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|  | **Our Reference:** 531-16 FOI 107860 |  | October 2016 |

**Freedom of Information Request**

You asked for the following information from the Ministry of Justice (MoJ):

**On 10 November 2015, the commencement of section 79 of the Serious Crime Act 2015 created section 40CB of the Prison Act 1952, which provides for an offence of throwing any article or substance into a prison without authorisation.**

**Since this offence has come into force, I would like to know –**

**• How many people have been convicted under s. 40CB of the Prison Act**

**• How many have received the maximum possible sentence**

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

I can confirm that the department holds the information that you have asked for.

The number of offenders found guilty and sentenced at all courts for the offence in question, in England and Wales, in 2015 is zero. Please note this relates to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

With regard to the information for 2016, please note we are not obliged to provide information if there are prohibitions on disclosure ‘by or under any enactment’ (Section 44(1)(a) of the Act).  In this case, the information you are seeking is prohibited by the Statistics and Registration Services Act 2007 and the Pre-release Access to Official Statistics Order 2008.

The information you have requested is a subset of the Criminal Justice Statistics data held in its final form which we routinely publish. It is intended for publication on the Ministry of Justice website in the summer 2017. As such we are required to consider your request in a manner compliant with the Pre-release Access to Official Statistics Order 2008 further to Sections 11 and 13 of the Statistics and Registration Service (SRS) Act 2007.

It may be helpful to explain further that Ministry of Justice is obliged under Section 13 of the SRS Act to continue to comply with the Code of Practice for Official Statistics (the Code) for National Statistics designated statistics. Section 11(3) of the SRS Act regards the Pre-Release Access to Official Statistics Order as being included in the Code. Protocol 2 of the Code reflects the requirements of the Pre-Release Access to Statistics Order. Specifically, it requires producers of official statistics to ensure that no indication of the substance of a statistical report is made public, or given to the media or any other party not recorded as eligible for access prior to publication. I can confirm that the Ministry of Justice does publish information on convictions and sentencing under the above legislation for 2016, as part of National Statistics. Therefore, to now disclose as part of your FOI request, will violate the provisions of Section 13 of the SRS Act and the Pre-Release Access Order to Official Statistics 2008 and as such engages the exemption under Section 44(1) (a).

Additionally, we are not obliged to provide information that is intended for future publication under the terms of Section 22 of the FOIA.  Data for 2016 is due to be published in May 2017.

Please note that whilst quarterly court proceedings and convictions headline data are published on the MoJ website and are currently available up to end March 2016, these data are subject to revision as later quarters are published, and are finalised only when the annual publication is made publicly available. To ensure consistency of data released to users, further breakdowns (in this case by specific offences under certain legislation) of 2016 Quarter 1 (January to March) data are not available until the annual criminal statistics publication is published.

In line with the terms of this exemption in the FOIA, we have also considered whether it would be in the public interest for us to provide you with the information ahead of publication, despite the exemption being applicable.

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 are public interest arguments in favour of disclosure of this information at the present time. Disclosure would for example improve transparency in the operations of Government, and of the justice system in particular.

**Public interest considerations favouring withholding the information**

There are public interest arguments against disclosure of this information at the present time. These arguments include that it is in the public interest to adhere to the existing publication process for official statistics, which includes time for the data to be collated and properly verified.

It is also in the public interest to ensure that data used in the compilation of official statistics comply with the Code of Practice for Official Statistics and that resulting outputs are produced to the highest quality. Statistics of high quality are produced to sound methods, with all users having easy and equal access that is fair and open, and are managed impartially and objectively in the public interest. Premature publication could undermine the principle of making the information available to all at the same time through the official publication process.

We reached the view that, on balance, the public interest is better served by withholding this information under Section 22 of the Act at this time.

You can find out more about Section 22 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/contents> and further guidance <http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/exemptions-guidance>