



HOLLESLEY PARISH COUNCIL

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25th November 2020

Helen Jarman
Senior Case Officer
Information Commissioner's Office,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire SK9 5AF

Dear Ms Jarman,

Re: Freedom of Information Act 2000 - Ministry of Justice – Previous Case Reference Number: FS50872002

I am the clerk of Hollesley Parish Council (HPC). I have been instructed by the Councillors of HPC to make a complaint to the Information Commissioner regarding the Ministry of Justice's (MoJ) handling of a Freedom of Information (FOI) request.

This complaint relates to a request for a copy of an 'operational assessment', apparently carried out by the MoJ in connection with a decision to house convicted sex offenders at HMP and YO1 Hollesley Bay open prison.

The request was made in a letter dated 5 August 2020. A reply dated 28 August 2020 was received from Mr Findlay, on behalf of the MoJ, confirming the existence of the 'operational assessment'. He refused to disclose the document, stating that Section 14(2) FOIA applied i.e. it had already been disclosed to the 'requester' (in this case HPC).

Having spent just a few minutes researching the Information Commissioner's published guidance on Section 14(2) it was apparent that this exemption relates to **information that has already been disclosed to the 'requester'**. As such, it appeared that Mr Findlay was of the view that HPC had already (or should have) been supplied with a copy of the document and that HPC's Councillors are 'time-wasters'. Another possible explanation was that Mr Findlay did not have a sufficient understanding of the FOIA and erred when choosing to rely on Section 14(2). HPC considered it more polite to respond to Mr Findlay's letter based on the first possible explanation.

When it was pointed out to Mr Findlay that the document had not actually been provided to HPC, and that a copy would be welcome (see letter dated 25 September 2020) this appears to have been construed as a request for a review.

HPC received a somewhat confusing letter from the MoJ's Ms Claire Nicholls dated 22 October 2020. In it, she suggested that both Section 35 and 14(2) might apply to our request – effectively saying that the document cannot be disclosed (Section 35) but it can be disclosed and has been disclosed (Section 14(2)).

In a letter dated 30 October 2020, Ms Nicholls again wrote to HPC stating that Mr Findlay's reliance upon Section 14(2) was "partially compliant" with the FOIA. She appears to be suggesting that although the document was not supplied to HPC i.e. the 'requester' – it has, apparently, been previously supplied to the Information Commissioner (see below for further details) and so this means that Mr Findlay was not wholly wrong.

Ms Nicholls then goes on to state that the MoJ is now relying upon Section 35 FOIA to withhold the document. As this section (and the associated Public Interest Test - PIT) was not used by Mr Findlay, HPC had no opportunity to challenge the use of this section, or the application of the PIT, in this case. The first, and only, PIT carried out by the MoJ in connection with this FOI request took place at the review stage.

The arguments HPC now make could have been put to the MoJ if Mr Findlay had relied upon Section 35 and not 14(2). It is therefore possible that Ms Nicholls may have come to a different conclusion - if Mr Findlay had used the 'right' section. Alternatively, she may have countered HPC's arguments, leading to HPC accepting the MoJ's position.

Unfortunately, HPC now has no option other than to bring this matter to the Information Commissioner's Office as its councillors do not accept Ms Nicholls' conclusions.

[Previous complaint - Ref: FS50872002](#)

I should make you aware that HPC has previously made a related complaint to the ICO – this was given the reference number shown above. This will also be apparent from reading the attached letters in connection with this new complaint.

HPC's Councillors accepted the Information Commissioner's findings in the above case and considered the points she had made. HPC acknowledged that the request covered a "wide range" of documents (see paragraph 70 of the Decision Notice). HPC also noted that despite the broad nature of the request, when it came to consideration of the Public Interest Test the Information Commissioner considered that the arguments, for and against disclosure, were "finely balanced" (paragraph 62).

Having read the Decision Notice, HPC's Councillors noted the MoJ's comment in paragraph 44 - regarding the information "that can still not be disclosed at this stage". From this, HPC did not conclude that the information requested could never be disclosed, i.e. the Section 35 FOIA exemption is not one that the MoJ can rely on indefinitely.

The Information Commissioner did direct the MoJ to disclose a "small amount of withheld information" (paragraph 66). Just one document was subsequently provided to HPC by the MoJ – a report sent to the 'Prisons Minister' dated 13.07.2018. This document is explored in more detail below. It was noted that it referred to an 'operational assessment' that had clearly been carried out, and concluded, prior to that date.

The Information Commissioner considered it inappropriate for HPC to know what information had been supplied to her by the MoJ. HPC therefore had no possible way of knowing, for certain, that the 'operational assessment' formed part of that information. It was not until the MoJ's Mr Findlay disclosed this fact (in response to HPC's current FOI request) that HPC became aware that this specific document had, apparently, been seen by the Information Commissioner.

I have used the word 'apparently' above as the MoJ have not provided HPC with any evidence to confirm that this document was supplied to the Information Commissioner. Having read her comments in paragraph 16 of the Decision Notice and based upon HPC's own dealings with the MoJ, in connection with these FOI requests, HPC's councillors no longer have complete confidence in the assurances made by the MoJ's employees.

Whilst HPC has received no proof that the 'operational assessment' was considered as part of the evidence provided to the Information Commissioner it is patently obvious that she conducted a thorough investigation. HPC now considers it more likely, than not, that she did have sight of this document and believes it would make sense to proceed on the basis that it did form part of the evidence considered by her.

More questions than answers

As I have already stated, HPC's previous complaint to the ICO resulted in just one document being disclosed by the MoJ. Having taken time to consider the document HPC's Councillors were of the view that its content did nothing to allay the genuine concerns of many of Hollesley's residents. In fact, it was felt that the document gave rise to more questions than it answered. Some of those questions are set out below.

1. What is the MoJ still trying to hide?

In common with most people, HPC's councillors first thought on seeing the redacted document was, "what is under all that black ink?" (see attached copy). The Information Commissioner clearly stated that the MoJ should redact "personal information" that might identify its "junior officials" (paragraphs 3 and 69).

It was soon apparent that much of the hidden text related to information that had nothing to do with the personal information of junior officials. The names of prison establishments were redacted. The fact that HMP Leyhill and HMP North Sea Camp already house sex offenders is common knowledge. The fact that a decision was also made to house sex offenders at HMP Thorn Cross is also common knowledge. This was widely reported in the media over two years ago.

Details that clearly relate to the (ex) MP for the Thorn Cross area have also been hidden. All details relating to 'Annex B' have also been kept secret – are we to conclude that his was simply a list of the names of junior MoJ officials?

What possible reason can the MoJ have for hiding this information from the people of Hollesley?

2. Why have the people of Hollesley been treated less favourably than those living near HMP Thorn Cross?

The MoJ announced its plans to house sex offenders at HMP Hollesley Bay and HMP Thorn Cross at the same time. I hereby supply the URLs of three reports from a newspaper – The Warrington Guardian – published at that time.

<https://www.warringtonguardian.co.uk/news/16376191.sex-offenders-serve-remainder-custodial-sentence-hmp-thorn-cross/>

<https://www.warringtonguardian.co.uk/news/16382299.read-letter-sent-residents-sex-offenders-thorn-cross-prison/>

<https://www.warrington-worldwide.co.uk/2018/08/10/no-plans-to-place-sex-offenders-at-thorn-cross-for-foreseeable-future/>

It is clear from these reports that information, only provided to HPC following the Information Commissioner's intervention, was readily provided to those living near HMP Thorn Cross over two years ago.

A letter was sent to residents by the Prison's Governor, Mick Povall. It contained a great deal of information – including sections reproduced from the "core script" found in the released document (see article dated 27 July 2018).

An "event" was even planned at the prison. It is unclear if this event took place. There was probably no call for it as the MoJ very quickly abandoned its decision to house sex offenders at HMP Thorn Cross.

In the article dated 10 August 2018 it was reported that the MoJ were forced to issue an apology to the people living around HMP Thorn Cross. It went on to report that the MoJ had made a statement announcing that, "Any future changes to the population make-up at HMP Thorn Cross will not be sought without prior engagement with local stakeholders". This would appear to be an acknowledgement of the fact that no such "prior engagement" took place there – in the same way that there was no prior engagement with the people of Hollesley.

Further to this point, HPC would like to refer to paragraphs 47 to 49 of the Information Commissioner's previous Decision Notice. Whilst it is not disputed that engagement has subsequently taken place between HPC and the MoJ, following their announcement, we would like to make it absolutely clear that this has only occurred because it was instigated by HPC. HPC organised a public meeting and asked the Governor at that time, Mr Declan Moore, to attend to explain what was planned by the MoJ. HPC made the request that led to two Councillors travelling to Westminster. HPC pushed for regular meetings with the current Governor of HMP and YOI Hollesley Bay.

For the MoJ to suggest that their actions represent a "willingness on the MoJ's behalf to be as transparent as possible" and that they have sought to address our concerns over a prolonged period is something that is strongly refuted.

All that we are trying to do is to understand why, out of all the open prisons in England and Wales, HMP and YOI Hollesley Bay was chosen. We have been trying to establish the answer for over two years now. It was only following the Information Commissioner's intervention that information - readily supplied to others - was disclosed to us (and even that was redacted in a way that does not support the MoJ's claim that they are being as "transparent as possible").

3. Does 'politics' have any part in the MoJ's decision?

It is clear from these newspaper reports that there was local opposition to the MoJ's plans for HMP Thorn Cross. There was (and is) similar opposition to the plans for HMP and YOI Hollesley Bay. What sets the two cases apart is the fact that there was also political opposition to the plans for HMP Thorn Cross. It was reported that the local Labour MP, Rt Hon Faisal Rashid, along with two Liberal Democrat Councillors, the local Police and Crime Commissioner and the Chief Executive of Warrington Borough Council - all raised concerns.

The only people trying to represent the concerns of the people of Hollesley (and neighbours such as those living in Boyton) are the members of Hollesley Parish Council.

Hollesley is a parish in the Suffolk Coastal electoral area - widely accepted as a 'safe' Conservative 'seat'. The Warrington 'seat', in which HMP Thorn Cross is situated, would be best described as a marginal one. Mr Rashid has since lost his 'seat' to a Conservative - who holds it with a very slim majority.

HPC noted that our local MP the Rt Hon Therese Coffey should - according to the document released - have been contacted and advised of the MoJ's decision at an early stage. HPC has written to her seeking an explanation of what she knew and when - (see letter attached). Despite a 'follow up' letter being sent to her HPC has yet to receive any response.

Would it be unreasonable to question whether 'party politics' has played any part in the decision to proceed with plans for HMP Hollesley Bay, whilst dropping those for HMP Thorn Cross?

4. How good was the 'operational assessment'?

The single piece of information that has been disclosed to HPC suggests that an 'operational assessment' took place. What form this assessment took, how it was conducted and by whom, remains unknown. This assessment "recommended" housing sex offenders at HMP and YOI Hollesley Bay (see Annex A - paragraph 4 - of the disclosed document).

This same paragraph has the name of another prison establishment - similarly "recommended" - hidden under black ink. Clearly this is HMP Thorn Cross - the unredacted version was readily supplied, by the MoJ, to the people living near that prison (see Warrington Guardian article) over two years ago.

If that assessment resulted in a sound decision, i.e. to hold sex offenders at the two prisons - this begs the question, "Why did they abandon the plans for Thorn Cross so readily?" A well-researched, fair assessment should be capable of standing up to scrutiny. If the MoJ made the right decision in their assessment one would reasonably expect them to put up some sort of fight - and back the person (or people) who wrote it. This did not happen. One possible explanation for this would be that the decision to house sex offenders at Thorn Cross was not a sound one - the MoJ knew that it would not stand up to scrutiny.

One of the points made in the Warrington Gazette relates to the proximity of HMP Thorn Cross to a primary school. This fact seems to have had some bearing on the MoJ's 'U-turn'. Did the MoJ's assessment take into consideration key issues such as the safety of school children in the communities where their open prisons are located? It appears not.

Hollesley also has a primary school. It is accepted that it is not as close to the open prison as is the case at Thorn Cross. Hollesley is, however, a rural area and a secluded footpath runs from the open prison right past the boundary of the school. As you can imagine this is a great concern to parents of children at the school.

We fully expect that when this assessment is eventually disclosed (perhaps not in response to this complaint, but one day) that it will demonstrate that those responsible for this "recommendation" will have been aware of key facts such as this and gave them due consideration - prior to making their decision.

The MoJ appears to have accepted that they 'got it wrong' at Thorn Cross i.e. their assessment was wrong. The same assessment "recommended" Hollesley Bay.

5. "Greater geographical options?"

The MoJ's statements regarding increased numbers of convicted sex offenders is not disputed. Nor is the fact that offenders need to be rehabilitated and that part of that process involves offenders being sent to open prisons.

Looking at Annex A – the "core script" – and cutting through the 'spin', the only point which offers any explanation as to why HMP and YOI Hollesley Bay and HMP Thorn Cross were "recommended" is found in paragraph 4. In essence it appears to suggest that one (or possibly the only) reason for choosing these two prisons was to increase "geographical options".

This would appear to be a perfectly reasonable objective. With only HMP Leyhill and HMP North Sea Camp housing sex offenders in England and Wales (Gloucester and Lincolnshire respectively) it might make sense to have establishments elsewhere. With Leyhill in the west of England and North Sea Camp on the east coast one has to ask, "How exactly is the MoJ increasing geographical options by adding Hollesley Bay to the list - when it is also on the east coast?"

We are led to believe that one of the MoJ's goals is the resettlement of offenders into their local areas. If the evidence confirms that two thirds of the nation's sex offenders come from Norfolk then the recommendation for HMP Hollesley Bay might make sense. Adding HMP Thorn Cross (in the north west) to the list, might have gone some way to achieving this stated objective. It would not appear to be a key factor when Hollesley Bay was recommended.

Conclusion

These are just some of the questions that remain unanswered. Clearly, HPC does not expect the Information Commissioner to provide the answers – that is a job for the MoJ. As they are not prepared to justify their decision, HPC's only option is to rely upon the Freedom of Information legislation and hope that on this occasion the "finely balanced" scales tip in favour of disclosure.

HPC acknowledges that it would be pointless to argue against the Information Commissioner's previous ruling that all the information, she previously considered, fell under the Section 35 exemption. We have had to proceed on the basis that the 'operational assessment' would have been a document that was previously considered. The MoJ have clearly stated that it was.

In her review, the MoJ's Ms Nicholls, did not state that she had given any consideration as to whether the requested document still fell under that exemption. It may well do, but she appears to have proceeded on the basis that it remains "self-evidently" exempt (as the Information Commissioner put it, in paragraph 28 of her previous Decision Notice).

The key issue would appear to be consideration of the Public Interest Test in connection with the one document now requested - the 'operational assessment'. For HPC's previous complaint I set out reasons which favoured disclosure for a whole raft of documentation. The arguments I put forward were based upon the ICO's published guidance. Those same arguments still stand as this

document apparently formed part of the information previously requested. To repeat those points again would simply be duplication.

The Information Commissioner did choose to reproduce one of the statements I made previously – in paragraph 42 of her Decision Notice.

“How can the public ever be confident that government officials have made ‘well-informed decisions’ if there is no means of obtaining the documentation upon which that decision has been based?”

This statement remains as true now as it did then. The content of the single document already released to us (and the further questions it raises) along with the MoJ’s handling of this new FOI request has done absolutely nothing to inspire confidence in the officials who made the decision to house sex offenders in Hollesley. I would stop short of suggesting wrongdoing on their part but would say that there is a genuine belief, here in Hollesley, that they might have been doing things wrong.

Ms Nicholl’s arguments in support of withholding the ‘assessment’ run to three paragraphs. The first is largely a repetition of the points made for our previous request. It includes a suggestion that would appear to be considered irrelevant (if one reads the ICO’s guidance) – e.g. the information might be misunderstood. The second and third effectively say the same thing – the Information Commissioner has previously said that they did not have to disclose the document, so they do not have to disclose it now.

Her assessment of the PIT is largely based on the position as it was when HPC made its previous request, over a year ago. The previous PIT covered a whole raft of documentation – not the one specific document now requested. As such, her conclusions are little more than an out-of-date generalisation. This approach would appear to be contrary to the ICO’s guidance, which states that:

“When carrying out the public interest test a public authority should consider the circumstances at the time at which it deals with the request”.

On behalf of Hollesley Parish Council I would say that I hope that this is a complaint that you are prepared to investigate. Thank you for your consideration.

Yours sincerely,

Judi Hallett

Clerk to Hollesley Parish Council