

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 December 2020

Public Authority: Northern Ireland Prison Service

Address: Dundonald House
Upper Newtownards Road
Belfast
BT4 3SU

Decision (including any steps ordered)

1. The complainant has requested information from the Northern Ireland Prison Service (NIPS) regarding prisoners who have attempted to smuggle drugs into prisons. The NIPS refused to disclose the requested information, citing section 31 of the FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the NIPS has incorrectly applied section 31 of the FOIA to the requested information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose the requested information to the complainant.
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 Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background to the request

5. Rule 32 is contained in the Prison and Young Offenders Centres Rules (Northern Ireland) 1995 as amended and is related to restrictions on association.

"Where it is necessary for the maintenance of good order or discipline, or to ensure the safety of officers, prisoners or any other person or in his own interests that the association permitted to a prisoner should be restricted, either generally or for particular purposes, the governor may arrange for restriction of his association".

6. The Care and Supervision Unit (CSU) is the area where prisoners are relocated to, and have their access to association restricted, when they are suspected of being in possession of unauthorised articles such as drugs. Prisoners will also be detained in this unit should they be suspected or confirmed as being involved in incidents which affect the security of the establishment.

Request and response

7. On 28 December 2018, the complainant wrote to the NIPS and requested information in the following terms:

"Over the past 12 months how many prisoners A - Roman Catholic, B - Protestant and C - OTHERS have been placed in the CSU under rule 32 as a result if a drug dog sitting at a prisoner coming back from home leave.

Over the past 12 months how many prisoners A, B ,C have been placed in the CSU under rule 32 as a result of information received that they were trying to convey drugs into the prison while coming back from home leave.

Over the past 12 months what is the average time days spent in the CSU by prisoners A, B, C after being placed on rule 32 as a result of a drug dog sitting after a prisoner came back from home leave.

Over the past 12 months what is the average time days spent in the CSU by prisoners A, B, C after being placed under rule 32 as a result of information being received that they were trying to convey drugs into the prison when coming back from home leave."

8. The NIPS responded on 15 January 2019, stating that it held the requested information but refusing to disclose it, citing section 31 of the FOIA as a basis for non-disclosure.
9. The complainant sought an internal review of the NIPS' decision on 1 February 2019, to which he received a response from the NIPS on 11 March 2019. The reviewer upheld the original decision.

Scope of the case

10. The complainant contacted the Commissioner on 11 April 2019 to complain about the way his request for information had been handled.
11. The Commissioner has considered the NIPS' handling of the complainant's request and in particular its application of the exemption set out in section 31 of the FOIA.

Reasons for decision

Section 31 – law enforcement

12. Section 31 of the FOIA creates an exemption from the right to know if disclosing the information would, or would be likely to, prejudice one or more of a range of law enforcement activities. Section 31 can be claimed by any public authority, not just those with law enforcement functions.
13. In order to engage a prejudice-based exemption such as section 31 there must be likelihood that disclosure would, or would be likely to, cause prejudice to the interests that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice-based exemption:
 - Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption (in this case, the administration of justice);
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice against which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,
 - Thirdly, it is necessary to establish whether the level of likelihood of

prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

14. Consideration of the exemption at section 31 is a two-stage process: even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
15. In this case, the NIPS is relying on sections 31(1)(a) (b) and (f) of the FOIA. Those subsections state that information is exempt if its disclosure 'would' or 'would be likely' to prejudice:
 - (a) the prevention or detection of crime;
 - (b) the apprehension or prosecution of offenders.
 - (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained.

The applicable interests

16. The first point for the Commissioner to consider is whether the arguments provided by the NIPS relate to the relevant applicable interests, namely the prevention or detection of crime, the apprehension or prosecution of offenders and the maintenance of security and good order within prisons and other similar institutions.
17. The questions from the requestor relate specifically to the prisoners returning from home leave and checks undertaken to ensure they are not smuggling drugs into the prisons. The NIPS has informed the Commissioner that the drugs culture in prisons mirrors that which exists within the wider outside community. The NIPS operates a specific Drugs Policy and Strategy.
18. The NIPS has a responsibility and duty to prevent the smuggling of drugs into prisons. Apart from the health problems caused by drugs, they also lead to intimidation and bullying in prisons and an unsafe environment for both staff and prisoners.
19. The approach adopted throughout the NIPS focuses on reducing the supply of drugs into prisons and developing ways of working with prisoners to reduce drug use. The NIPS has stated that it is committed to tackling the problem head on with every measure at its disposal.
20. The Commissioner's guidance confirms that section 31(1)(a) of the FOIA covers all aspects of the prevention and detection of crime and applies to information on general policies and methods adopted by law enforcement agencies. In this case, the use of intelligence and drugs

dogs are methods used by NIPS to stop the illegal smuggling of drugs into prisons, both by their use as a deterrent and in the detection of a crime.

21. The NIPS has informed the Commissioner that the statistics requested would provide some measure of the scale and success of the use of both intelligence and drugs dogs to prevent and detect crime.

Use of Section 31 (1) (b) the apprehension or prosecution of offenders

22. The NIPS states that the above subsection applies in this case as according to the Commissioner's guidance, 31(1)(b) covers the general procedures relating to the apprehension of offenders.
23. Again, the NIPS states that the statistics requested would provide some measure of the scale and success of the use of both intelligence and drugs dogs to apprehend offenders.

Use of Section 31 (1) (f) the maintenance of security and good order in prisons or other institutions where persons are lawfully detained

24. The NIPS state that this subsection applies in this case as the presence of drugs in prisons leads to an unsafe environment both for staff and prisoners. Again, the statistics requested would provide some measure of the scale and success of the use of both intelligence and drugs dogs to maintain the security and good order in prisons by detecting drugs and apprehending offenders.
25. The Commissioner accepts that the arguments provided by the NIPS in respect of all three specified subsections of section 31 do relate to the relevant applicable interests as set out in these subsections.

Nature and likelihood of prejudice

26. In a case such as this, it is not enough for the information to relate to an interest protected by sections 31(1)(a), (b) and (f) - its disclosure must also at least be likely to prejudice those interests. The onus is on the public authority to explain how that prejudice would arise and why it would or would be likely to occur.
27. The NIPS considers that disclosure of the requested information is capable of harming the interests that sections 31 (1) (a), (b) and (f) are designed to protect. The NIPS has not specified whether it considers that disclosure of the requested information 'would' or 'would be likely to' cause such prejudice to the relevant applicable interests.

The Commissioner has examined whether the lower threshold of prejudice, i.e. "would be likely" has been reached in this case.

28. The NIPS argues that disclosure of the requested information would reveal details of NIPS procedures to stop the supply of drugs in prisons and their success which could assist individuals to circumvent those procedures and enable them to commit crimes.
29. It is the Commissioner's understanding that the information requested is purely statistical and would have to be gathered from a number of sources. The Commissioner does not consider that disclosure of purely statistical information would reveal details of NIPS procedures to stop the supply of drugs in prisons or enable individuals to commit crimes by circumventing such procedures. The public is aware that intelligence and drugs dogs are measures which are commonly used in Northern Ireland prisons in order to stop the supply of drugs within such prisons and statistics indicating the success of such measures would not reveal anything further other than perhaps indicating which measure has been the most effective overall during a 12 month period.

Is the exemption engaged?

30. In a case such as this, it is not enough for the information to relate to an interest protected by sections 31(1)(a) and (b), its disclosure must also at least be likely to prejudice those interests. The onus is on the public authority to explain how that prejudice would arise and why it would occur.
31. Having considered the arguments put forward by the NIPS, the Commissioner is of the view that the NIPS has failed to demonstrate that any harm caused by the disclosure of the requested information would meet the threshold of 'likely to prejudice' as it does not appear from the insufficient arguments advanced that it would represent a real and significant risk to law enforcement matters. Therefore, the Commissioner does not consider the exemption to be engaged and has not gone on to consider the public interest arguments.

Right of appeal

32. 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

33. 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.
34. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF