

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 November 2019

Public Authority: Ministry of Justice

Address: 102 Petty France

London

SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information relating to offending behaviour programmes.
2. The Ministry of Justice (MoJ) provided some information but denied holding the remainder. The complainant disputed the amount of information provided.
3. The Commissioner has determined that, on the balance of probabilities, the MoJ did not hold further information within the scope of the request. She therefore considers that the MoJ complied with its obligations under section 1(1) (general right of access to information) of the FOIA.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. In a letter dated 25 March 2019, which was received by the MoJ on 8 April 2019, the complainant requested information in the following terms:

"What are the current offending behaviour programmes?"

What is the programme acceptance criteria for each programme?"

At which prisons are they run?"

6. The MoJ responded on 14 May 2019. It confirmed it held some, but not all, of the information within the scope of the request. The MoJ

explained that it did not hold all the information in scope of the request as it was not the appropriate authority to contact on this subject.

7. The MoJ provided information relating to points (1) and (3) of the request. In that respect, it disclosed a table listing the Offender Behaviour Programmes (OBPs) and showing which prisons they were being delivered at.
8. With respect to the requested acceptance criteria for each programme, the MoJ told the complainant it was exempt from disclosure by virtue of section 21 (information accessible to applicant by other means) of the FOIA.
9. The MoJ also provided the complainant with:

"... an accompanying document which lists the Currently Accredited Programmes and sets out the broad criteria for acceptance".
10. It provided the complainant with links to that document and general information about OBPs.
11. Following an internal review the MoJ wrote to the complainant on 20 June 2019. It revised its position, no longer relying on section 21 of the FOIA, on the basis that the information was not reasonably accessible to the applicant.
12. However, the MoJ confirmed that it had provided him with all the information it held that related to his request.

Scope of the case

13. The complainant wrote to the Commissioner on 29 June 2019 to complain about the way his request for information had been handled. He was concerned at the '*lack of information provided*', specifically that the acceptance criteria, the information requested at point (2) of the request, had not been provided.
14. The analysis below considers whether, on the balance of probabilities, the MoJ held further information within the scope of part (2) of the request.

Reasons for decision

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. 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.
18. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, the MoJ held further information within the scope of part (2) of the request.
19. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.
20. During the course of her investigation, the Commissioner asked the MoJ to describe the searches it carried out for information falling within the scope of the request, and the search terms used. She also asked other questions, as is her usual practice, relating to how the MoJ established whether or not it held further information within the scope of part (2) of the request.
21. With respect to whether it held relevant further information relating to courses commissioned by HMPPS [HM Prison and Probation Service], the MoJ confirmed that it had provided the complainant with information:

"... on the basis of what we held about our accredited offender behaviour programmes (OBPs), and the prisons they were delivered at, as at August 2018".

22. It further explained that, following the Commissioner's intervention, it had checked with the HMPPS team ('the team') that deals with its national commissioning of OBPs:

"... who would hold all the relevant information on this matter. They confirmed, having checked the relevant electronic files, that the information provided for [the complainant's] request is all of the relevant information we hold on those courses".

23. Regarding the complainant's concern about the lack of information relating to the criteria for acceptance on the OBPs, the MoJ explained that while there are broad criteria for the types of prisoner a course may be suitable for:

"... each individual's rehabilitation needs are addressed on their own particular circumstances and personal background".

24. With respect to non-HMPPS/MoJ commissioned OBPs, the MoJ told the Commissioner that the team had confirmed that the MoJ did not hold further relevant information. The MoJ re-iterated what it had told the complainant, namely that not all Correctional Services Accreditation and Advice Panel (CSAAP) accredited OBPs are commissioned by HMPPS/MoJ.

The Commissioner's view

25. The Commissioner acknowledges that the MoJ told the complainant that not all offending behaviour programmes are commissioned by HMPPS and that the information held by the MoJ is limited to the programmes it commissions.

26. While appreciating the complainant's frustration that the MoJ did not hold further 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)¹ which explained that the 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".

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

27. Having considered the MoJ's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that, on the civil standard of the balance of probabilities, the MoJ did not hold further information within the scope of the request.
28. The Commissioner therefore considers that the MoJ complied with its obligations under section 1(1) of the FOIA.

Right of appeal

29. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.

31. 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