



Ministry of JUSTICE

Ian Lawrence
General Secretary
NAPO
4 Chivalry Road, London,
SW11 1HT

Stephen Hubbard
Rehabilitation Programme
10th Floor
Ministry of Justice
102 Petty France
London SW1H 9AJ

T 020 3334 2844
E stephen.hubbard@justice.gsi.gov.uk

www.gov.uk

Our Reference: 90894

11 July 2014

Freedom of Information Request

Dear Mr Lawrence,

Thank you for your letter of 16 May to Amy Rees, Deputy Director, Transforming Rehabilitation Programme, in which you asked for the following information from the Ministry of Justice (MoJ):

Napo would like to request full details of the results of Test Gates 1-3 insofar as they provide:-

- an assessment of the Trusts' implementation of the new operational processes;*
- identification of any areas where action or contingency plans are needed;*
- an in-depth understanding of the risk profile for the Department; and*
- an assessment of business readiness for 1 June 2014*

We are particularly interested in the level of preparedness of multi-trust areas, ICT issues and pay, allowances and other HR data for those transferring to the NPS. Finally we are interested in information relating to staff allocation against predicted caseloads/workloads

Additionally, we request a copy of the terms of contracts upon which expressions of interest have been requested of bidders for each of the CRCs.

Your request has been handled under the Freedom of Information Act 2000 (FOIA).

I can confirm that the department holds some of the information that you have asked for, but in this case we will not be providing some of the information that we hold to you as it is exempt from disclosure.

Concerning your request for full details of the results of Test Gates 1 to 3, we are not obliged to provide information if its release would affect the delivery of effective central government and other public services. In this case, we believe that releasing documentation relating to the outcomes of the Transforming Rehabilitation Test Gates would be likely to inhibit the free and frank provision of advice (section 36(2)(b)(i)); inhibit the free and frank exchange of views for the purposes of

UNCLASSIFIED

deliberation (section 36(2)(b)(ii)); and otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs (section 36(2)(c)).

In line with the terms of this exemption in the Freedom of Information Act, we have also considered whether it would be in the public interest for us to provide you with the information, despite the exemption being applicable. In this case, we have concluded that the public interest favours withholding the information.

You can find out more about Section 36 by reading the extract from the Act and some guidance points we consider when applying this exemption, attached at the end of this letter.

You can also find more information by reading the full text of the Act, available at <http://www.legislation.gov.uk/ukpga/2000/36/section/36> and further guidance <http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/exemptions-guidance>.

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 public interest in disclosing information which helps further the public's understanding of the way in which Government operates and contributes to the accountability of Ministers and public officials so as to increase public trust in the governmental processes. This can particularly be the case when information relates to the successful delivery of a relatively high profile programme, such as the Rehabilitation Programme.

Public interest considerations favouring withholding the information

- Against disclosure is the public interest in preserving the willingness of senior managers to seek frank and open independent advice about programme delivery without the risk of premature disclosure. Disclosure would be detrimental to the integrity and effectiveness of the Department's testing process. This may also impact on timely delivery of test reports as more iterations and clearances are required. It is in the public interest that officials have discussions about the threats to delivery of the programme and the opportunities offered by it in a protected environment that allows such matters to be evaluated frankly and in a way that helps to address them. This ensures that the Programme takes the actions required to maximise the chances of successful delivery and focuses its resources to that end.

We reached the view that, on balance, the public interest is better served by withholding this information under Sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) of the Act at this time.

Outside the scope of the Act, and on a discretionary basis, you may find it helpful to know that, from the outset the Department's intention has always been that these reforms will be rolled out in a controlled way that makes sure public safety is maintained, and this continues to be the case.

UNCLASSIFIED

Part of your request, requires further clarification before we are able to answer. In your letter, you asked for “information relating to staff allocation against predicted caseloads/workloads”. We did conduct some resource validation work earlier this year; however, having assessed this aspect of your request for information, I am unclear as to what exactly you were requesting.

You also asked for “a copy of the terms of contracts upon which expressions of interest have been requested of bidders for each of the CRCs”. While the Department has produced a wide range of documentation relating to the draft contracts during the course of the bidding process, “Expressions of Interest” were only invited at the very initial stage following the publication of the OJEU notice. No terms of contract were issued at that stage. Subsequently, bidders who qualified at the Pre-Qualification Stage have been invited to submit bids at the Invitation to Negotiate stage. We published the draft contracts that were the basis of the negotiation on the MoJ website and these can be accessed at <https://www.justice.gov.uk/transforming-rehabilitation/competition>. However, we have also issued updated versions of the contract subsequently following the first round of negotiations. Therefore, again, I am unclear as to what exactly you were requesting. Please can you confirm which version of the contract documentation you are requesting.

Unfortunately I will not be able to answer these two parts of your request without further clarification. Section 1(3) of the Freedom of Information Act does not oblige us to answer requests where we require further clarification to identify and locate the information requested. In order to help ensure that I provide you with the right information, I would be grateful if you could clarify your request. Please could you provide us with more context on what information you are seeking in relation to your statement. Upon receipt of this information I will be in a position to continue with the processing this part of your request.

You have the right to appeal our decision if you think it is incorrect. Details can be found in the ‘How to Appeal’ section attached at the end of this letter.

Disclosure Log

You can also view information that the Ministry of Justice has disclosed in response to previous Freedom of Information requests. Responses are anonymised and published on our on-line disclosure log which can be found on the MoJ website: <http://www.justice.gov.uk/information-access-rights/latest-disclosure-log>

The published information is categorised by subject area and in alphabetical order.

Yours sincerely

STEPHEN HUBBARD

UNCLASSIFIED

How to Appeal

Internal Review

If you are not satisfied with this response, you have the right to an internal review. The handling of your request will be looked at by someone who was not responsible for the original case, and they will make a decision as to whether we answered your request correctly.

If you would like to request a review, please write or send an email to the Data Access and Compliance Unit within two months of the date of this letter, at the following address:

Data Access and Compliance Unit (10.34),
Information & Communications Directorate,
Ministry of Justice,
102 Petty France,
London
SW1H 9AJ

E-mail: data.access@justice.gsi.gov.uk

Information Commissioner's Office

If you remain dissatisfied after an internal review decision, you have the right to apply to the Information Commissioner's Office. The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if he considers that we have handled it incorrectly.

You can contact the Information Commissioner's Office at the following address:

Information Commissioner's Office,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire
SK9 5AF

Internet address: https://www.ico.gov.uk/Global/contact_us.aspx

EXPLANATION OF FOIA - SECTION 36 – PREJUDICE TO THE EFFECTIVE CONDUCT OF PUBLIC AFFAIRS

We have provided below additional information about Section 36 of the Freedom of Information Act. We have included some extracts from the legislation, as well as some of the guidance we use when applying it. We hope you find this information useful.

The legislation

Section 1: Right of Access to information held by public authorities

- (1) 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.

Section 36: Prejudice to the effective conduct of public affairs

- (1) This section applies to—
- (a) information which is held by a government department or by the Welsh Assembly Government and is not exempt information by virtue of section 35, and
 - (b) information which is held by any other public authority.
- (2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—
- (a) would, or would be likely to, prejudice—
 - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
 - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
 - (iii) the work of the Cabinet of the Welsh Assembly Government.
 - (b) would, or would be likely to, inhibit—
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
 - (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.
- (3) The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).
- (4) In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words “in the reasonable opinion of a qualified person”.
- (5) In subsections (2) and (3) “qualified person”—

UNCLASSIFIED

- (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,
- (b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,
- (c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,
- (d) in relation to information held by the House of Commons, means the Speaker of that House,
- (e) in relation to information held by the House of Lords, means the Clerk of the Parliaments,
- (f) in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,
- (g) in relation to information held by the Welsh Assembly Government, means the Welsh Ministers or the Counsel General to the Welsh Assembly Government,

in relation to information held by the National Assembly for Wales, means the Presiding Officer of the National Assembly for Wales,

in relation to information held by any Welsh public authority (other than one referred to in section 83(1)(b)(ii) (subsidiary of the Assembly Commission), the Auditor General for Wales or the Public Services Ombudsman for Wales), means—

- (i) the public authority, or
- (ii) any officer or employee of the authority authorised by the Welsh Ministers or the Counsel General to the Welsh Assembly Government”,

in relation to information held by a Welsh public authority referred to in section 83(1)(b)(ii), means—

- (i) the public authority, or
- (ii) any officer or employee of the authority authorised by the Presiding Officer of the National Assembly for Wales,

- (i) in relation to information held by the National Audit Office, means the Comptroller and Auditor General,
- (j) in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern Ireland,
- (k) in relation to information held by the Auditor General for Wales, means the Auditor General for Wales,

in relation to information held by the Public Services Ombudsman for Wales, means the Public Services Ombudsman for Wales,

- (l) in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means—
 - (i) the public authority, or
 - (ii) any officer or employee of the authority authorised by the First Minister and deputy First Minister in Northern Ireland acting jointly,

- (m) in relation to information held by the Greater London Authority, means the Mayor of London,

UNCLASSIFIED

- (n) in relation to information held by a functional body within the meaning of the M1Greater London Authority Act 1999, means the chairman of that functional body, and
- (o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means—
 - (i) a Minister of the Crown,
 - (ii) the public authority, if authorised for the purposes of this section by a Minister of the Crown, or
 - (iii) any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown.

(6) Any authorisation for the purposes of this section—

- (a) may relate to a specified person or to persons falling within a specified class,
- (b) may be general or limited to particular classes of case, and
- (c) may be granted subject to conditions.

(7) A certificate signed by the qualified person referred to in subsection (5)(d) or (e) above certifying that in his reasonable opinion—

- (a) disclosure of information held by either House of Parliament, or
- (b) compliance with section 1(1)(a) by either House,

would, or would be likely to, have any of the effects mentioned in subsection (2) shall be conclusive evidence of that fact.

Guidance

Section 36 relates to information that if disclosed would adversely affect the delivery of effective central government and other public services. It is the effect that disclosure of information would have, rather than the type of information itself, that is key in considering the application of section 36.

Section 36 relates to information that in the reasonable opinion of a qualified person, if disclosed, would adversely affect the following areas:

- the maintenance of the convention of the collective responsibility of the Ministers of the Crown
- the work of the Executive Committee of the Northern Ireland Assembly
- the work of the Cabinet of the Welsh Assembly Government
- the free and frank provision of advice
- the free and frank exchange of views for the purposes of deliberation
- the effective conduct of public affairs

Whether this exemption applies will depend on whether disclosing information would or would be likely to cause some harm or prejudice to this convention. Public authorities will need to consider if disclosure:

- would reduce confidence in, or the effectiveness of, a final decision taken by ministers
- would make it less likely that decisions will be taken collectively
- would inhibit discussions between ministers
- would make it more difficult for ministers and departments to act collaboratively and cohesively

UNCLASSIFIED

- would, by revealing differences in opinion within government, increase the extent to which some individual ministers can be held responsible for government decisions (and reduce it for others)
- would encourage the exploitation of differences of opinion for political or personal purposes.