

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 October 2011

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

Decision (including any steps)

1. The complainant made a four-part request and subsequently complained about the non-provision of copies of some assessment forms. The public authority advised the complainant that these were exempt under section 31(1)(f) of the FOIA. This finding was based on the public authority concluding that the complainant could only access the information by viewing it on a secure computer system which was restricted to vetted personnel.
2. The Information Commissioner's decision is that the public authority does hold the requested information in paper format, albeit as part of an outdated system.
3. The Information Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - it should either provide a copy of the requested information or issue a refusal notice stating on what grounds it is not available for disclosure.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information Commissioner making written certification of this fact to the high court (or the court of session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. The complainant is a prison inmate.

6. The request is for forms which formed part of an assessment system which is now obsolete. The completed assessments were, and still are, made available to the inmate concerned when requested.
7. According to the OASys (Offender Assessment System) Manual which is currently in use:

"OASys is a new national system for assessing the risk and needs of an offender. The decision was taken to develop a new risk assessment system because none of the existing tools and inventories fully met the requirements specified by the project team. The Prison and Probation Services have jointly designed the system.

OASys is designed to:

- *assess how likely an offender is to be reconvicted*
- *identify and classify offending-related needs, including basic personality characteristics and cognitive behavioural problems*
- *assess risk of serious harm, risks to the individual and other risks*
- *assist with management of risk of harm*
- *link the assessment to the supervision or sentence plan*
- *indicate the need for further specialist assessments*
- *measure change during the period of supervision/sentence".*

Request and response

8. On 26 May 2011, the complainant wrote to the public authority and requested information in the following terms:
 1. *Blank copies of the OASys 1 and OASys 2 paper assessment forms;*
 2. *Any guidance or information published for staff which updates the OASys manual;*
 3. *Copies of the scoring schedules used in calculating scores on OASys 1 and OASys 2; and*
 4. *The name and contact details of anyone to whom complaints about OASys should be addressed.*
 9. The public authority responded on 24 June 2011. It provided responses to parts (2) to (4). In respect of part (1) it advised that the information was exempt by virtue of section 31(1)(f) of the FOIA.
 10. On 30 June 2011 the complainant sought an internal review. On 28 July 2011 the public authority responded, maintaining its original position.
-

Scope of the case

11. On 1 August 2011 the complainant wrote to the Information Commissioner to complain about the way his request had been handled. He asked for the Information Commissioner to consider whether or not the OASys 1 and OASys 2 assessment forms (the "Forms") should be disclosed. He also raised issues about part (4) of his request which are outside the Information Commissioner's jurisdiction so have not been considered.

Reasons for decision

12. The public authority has given the complainant the following reasons for non-provision of the requested information.

At refusal

"I can confirm that the department holds the information that you have asked for, but as the forms that you have requested are only available in electronic format via the OASys programme and cannot be printed they will not be disclosed to you, as they are considered to be exempt from disclosure.

The department is not obliged to provide information if its release would be likely to prejudice the maintenance of security and good order in a prison ... I have considered whether it would be in the public interest for you to be permitted access, despite the exemption being applicable and I continue to take the view that, on balance, at this time the public interest is better served by withholding access to the OASys software programme under section 31(1)(f) of the Act".

At internal review

"I can confirm that blank OASys assessment forms are not made available and I understand this is because all OASys assessments must be recorded on the OASys system. I also understand that the questions asked in the assessment are those shown on the print-out of an assessment. This means that if an offender has a copy of his or her assessment, he or she will already have a list of the questions contained in the assessment.

Viewing the OASys assessment forms requested is only available if you are granted access to the NOMS Quantum system but such

access would disclose sensitive security data. This is why your request has had to be refused. I can see that you have not specifically requested access to the Quantum system. However because blank OASys assessment forms are not available to prisoners and assessments must be recorded on the OASys system, the issue of access to quantum is again relevant".

13. The Information Commissioner notes that the complainant has not asked for access to the Quantum system. Furthermore, he has not asked for access to the current regime, rather he has specified blank copies of forms which formed part of a system which has since been superseded. Although it may seem pertinent for the public authority to consider the current regime rather than something that is outdated, the requests clearly refer to copies of the older forms rather than the current OASys system. The public authority should have considered the actual request which was made.

14. On making enquiries about the specific forms requested the Information Commissioner was been advised by the relevant department within the public authority that:

"They are no longer in use, there is no longer an OASys 1 or 2 assessment. Paper copies were never used in the prison service only prior to 2005 within the probation service".

He was also advised that the probation service (a separate public authority for the purposes of FOIA) may still hold copies of the forms as they used to conduct assessments in this manner.

15. The Information Commissioner was further advised that the forms *"used to be in the old user manual"*. When asked whether or not a copy of this older manual was still held by the public authority the Information Commissioner was advised: *" We have user manual but the forms within are out of date as I have already said they are no longer in use"*. Reference was also made to potential copyright issues.

16. The Information Commissioner therefore concludes that the public authority does have copies of the requested forms. Accordingly, the public authority should either provide the requested information or issue a valid refusal notice stating why it is exempt from disclosure.

17. As the public authority has not complied with section 1 of FOIA it has committed procedural breaches.

Other matters

18. It is important to note that FOIA provides access to 'recorded information'. Therefore, if the complainant already has a copy of an assessment which was provided to him using the older forms then it may be that the public authority has already provided him with the requested information.

Right of appeal

19. 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: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

20. 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.
21. Any Notice of Appeal should be served on the tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Dated the 17th day of October 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**