



Disclosure Team
Ministry of Justice
102 Petty France
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Mrs Judi Hallett
Hollisley Parish Council
Email: hollesleyparishclerk@gmail.com

data.access@justice.gov.uk

30 October 2020

Dear Mrs Hallett,

Freedom of Information Act (FOIA) Outcome of Internal Review – 200925018

Thank you for your request received on the 25 September 2020, which has been treated as an Internal Review (IR). This IR is in response to your FOIA request **200805015**, in which you asked for the following information from the Ministry of Justice (MoJ):

“... we would like to request a copy of the said ‘Operational Assessment’ that was used to recommend introducing men convicted of sexual offences to HMP Hollisley Bay.”

The purpose of an IR is to assess how your FOIA request was handled in the first instance and to determine whether the original decision given to you was correct. This is an independent review: I was not involved in the original decision.

The response to your FOIA request 200805015, confirmed that the information requested was held and in accordance with section 14(2) of the FOIA, the MoJ was not required to reply to you if any substantially similar, or identical request, had been received within a reasonable time period since complying with your original request. After careful consideration I have concluded that this response was partially compliant with the requirements of the FOIA. Please see the outcome section below for a full explanation.

Statutory deadline

The statutory deadline for your request was 3 September 2020, and the response was provided on 28 August 2020. The response was therefore compliant with the timeliness requirements of the FOIA.

Outcome

Having considered your request, I have concluded that the response we provided, dated 28 August 2020, was partially compliant.

In your request you reproduced guidance from the Information Commissioner’s Office (ICO) stating that section 14(2) of the FOI Act may only be applied when all three criteria have been fulfilled including:

“The authority has previously provided the information to the requester or confirmed that it is not held in response to the earlier FOIA request;”

This section of the criteria was not fulfilled as the operational assessment had not previously been provided to you directly. Rather, it was provided as part of the documentation that was submitted to the ICO, who were acting on your behalf following your appeal of the MoJ’s Internal Review (reference: IR 190523002). The ICO then determined what information should be disclosed and what information was appropriate to withhold. The ICO upheld the MoJ’s decision not to disclose this information however they instructed the MoJ to provide you with one document namely the *2018.07.13 Submission of Handling of Hollesley Bay* in a redacted format which was provided to you on 18 May 2020.

The MoJ complied with the ICO’s Decision Notice and is not required to disclose further parts of the information covered in your initial request dated 15 April 2019 (reference: FOIA 190415037 and subsequent ICO reference FS50872002) and repeated in your request dated 5 August 2020.

In conclusion I believe the original response you received on 28 August 2020 was partially incorrect, in the respect that the MoJ had not provided the operational assessment directly to you, for which I apologise. However, I judge the information is still exempt from disclosure under Section 35 (1) (a) of the FOIA, because it relates to the development of government policy.

Section 35 is a qualified exemption which means that the decision to disclose the requested material is subject to the public interest test. When assessing whether or not it was in the public interest to disclose the information to you, we took into account the following factors:

Public interest considerations favouring disclosure

- There is a general public interest in openness and in knowing what informs decisions, and knowing these decisions have been taken fairly. It is arguable disclosure of the information may lead to a greater understanding of the decision-making process and providing this information would be consistent with the government’s commitment to transparency. Fostering an ethos of transparency in public services.
- Providing this information would reassure the public that departmental work is attended to appropriately.
- It would ensure that key stakeholders are kept informed about developments in their local area.

Public interest considerations favouring withholding the information

- It is essential to ensure the integrity of the formulation and development of previous and future policies and plans within the MoJ and across government. Disclosure may cause public debate based on an incomplete picture of the policy. Release of information out of context from the proposals may also lead to a misunderstanding of the nature of these and any future changes. There is a risk that premature disclosure of the data may lead to incorrect expectations of government departments and their agencies based on isolated comments.

- On 6 May 2020 the Information Commissioner's Office (ICO) provided their decision on the complaint (Reference: FS50872002) submitted by you, Mrs Judi Hallett, on behalf of Hollesley Parish Council. The ICO upheld the MoJ's decision not to disclose albeit apart from one document titled *2018.07.13 Submission of Handling of Hollesley Bay and [REDACTED]*. This document was sent to you on 18 May 2020. As the ICO upheld our decision not to disclose we do not therefore consider that the document *Operational Assessment*, should be disclosed.
- The Operational Assessment you request was part of the document set submitted to the ICO's investigation into your complaint (reference: FS50872002). After investigation, the ICO upheld the MoJ's decision to not disclose but instructed us to provide you with the *2018.07.13 Submission of Handling of Hollesley Bay and [REDACTED]*. HMPPS subsequently provided you with the document *2018.07.13 Submission of Handling of Hollesley Bay and [REDACTED]* on 18 May 2020 via email.

On balance, we consider the public interest favours withholding the information at this time.

Appeal Rights

If you are not satisfied with this response you have the right to apply to the Information Commissioner's Office (ICO). The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if she considers that we have handled it incorrectly.

You can contact the ICO at the following address:

Information Commissioner's Office

<https://ico.org.uk/Global/contact-us>

Yours sincerely

Claire Nicholls
HMPPS Prison Supply Directorate.