

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 December 2017

**Public Authority:** Ministry of Justice

**Address:** 102 Petty France  
London  
SW1H 9AJ

### Decision (including any steps ordered)

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1. The complainant has requested information about offenders recalled from licence from the Ministry of Justice (the "MOJ"). The Commissioner's decision is that the MOJ has failed to provide a response to the request within the statutory time frame of 20 working days. She requires it to comply with the request or issue a valid refusal notice as set out in section 17 of the FOIA.
2. The MOJ must take these steps within 35 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

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3. On 27 June 2017 the complainant wrote to the MOJ via the "*What do they know?*" website and made the following information request<sup>1</sup>:

*"Please can you provide me with answers to the below requests:*

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<sup>1</sup> [https://www.whatdotheyknow.com/request/recall\\_data\\_for\\_women\\_by\\_probati#incoming-1018994](https://www.whatdotheyknow.com/request/recall_data_for_women_by_probati#incoming-1018994)

*1. Number of offenders recalled from licence, by National Probation Service division and Community Rehabilitation Company area for each quarter by gender and ethnicity (for all quarters available)*

*2. Number of offenders recalled from licence by sentence type, and process time by gender and ethnicity (for all quarters available)*

*3. Total number of offenders not returned to custody after licence recall, by supervising body, and length of time since recall by gender and ethnicity (for all quarters available)*

*4. Breakdown of the number of offenders and the reasons for recall by each National Probation Service division and Community Rehabilitation Company area for each quarter by gender and ethnicity (for all quarters available)*

*5. What is the rate of recall by each National Probation Service division and Community Rehabilitation Company area for each quarter by gender and ethnicity (for all quarters available)?"*

4. On 21 July 2017, the MOJ wrote to the complainant with the following query:

*"I have considered your request for information but I am unable to answer it without further clarification. Section 1(3) of the FOIA does not oblige us to answer requests where we require further clarification to identify and locate the information requested.*

*So that I provide you with the right information, please can you define what you mean by 'rate of recall' [sic] and how you intend this measure to be computed. The MoJ does not have a standard definition of 'rate of recall' [sic], so we can't answer this part of your request at the moment. On receipt of this information I will continue to process your request".*

5. On 26 July 2017 the complainant replied as follows:

*"I would like to offer clarification on 'rate of recall' for this question:*

*5. What is the rate of recall by each National Probation Service division and Community Rehabilitation Company area for each quarter by gender and ethnicity (for all quarters available)*

*We are solely [sic] interested in women that are on post-custody release supervision.*

*By rate of recall, I mean the number of women recalled to custody (by each NPS division [sic] and CRC area) divided by the total number of women on post-release supervision (by that NPS division*

*and CRC area). This should be expressed as a percentage and worked out on a quarterly basis".*

6. On 8 August 2017 the MOJ wrote to the complainant again. It acknowledged the clarification but treated the clarification it as if it were a new request, advising that a further 20 working days was permitted.
7. On 22 September 2017 the complainant chased a response to her request.
8. Still having received no response, on 8 November 2017 the complainant requested an internal review into the handling of her request.
9. To date no response to either the original request or the request for an internal review has been provided.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 20 October 2017 to complain about the lack of response to her request. The Commissioner has considered this below.
11. On 16 November 2017 the Commissioner wrote to the MOJ. She asked it to provide a response within 10 working days and also to acknowledge receipt of her correspondence. No substantive response to the request had been provided to the complainant by the date of this notice and no acknowledgement has been received by the Commissioner.

### **Reasons for decision**

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#### **Section 10 – time for compliance**

12. The Commissioner considered whether the MOJ has responded to the request of 27 June 2017, clarified on 26 July 2017, in line with the provisions of the FOIA.
13. Despite the intervention of the Commissioner, the MOJ has not responded to the complainant's request for information or conducted an internal review into the handling of her request.
14. Section 10(1) of the FOIA states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.
15. From the information provided to the Commissioner in this case it is evident that the MOJ did not deal with the request for information in

accordance with the FOIA. In this case the MOJ has breached sections 1(1) and 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

## **Other matters**

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### *Internal review*

16. The Commissioner cannot consider the amount of time it takes a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA. However, the Commissioner has issued guidance in which she has stated that in her view internal reviews should take no longer than 20 working days to complete. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases, which this request was not.
17. The Commissioner would like to remind the MOJ that she routinely monitors the performance of public authorities and their compliance with the legislation. Records of procedural breaches are retained to assist the Commissioner with this process and further remedial work may be required in the future should any patterns of non-compliance emerge.

## Right of appeal

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18. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

19. 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.
20. 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 .....**

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**