

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 June 2020

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information relating to Swaleside Prison and the Chaplaincy. The Ministry of Justice (MoJ) disclosed information in response to the multi-part request. The complainant believed that it held more information within the scope of one part of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the MoJ has disclosed to the complainant all the information it holds falling within the scope of that part of his request.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 17 May 2019, the complainant wrote to the MoJ and requested:
 - "1. Can you tell me when HMP Swaleside last had a Rastafarian – be a regular employed Man/Female Chaplain?
 2. Can you tell me when the last time a Rastafarian Chaplain visited HMP Swaleside was?
 3. Please can you provide/or show/emails/itemised list where phone calls have been made to other Chaplaincy HQ added with the same for Rastafari Heritage whom are basically in charge in unison with Chaplaincy HQ regarding the employment of Rastafarian Chaplains in this country/English Prisons * for 2017/2018 and

*current up to date 2019 so far/*since January 2019* from HMP Swaleside.*

*So in essence consolidated with the afore mentioned question - I want to see what steps + measures HMP Chaplaincy have liaised communicated/emails/phone calls with the above/*Rastafari Heritage/Chaplaincy HQ in the last 3 yrs*.*

4. How many Rastafarian prisoners at HMP Swaleside been banned from the chapel in the last 3 years?

5. In the last 3 years, how many other prisoners from other faith denominations been banned? Please can you provide a breakdown of this in the simplest way/layman terms i.e. 10 Muslims in 2017 – 2 Rastafarians etc.

6. How many Rastafarians were registered in 2017, 2018 + currently now/2019 in HMP Swaleside.

7. What is the correct procedure regarding contacting a Chaplain from a prisoner's faith denomination when they have a bereavement. i.e. losing their Mother? I.e. what steps, measures, and protocols/adherences does the Prison Service/Chaplaincy have to follow? By law!

8. By Law is the Prison Service/ legally obliged to make sure that all Faith denomination festivals are*

*Adhered to /*A day off work*

*Celebrated with a communal gathering/*regarding the men/Women/Transgender etc. with whom it concerns.*

*9. Can you tell me the full procedure when a prisoner is banned from the chapel i.e. is there a specific form to appeal? What contingencies do the Chapel have to Adhere to Etc.! To make sure a prisoner isn't penalised/*wrongly removed.*

10. What measures + steps do the Prison Service have to take when a man has lost a Mother or Father/ Bereavement policies in regarding to consoling the prisoner*

5. The MoJ responded, in correspondence simply dated 'June 2019'. It provided information in response to each part of the multi-part request.
6. The complainant was dissatisfied with one aspect of the response, namely the MoJ's response to part (4) of the request.
7. Following an internal review the MoJ wrote to the complainant on 24 July 2019. It maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 28 August 2019 to complain about the way part (4) of his request for information had been handled. He disputed the MoJ's response to that part of the request.
9. The complainant did not dispute the timeliness of the MoJ's response. It is accepted that, although his request for information was dated 17 May 2019, it was not received by the MoJ until 11 June 2019.
10. In the course of his correspondence with the Commissioner, the complainant raised a number of issues which are outside the scope of the Commissioner's remit. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (FOIA).
11. The analysis below considers whether the MoJ conducted the necessary searches to identify all the information it held within the scope of part (4) of the complainant's request, as required by section 1 of the FOIA.

Reasons for decision

Section 1 - general right of access

12. 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."

13. 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.
14. 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.

15. With respect to part (4) of the request, the MoJ told the complainant:

"There has been [sic] three Rastafarian residents excluded by the Governor from Chaplaincy activities and Corporate Worship in the last 3 years".

16. The complainant believed that a greater number of Rastafarian prisoners had been banned from the chapel in the timeframe specified in the request.

17. The MoJ subsequently confirmed to the complainant that it had contacted HMP Swaleside, the holders of this information, and asked them to do a further check of their records. It advised that that check had verified that the information provided to him was all the information that was held.

18. 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 part (4) of the request, and why these searches would have been likely to retrieve any relevant information.

19. She also asked other questions, as is her usual practice, relating to how the MoJ established whether or not it held information within the scope of part (4) of the request.

20. In a comprehensive submission to the Commissioner, the MoJ told her:

"The term 'ban' is not the correct terminology in this situation. The establishment class it as an 'Exclusion'".

21. The MoJ provided the Commissioner with the definition of an exclusion, taken from *'The Prison Service Instruction (PSI) 05/2016 – Faith and Pastoral Care for Prisoners'*¹.

22. The MoJ also provided her with details of the searches it had conducted for the requested information. In that respect it explained:

"When a prisoner is excluded from the chaplaincy and religious teachings, it is recorded by the Governor authorising the exclusion

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<https://webarchive.nationalarchives.gov.uk/20161006124500/http://www.justice.gov.uk/offenders/psis>

on a paper copy, which is filed on the prisoner's Chaplaincy Record. An additional copy is saved electronically on the Chaplaincy shared drive... An entry is also added to the prisoner's Cnomis [Computer-National Offender Management Information System] record....".

23. The MoJ confirmed that, in order to respond to this request, the Chaplaincy filing system and their electronic copies of Exclusion paperwork had been searched. It also confirmed that, following the Commissioner's intervention, checks of prisoner records had been made.
24. The Commissioner acknowledges that the requested information may be of interest to the complainant. However, while appreciating the complainant's frustration about the amount of information held by the MoJ, the Commissioner is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ (EA2006/0085)*² 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".
25. Having considered the MoJ's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that the MoJ carried out necessary searches to identify the requested information that was held at the time of the request. The Commissioner is satisfied that the MoJ conducted adequate searches that were necessary for identifying all the information it held within the scope of part (4) of the request.
26. On the balance of probabilities, the Commissioner is satisfied that the MoJ did not hold further information within the scope of part (4) of the request.
27. The Commissioner therefore considers that the MoJ complied with its obligation under section 1(1) of the FOIA

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

Right of appeal

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@justice.gov.uk
Website: 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

**Laura Tomkinson
Group Manager
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Wycliffe House
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SK9 5AF**