



# Ministry of Justice

**Our Reference:**

January 2016

Dear

## **FREEDOM OF INFORMATION REQUEST**

Thank you for your email of November 2014, in which you asked for the following information from the Independent Advisory Panel on deaths in custody:

***“Please can you supply me with a complete list of all deaths in custody in the UK to date. Include statistics, names and dates.”***

Your email was passed to the Ministry of Justice (MoJ) and your request has been handled under the Freedom of Information Act 2000 (FOIA).

Please accept my apologies for the fact that it has taken much longer than the 20 working days set under the Act to provide you with a response.

I can confirm that the National Offender Management Service (NOMS), an executive agency of the MoJ holds some of the information that you have requested.

NOMS does not hold information about all deaths in custody as it is responsible only for prisons in England and Wales. For deaths in custody other than those in prisons, for example in local authority secure accommodation, military custody, police custody and secure mental health settings, you will need to contact the relevant agency directly. For deaths in prison custody in Scotland and Northern Ireland you will need to contact their respective prison services.

### **Section 40 consideration**

We believe that some of this information could be the personal data of members of the family and/or friends of the deceased, and we have therefore proceeded on the basis that section 40 of the FOIA applies. We are therefore required to consider whether disclosure of the information would breach the data protection principles. In other words, would it be fair and lawful, and does it satisfy one of the conditions in Schedule 2 of the DPA? We have done so by using the Information Commissioner's Office guidance.

#### Is this sensitive personal data?

The information does not constitute sensitive personal data.

#### Is the disclosure fair?

It is accepted that disclosure of some of the data could cause some distress, for instance if the information is linked with other information to identify that an individual died in prison and this was not previously known by the family member or friend.

However, the nature of the information is such that there is no reasonable expectation that it would remain private. Almost all the information has already been available in the public domain as very nearly all the deaths have been the subject of inquests and those that have not (a handful of homicides) have been the subject of criminal proceedings. Most of the deaths have also been the subject of media reporting. It was formerly the practice of the Ministry of Justice Press Office to release information about each death to the Press Association, and in many of the cases where this has not occurred they have confirmed the information when contacted by journalists. NOMS has also previously released the information through notifications to stakeholders. The deaths since 2004 are the subject of PPO reports that are publicly available, and whilst these are for the most part published in an anonymised form, there is little difficulty in identifying the individuals involved in many cases. Many of the more recent deaths are the subject of regulation 28 reports to prevent future deaths that are published on the website of the Chief Coroner.

#### Schedule 2 condition

The relevant Schedule 2 condition is the one in paragraph 6 of Schedule 2, that there is a legitimate interest in disclosure to the public and disclosure is necessary to meet that interest and it does not cause unwarranted harm to the data subject's interests. The key consideration here is whether the disclosure is necessary.

Disclosure would be in accordance with the principles of accountability and transparency, and there is a legitimate public interest in making the data available that outweighs the moderate risk of relatively low level harm to the family members and/or friends of the deceased. Disclosure is considered to be necessary to meet that interest and it is not believed that it will cause unwarranted harm.

Disclosure does not breach statute or common law, a duty of confidence or an enforceable contractual term, and there are no relevant DPA exemptions.

On balance, therefore, we have reached the conclusion that disclosure is justified.

#### **Part disclosure**

NOMS holds information on deaths in prisons in England and Wales since 1978. Please find the names and dates of death of all deceased prisoners on our records from 1978 to 2014 in the attached spreadsheet. I have included the main variables used in compiling our published statistics.

You also requested statistics. NOMS holds statistical information on deaths in prisons in England and Wales since 1978 but is exempt from disclosing it under Section 21 of the FOIA. Section 21(1) of the Freedom of Information Act exempts disclosure of information that is reasonably accessible by other means (the terms of this exemption in the Act also mean that we do not have to consider whether or not it would be in the public interest for you to have the information). In line with our obligation under Section 16 to provide help and assistance, please find below a link to the statistics that we have published in relation to Deaths in Prison Custody for England and Wales:

<https://www.gov.uk/government/statistics/safety-in-custody-quarterly-bulletin-june-2015>

At this web page, please see the Excel document 'Safety in Custody Summary Tables' and 'Deaths in Prison Custody 1978 to 2014'. You may also find the document 'Guide to Safety in Custody Statistics' that is available at this web page

useful in interpreting these statistics and the attached table, and I would in particular refer you to the material on the 'system for classifying deaths' at pp11-13. This makes clear that "it is the responsibility of the coroner to determine the cause of death. The NOMS system for classifying deaths provides a provisional classification for administrative and statistical purposes. The final classification is only determined at inquest."

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.

The full text of the FOIA is available at <http://www.legislation.gov.uk/ukpga/2000/36/section/21> and further guidance is available at: <http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/exemptions-guidance>

You can find out more about Section 21 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 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: <https://www.gov.uk/government/organisations/ministry-of-justice/series/freedom-of-information-disclosure-log>

Yours sincerely