

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 3 April 2019

**Public Authority:** The Parole Board for England and Wales  
**Address:** 3<sup>rd</sup> Floor, 10 South Colonnade  
London  
E14 4PU

#### Decision (including any steps ordered)

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1. The complainant requested information relating to prisoner recalls.
2. The Parole Board ultimately confirmed that it did not hold the requested information.
3. The Commissioner's decision is that, on the balance of probabilities, the Parole Board did not hold the requested information and it had therefore complied with the duty set out at section 1(1) (general right of access) of the FOIA.
4. The Commissioner requires no steps to be taken as a result of this decision.

#### Request and response

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5. Following earlier correspondence, on 16 July 2018 the complainant wrote to the Parole Board and requested information in the following terms:

*"Since the 7th April 2017 to the 31st March 2018 the Parole Board have sat 2 oral hearings in Northern Ireland for 2 prisoners who had been recalled back to prison.*

*So the information that I am requesting under FOI 2000 is how long did it take for these 2 recalled prisoners to get a decision on their recalls?"*

6. The Parole Board responded on 19 July 2018. It refused to provide the requested information, citing section 14(2) (repeated request) of the FOIA as its basis for doing so.
7. The complainant requested an internal review on 30 July 2018.
8. Following the Commissioner's intervention, the Parole Board sent him the outcome of its internal review on 7 December 2018. It apologised for the delay in responding. It also revised its position, accepting that the request was not a duplicate request.
9. The Parole Board explained that, as the data is held in a live case-management system, it is subject to change. It acknowledged that, while its response to the earlier request was 'two', having re-run the data for hearings in Northern Ireland in 2017-18, the answer was 'none'.
10. It concluded that, as no prisoners were recalled within the timeframe specified in the request, it was not able to answer how long it took for the recalled prisoners to get a decision on their recalls.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 17 December 2018 to complain about the way his request for information had been handled.
12. It is not in dispute that the request under consideration in this case was a follow-up to a previous request.
13. In light of the Parole Board's response to that previous request, the complainant was concerned that he was now being told that the two prisoner recalls did not exist.
14. The analysis below considers whether, on the balance of probabilities, the Parole Board held information within the scope of the request at the time the request was made.

### **Reasons for decision**

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

15. Section 1 of the 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."*

16. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
17. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. In addition she will consider reasons why it is inherently likely or unlikely that information is not held.
18. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
19. The Commissioner recognises that, in explaining why it did not hold the requested information, the Parole Board told the complainant:

*"The data is held in a live case management system and is subject to change as records are updated and quality assured".*
20. It confirmed that, having re-run the data for hearings in Northern Ireland in 2017-18:

*"...there are none in Northern Ireland for prisoners who had been recalled".*
21. In progressing her investigation, the Commissioner asked the Parole Board to describe the searches it carried out for information falling within the scope of the request and the search terms used. She also asked the Parole Board to explain why, having conducted a similar search in this case and in relation to the earlier request for information, the response was different ('none' as opposed to 'two').
22. In its substantive response to the Commissioner, the Parole Board explained that its case management system is jointly owned with Her Majesty's Prisons and Probation Service.
23. It told the Commissioner:

*"Records are updated and maintained from both sides. Occasionally errors are made, and a record updated incorrectly but this should be picked up when checking records".*

24. In the context of this case, the Parole Board said:

*"It is likely that one prisoner had two hearings listed in Northern Ireland during the year, and at the time of running the original data was incorrectly recorded as a recall, the error was subsequently picked up, and is now recorded correctly and so did not show up in the search".*

25. The Commissioner acknowledges that the requested information is of interest to the complainant. She also recognises that his expectation that information within the scope of this request was held by the Parole Board is not unreasonable in light of its earlier response.
26. While appreciating the complainant's frustration that the Parole Board did not hold the requested information, having considered the Parole Board's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that, on the balance of probabilities, the Parole Board did not hold the requested information at the time of the request.
27. The Commissioner therefore considers that the Parole Board complied with its obligations under section 1(1) of the FOIA.

## Right of appeal

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28. 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)

29. 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.

30. 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**