

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2017

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

Decision (including any steps ordered)

1. The complainant requested information relating to prison establishments. The Ministry of Justice (MoJ) provided some information within the scope of the request but refused to provide the remainder citing section 21(1) of the FOIA (information accessible to applicant by other means) and section 40(2) of the FOIA (personal information).
2. The complainant did not dispute the MoJ's application of section 40(2). Accordingly the Commissioner only investigated its application of section 21(1) to the information withheld by virtue of that exemption.
3. The Commissioner's decision is that the MoJ incorrectly applied section 21(1) in this case. However, as the information is now accessible to the applicant, she requires no steps to be taken.

Request and response

4. On 8 January 2017 the complainant made the following request for information:

"I am writing to formally request the following information in relation to ALL prison establishments in England & Wales

*Establishment Name
Establishment Address
Establishment Telephone
Establishment Fax
Governing Governor Name
Governing Governor Email*

*Operational Capacity
CNA
Reception Criteria*

I have checked the Prison Finder on the Justice website however from the first five establishments I have checked the details are outdated and incorrect. On that basis I would respectfully request that you do not refer me to this site as a point of accessing the information myself in that I am not able to rely on incorrect and outdated information".

5. The request for information was made via the 'WhatDoTheyKnow' website.¹
6. The MoJ responded on 20 January 2017. It confirmed it held the requested information. However, it refused to provide some of the requested information citing the following exemptions as its basis for doing so:
 - section 21 (information accessible to applicant by other means)
 - section 40 (personal information).
7. The complainant requested an internal review on 29 January 2017.
8. The MoJ provided a response on 30 January 2017, the content of which appeared to be the same as its response of 20 January 2017. The complainant expressed dissatisfaction with that response on 13 February 2017.
9. The MoJ ultimately sent the complainant the outcome of its internal review on 28 February 2017. It upheld its original position with respect to section 40(2) of the FOIA. With respect to his concerns about details being out of date, the MoJ told the complainant that Governors and Directors of contracted prisons had been asked to ensure their details were up to date on the government website.

Scope of the case

¹ https://www.whatdotheyknow.com/request/prison_establishment_updated_con#incoming-924455

10. The complainant contacted the Commissioner on 20 February 2017 to complain about the way his request for information had been handled.
11. The complainant did not dispute the MoJ's application of section 40(2) of the FOIA to the information withheld by virtue of that exemption. Rather, he disputed the MoJ's application of section 21 of the FOIA to the remaining withheld information. While he agreed that the information is publicly accessible, he did not consider that it was up-to-date.
12. Referring to the information available in the public domain, he told the Commissioner:

"... I detailed the fact that I had already consulted this information but found a lot of the content to be inaccurate and not up to date I would like them to send the information as the date requested [sic]".
13. The analysis below considers the MoJ's application of section 21 of the FOIA to the information withheld by virtue of that exemption.

Reasons for decision

Section 21 Information reasonably accessible to the applicant by other means

14. Section 21(1) of the FOIA provides that a public authority does not need to provide information under section 1 of the FOIA if that information is reasonably accessible to the applicant by other means.
15. Section 21 provides an absolute exemption. This means that if the requested information is held by the public authority, and it is reasonably accessible to the applicant by other means, it is not subject to the public interest test.
16. In order for section 21 to apply there should be another existing, clear mechanism by which the particular applicant can reasonably access the information outside of the FOIA. In addition, for section 21 to apply, it is necessary to consider whether the entirety of the information is reasonably accessible to the applicant.
17. Information is only reasonably accessible to the applicant if the public authority:
 - knows that the applicant has already found the information; or
 - is able to provide the applicant with precise directions to the information so that it can be found without difficulty.

18. The Commissioner's guidance² on the subject explains that, unlike consideration of most other exemptions in the FOIA, a public authority can take the individual circumstances of the applicant into account.

19. Her guidance also states:

"It is important to emphasise that a public authority must know that it holds the information in order to be able to apply the section 21 exemption. When a public authority receives a request for information it has a duty to establish whether it holds that specific information, as, under section 1(1)(a), the requester is entitled to be told whether the authority holds the information. In other words, it has a duty to confirm or deny whether it holds the requested information. Consequently, a public authority cannot claim the section 21 exemption on the basis that it probably holds the information or information of the same type. The authority must know whether it holds the information as specified in the request".

20. In light of the complainant's concern that the accessible information was not up-to-date, the Commissioner asked the MoJ to confirm what relevant information it held at the time of the request. She also asked it to explain why it considered that such information was reasonably accessible to the applicant by other means.

Is the information reasonably accessible to the applicant?

21. In its substantive submission to the Commissioner, the MoJ confirmed that having provided the complainant with a number of web links where he could access the requested information:

"[The complainant] did not mention that he had difficulties accessing the information on the internet. As a result, the MoJ considered that the information available on the internet was reasonably accessible".

22. The MoJ further explained:

"At the time of our initial response to [the complainant], the MoJ believed that the requested information was up to date. Once aware that some information may have been out of date, Governors and Directors of contracted prisons were asked to update their

² <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

information on the website. The information was updated in April 2017".

23. In its correspondence with the Commissioner, the MoJ confirmed:

"... that the MoJ have a business need to hold up to date internal information about prison establishments, including details of the Governors and Directors. This information is crucial to enable effective communications in the Department".

24. It also told her:

" ...I can confirm that the MoJ held the information at the time of the request. However, we were not aware that the information available was not updated. This has now been rectified and updated. I apologise for this".

25. The Commissioner considers that the MoJ failed to ensure that the information it held at the time of the request was the same as the information that was available to the applicant via the weblinks.

26. As the information in the public domain was not the same as the information held by the MoJ at the time of the request, the Commissioner does not consider that the requested information was reasonably accessible to the complainant. It was therefore not exempt from disclosure under section 21 of the FOIA.

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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.

Signed

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF