



Ministry
of Justice

Disclosure Team
Ministry of Justice
102 Petty France
London
SW1H 9AJ

Nicola Williams

data.access@justice.gsi.gov.uk

15 May 2018

Dear Ms Williams,

Freedom of Information Act (FOIA) Request – 171212007

Thank you for your separate emails in which you made the following request for information from the Ministry of Justice (MoJ):

Email dated the 12th December 2017:

FOI request based on NOMS Annual Offender Equalities Report 2016/17. Page 13 Transgender prisoners.

- 1) How many of the 124 prisons did not reply to the request for data.***
- 2) How many of the 124 prisons confirmed zero transgender prisoners.***
- 3) How many of the 125 prisoners were reported by Equality representatives from male prisons***
- 4) How many of the 125 prisoners were reported by Equality representatives from female prisons***
- 5) How many of the 125 prisoners were reported by Equality representatives from:
a) Littlehey b) Isle of Wight c) Ashfield d) Bure e) Rye Hill f) Stafford g) Usk h) Whatton
i) any of the above 8 prisons***
- 6) How many of the 125 prisoners who have had a local transgender case board were reported by Equality representatives from a category A prison.***
- 7) What are the names of the 8 prisons who reported to have 5 or more transgender prisoners.***
- 8) What are the names of the 16 prisons who reported to have 2-4 transgender prisoners.***
- 9) What are the names of the 23 prisons who reported to have 1 transgender prisoner.***
- 10) What are the names of the prisons who reported to have 0 transgender prisoners.***

Email dated the 15 December 2017:

I have a follow up FOI request. In the annual report on offender equalities by NOMS the following figures were released:

47 of the 124 public and private prisons (38%) in England and Wales said that they had 1 or more transgender prisoners

There were 125 prisoners currently living in, or presenting in, a gender different to their sex assigned at birth and who had a local transgender case board

Of these, 99 reported their gender as male, 23 reported their gender as female and 3 did not state their gender.

12 of the 125 prisoners reported their ethnic group as black, asian and minority ethnic group and 113 as white.

Based on this exercise, there were 1.5 transgender prisons reported per 1000 prisoners in custody

1) how many of the 125 prisoners were assigned male at birth

2) how many of the 125 prisoners were assigned female at birth

3) How many prisoners assigned male at birth are currently in a women's prison

Your separate emails are being handled as an aggregated request under the FOIA.

Where more than one request is received for the same or similar information, section 12(4) further to Regulation 5 of the FOI and Data Protection (Appropriate Limit and Fees) Regulations 2004, public authorities are allowed to aggregate requests and respond to them together. I have therefore aggregated your separate requests as both relate to offender management.

In relation to your email of the 15 December 2017 and given this part is specific to the birth gender of transgender inmates, I can confirm MoJ does not hold the information you have requested stated as questions one to three above.

HM Prison & Probation Service (HMPPS) does not hold the information you have requested because transgender inmates when they come forward with their new status, although often provide information to include a gender, we do not know from information collected whether this is their birth or biological gender. As such, we do not hold any information able to answer this part of your request.

I should mention that the FOIA does not oblige a public authority to create information to answer a request if the requested information is not held. The FOIA duty is only to provide the recorded information held.

In relation to your email of the 12 December 2017, I can confirm the MoJ holds information requested stated as questions one to ten above.

As a background, it may help to explain that a data collection exercise took place in March/April 2017 on which the NOMS Equalities Report that you have referenced is based. During the exercise, Equalities representatives in prisons were asked about the number of Transgender prisoners. Transgender inmates were defined as those individuals known within the prisons to be currently living in, or are presenting in, a gender different to their sex assigned at birth and who have had a case conference (as defined by PSI 17/2016 The Care and Management of Transgender Offenders^[1]). The prison population is dynamic and the number of transgender prisoners may differ from the number at March/April 2017. Below is our response to each of your questions in this part:

Question 1

^[1] This replaced PSI 07/2011 – Care and Management of Transsexual Prisoners in January 2017. Information about the review which led to new guidance is available at www.gov.uk/government/publications/care-and-management-of-transgender-offenders.

All of the 124 prisons provided a response to the data collection exercise.

Question 2, 8, 9 & 10

The figures that we hold on these parts are exempt from disclosure under the Act as if disclosed, may lead to the identification of the individual Transgender offender/s involved.

We are not obliged, under section 40(2) of the FOIA, to provide personal information, if releasing such information would contravene any of the provisions in the Data Protection Act 1998 (DPA). If a request is made for information and the total figure amounts to five or fewer people, the MoJ must consider whether this could lead to the identification of individuals and whether disclosure of this information would be in breach of our statutory obligations under the Data Protection Act 1998 (DPA). In this instance, the prison name and/or figures withheld for these questions relate to five or fewer people and if disclosed could by combining other information already in public domain result in their identification and potentially cause harm to individuals involved or their families.

Personal data can only be released if to do so would not contravene any of the data protection principles of the Data Protection Act 1998 (DPA). The first principle states:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

We believe releasing the requested information into the public domain would be unlawful. Individuals have a clear and strong expectation that their personal data will be held in confidence and not disclosed to the public under the FOIA.

Disclosure would therefore breach the first data protection principle as it would be unlawful. And we do not need to consider schedules 2 and 3.

Further information on the data protection principles is available as follows:

<http://www.legislation.gov.uk/ukpga/1998/29/schedule/1>

<http://www.legislation.gov.uk/ukpga/1998/29/schedule/2>

<http://www.legislation.gov.uk/ukpga/1998/29/schedule/3>

This is an absolute exemption and does not require a public interest test.

Question 3

Of the 125 offenders identified, 100 transgender prisoners were reported by Equalities Representatives from male prisons

Question 4

Of the 125 offenders identified, 25 transgender prisoners were reported by Equalities Representatives from female prisons

Question 5

For the prisons you are interested listed as (a) – (h) above, 11 out the 125 offenders identified were reported at HMP Littlehey whilst 10 were reported at HMP Isle of Wight. There were 6 at HMP Stafford and 7 at HMP Whatton. However, the figures reported in relation to the remaining 4 prisons as explained at questions 2, 8, 9 &10 above, are exempt from disclosure under Section 40(2) of the FOIA.

Question 6

Of the 125 offenders identified, 18 transgender prisoners were reported by Equalities Representatives from high Security Prisons.

Question 7

The names of the 8 prisons that recorded 5 or more transgender are HMP Isle of Wight, HMP Littlehey, HMP Stafford, HMP Whatton, HMP and YOI Low Newton, HMP and YOI Bronzefield, HMP and YOI New Hall, HMP and YOI Parc

The welfare of those in our custody is a top priority. There are stringent procedures in place to ensure transgender prisoners are managed safely and in accordance with the law.

The care and management of transgender prisoners was reviewed last year and new arrangements were fully implemented on 1 January 2017. A Gender Recognition Certificate is proof of legal gender, but the absence of it does not automatically prevent a prisoner being located in the part of the estate consistent with the gender they identify with. Where a transgender offender expresses a view of prison location that is not consistent with their legally recognised gender, the offender must provide evidence of living in the gender with which they identify. This evidence is then considered by a Transgender Case Board together with all known risk factors before a decision is made. Whilst that process takes place, transgender prisoners are able to live in the gender they identify.

Appeal Rights

If you are not satisfied with this response you have the right to request an internal review by responding in writing to one of the addresses below within two months of the date of this response.

data.access@justice.gsi.gov.uk

Disclosure Team Ministry of Justice, 10.38, 102 Petty France, London, SW1H 9AJ

You do have the right to ask the Information Commissioner's Office (ICO) to investigate any aspect of your complaint. However, please note that the ICO is likely to expect internal complaints procedures to have been exhausted before beginning their investigation.

Yours sincerely,

Olu Adedeji
Prison & Probation Analytical Services (PPAS)