in respect of the request and that its searches were therefore appropriate.
32. Having considered the various explanations provided by the MOJ during the course of his investigation, whilst taking account of the points raised by the complainant, the Commissioner is satisfied, on the civil standard of the balance of probabilities, that no further recorded information within the scope of the request is held.

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<sup>1</sup><http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>



## **Right of appeal**

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33. 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)

34. 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.
35. 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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