

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 January 2024

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

#### Decision (including any steps ordered)

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1. The complainant requested from the Ministry of Justice (MoJ) information concerning due diligence protocols undertaken by HM Prison & Probation Service/National Probation Service prior to the lease agreement between [name of development company redacted], leaseholds of [name redacted] and the MoJ. The MoJ stated it does not hold any information relating to the request.
2. The Commissioner's decision is that, on the balance of probabilities, the MoJ does not hold the information falling within scope of the request, and it has complied with section 1(1)(a) of FOIA. Therefore the Commissioner does not require the MoJ to take any further steps as a result of this decision.

#### Request and response

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3. On 24 February 2023, the complainant wrote to the MoJ and requested information in the following terms:  
  
"Under the Freedom of Information Act 2000, please would you send me full disclosure details of all due diligence protocols undertaken by HM Prison & Probation Service/National Probation Service to ensure that a duty of care has been considered over the security and safety of the local residents, prior to the lease agreement between [name of the

development redacted], [name of leaseholders redacted] and the Ministry of Justice.

Under the Freedom of Information Act 2000, I would also be grateful if you would send me full disclosure details confirming how HM Prison & Probation Service/National Probation Service have collaborated with both the Leaseholders, [name of development company redacted] and Enfield Council, to safeguard the local community and provide residents with both reassurance and confidence.”

4. On 24 March 2023 the MoJ responded, it said it does not hold any information relating to the first part of the request. With regard to the second part of the request, concerns were to be discussed at a meeting.
5. On 14 June 2023 the complainant asked the MoJ for an internal review.
6. On 5 July 2023 the MoJ provided its review response and maintained its original position

### **Reasons for decision**

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7. This reasoning covers whether, on the balance of probabilities, the MoJ holds the information to the first part of the request.

### **Section 1 – information held/not held**

8. Section 1 of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
9. The public authority is not obliged to create or acquire information in order to satisfy a request.
10. The Commissioner’s role when determining whether a public authority has or has not complied with section 1(1) of FOIA, is limited to determining whether it is more likely than not that the public authority has provided all the recorded information it holds. The Commissioner is not required to challenge the accuracy or the adequacy of the recorded information a public authority does (or, in some cases, does not) hold. This is because the terms of FOIA only relate to the provision of information as it is recorded, regardless of its accuracy or validity.

11. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
12. The MoJ notified the complainant that it does not hold any information relating to the first part of the request, and this is because there is no legal or business requirement to do so.
13. The MoJ informed the Commissioner of the searches carried out to check no information was held within the scope of the request. It said His Majesty's Prison & Probation Service (HMPPS) Headquarters staff made contact with the Head of the Probation Service Business, Strategy & Change Team in London, and the MoJ Project Delivery team that were directly involved with the acquisition of the property in question. Also, the Head of Service of Enfield & Haringey Probation Delivery Unit were contacted, and they were all asked to provide the MoJ with any relevant documents.
14. The MoJ said it had been explained to them that as for planning purposes, "no change of use was involved, it had not been necessary to generate documents (paper or electronic) of the kind the complainant had requested." The MoJ stated that the parties it consulted were the appropriate people to give an authoritative answer on this issue. The MoJ deemed the search it conducted was sufficient to confirm that no relevant information was held.

### **The complainant's position**

15. The complainant disputes the MoJ's assertion that no pertinent information exists. She said "the MoJ had concurrently disclosed that the public authority in question had undertaken preparations 'as part of its planning for the new office' and had 'given careful consideration to the safety of local residents.' These disclosures by the MoJ confirm that information was in fact generated [recorded information] and is therefore inconsistent with the internal review response." The complainant also considered the response provided by the MoJ inadequately addressed the specific information that was requested.

### **The MoJ's position**

16. The MoJ, in response to the complainant's argument, said "The assurance we gave in our reply to the first part of the request, that the Probation Service in Enfield, as part of its planning for the new office,

had given careful consideration to the safety of local residents, was based on an assurance we had received that the question had formed part of the consideration process preceding the acquisition of the new site. That did not mean that any document had been generated, and we were assured that none had been. That such a document or documents must exist is an inference that the complainant has drawn, but is not what we intended to convey, and it is not what the words mean. Had such documents existed, we would have given a different response to the first part of her request.”

17. The MoJ stated that further to the Commissioner’s involvement, it made a further check and this confirmed that the consideration which took place, was a meeting-based process that relied on the expertise of the operational staff and management at Enfield Probation, and that no document was created.
18. With regard to the second part of the request, the MoJ said it understood it to be asking for an explanation of the steps that had been taken, rather than a request for specific recorded information. The MoJ believed it should have made that clear in its reply to the complainant. However, the MoJ is satisfied that its understanding was the natural and obvious way in which to interpret that part of the request, and that its reply “was a reasonable summary of the action taken.”

### **The Commissioner’s view**

19. The Commissioner, in reaching his decision in this case, has taken account of the views put forward by the complainant. He has also considered the actions taken by the MoJ to check whether it holds the requested information and the explanations provided as to why recorded information is not held.
20. The Commissioner notes the complainant’s dissatisfaction with the responses from the MoJ, and that she strongly considers the information requested is held by the MoJ. However, while the complainant may believe information must be held, the Commissioner has found no evidence which would indicate that the MoJ holds the requested information, and he sees no reason to doubt the MoJ’s explanation.

### **Conclusion**

21. Based on the evidence provided to him, the Commissioner is satisfied that, on the balance of probabilities, the MoJ does not hold recorded information falling within the scope of the first part of the request. He is therefore satisfied that the MoJ has complied with the requirements of section 1(1) of FOIA in this case.

## Right of appeal

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22. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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

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