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|  | Our Reference: FOI/108741 |   | December 2016 |

**Freedom of Information Request**

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

***1. Which offender (without revealing their name, age or address) appearing at Chesterfield Magistrates Court for an assault charge in 2016 between January 1 - end of September who was not sent into prison custody at their last appearance had the most previous offences and convictions and can you tell me what those offences and convictions were? Can you also tell me, if they were not taken into prison custody at their last appearance, what their sentence was, ie: suspended prison sentence with X amount of hour unpaid work***

***2. Which offender (without revealing their name, age or address) appearing at Chesterfield Magistrates Court for a harassment charge in 2016 between January 1 - end of September who was not sent into prison custody at their last appearance had the most previous offences and convictions and can you tell me what those offences and convictions were? Can you also tell me, if they were not taken into prison custody at their last appearance, what their sentence was, ie: suspended prison sentence with X amount of hour unpaid work***

***3. Which offender (without revealing their name, age or address) appearing at Chesterfield Magistrates Court for a driving while in excess of the alcohol limit charge in 2016 between January 1 - end of September who was not sent into prison custody at their last appearance had the most previous offences and convictions and can you tell me what those offences and convictions were? Can you also tell me, if they were not taken into prison custody at their last appearance, what their sentence was, ie: suspended prison sentence with X amount of hour unpaid work***

***4. Which offender (without revealing their name, age or address) appearing at Chesterfield Magistrates Court for a drug possession charge in 2016 between January 1 - end of September who was not sent into prison custody at their last appearance had the most previous offences and convictions and can you tell me what those offences and convictions were? Can you also tell me, if they were not taken into prison custody at their last appearance, what their sentence was, ie: suspended prison sentence with X amount of hour unpaid work***

***5. Which offender (without revealing their name, age or address) appearing at Chesterfield Magistrates Court for a driving under the influence of drugs charge in 2016 between January 1 - end of September who was not sent into prison custody at their last appearance had the most previous offences and convictions and can you tell me what those offences and convictions were? Can you also tell me, if they were not taken into prison custody at their last appearance, what their sentence was, ie: suspended prison sentence with X amount of hour unpaid work***

***6. Which offender (without revealing their name, age or address) appearing at Chesterfield Magistrates Court for a failing to notify DWP of a change in circumstances (benefits) charge in 2016 between January 1 - end of September who was not sent into prison custody at their last appearance had the most previous offences and convictions and can you tell me what those offences and convictions were? Can you also tell me, if they were not taken into prison custody at their last appearance, what their sentence was, ie: suspended prison sentence with X amount of hour unpaid work***

***7. Which offender (without revealing their name, age or address) appearing at Chesterfield Magistrates Court for a weapons possession charge in 2016 between January 1 - end of September who was not sent into prison custody at their last appearance had the most previous offences and convictions and can you tell me what those offences and convictions were? Can you also tell me, if they were not taken into prison custody at their last appearance, what their sentence was, ie: suspended prison sentence with X amount of hour unpaid work***

***8. Which offender (without revealing their name, age or address) appearing at Chesterfield Magistrates Court for a criminal damage charge in 2016 between January 1 - end of September who was not sent into prison custody at their last appearance had the most previous offences and convictions and can you tell me what those offences and convictions were? Can you also tell me, if they were not taken into prison custody at their last appearance, what their sentence was, ie: suspended prison sentence with X amount of hour unpaid work***

***10. Which offender (without revealing their name, age or address) appearing at Chesterfield Magistrates Court for a theft charge in 2016 between January 1 - end of September who was not sent into prison custody at their last appearance had the most previous offences and convictions and can you tell me what those offences and convictions were? Can you also tell me, if they were not taken into prison custody at their last appearance, what their sentence was, ie: suspended prison sentence with X amount of hour unpaid work***

***11. Which offender (without revealing their name, age or address) appearing at Chesterfield Magistrates Court for a burglary charge in 2016 between January 1 - end of September who was not sent into prison custody at their last appearance had the most previous offences and convictions and can you tell me what those offences and convictions were? Can you also tell me, if they were not taken into prison custody at their last appearance, what their sentence was, ie: suspended prison sentence with X amount of hour unpaid work***

***12. Which offender (without revealing their name, age or address) appearing at Chesterfield Magistrates Court for a sex offences charge in 2016 between January 1 - end of September who was not sent into prison custody at their last appearance had the most previous offences and convictions and can you tell me what those offences and convictions were? Can you also tell me, if they were not taken into prison custody at their last appearance, what their sentence was, ie: suspended prison sentence with X amount of hour unpaid work***

***13. Which offender (without revealing their name, age or address) appearing at Chesterfield Magistrates Court for an arson charge in 2016 between January 1 - end of September who was not sent into prison custody at their last appearance had the most previous offences and convictions and can you tell me what those offences and convictions were? Can you also tell me, if they were not taken into prison custody at their last appearance, what their sentence was, ie: suspended prison sentence with X amount of hour unpaid work***

***For the purposes of clarifying the kind of information I require I have pasted a link below to a similar news story in the Nottingham Post newspaper as an example:***

***http://www.nottinghampost.com/burglar-had-18-previous-burglary-convictions-but-escaped-jail/story-29725148-detail/story.html***

***I would like the above information to be provided to me as [paper or electronic copies, audio-tape version or an opportunity to view].”***

And later clarified your request.

***“Let us take the example of point number 3 (driving while in excess of the alcohol limit).***

***I don't want you to identify an individual. What I want (as is specified already) is that you simply find the individual who 'appear(ed) at Chesterfield Magistrates Court for a driving while in excess of the alcohol limit charge in 2016 between January 1 - end of September who was not sent into prison custody at their last appearance (who) had the most previous offences and convictions' and that you tell me what those offences and convictions were. But I do not want you identify the individual by name, age, address, etc.***

***So, in my mind, the information could be presented, thus:***

***"One offender, who appeared at Chesterfield Magistrates' Court on X date, charged with driving while in excess of the alcohol limit, who was given a prison sentence, suspended for X amount of months with X amount of unpaid work and a community rehabilitation requirement had X amount of previous convictions for drink driving, X amount of previous convictions for theft, X amount of previous convictions for burglary (or whatever those convictions may be)."***

Your request has been passed to me as I have responsibility for answering requests which relate to statistics on offenders in England and Wales and has been handled under the Freedom of Information Act 2000 (FOIA).

I can confirm that, with two exceptions, the MoJ holds the data that you have requested and I am able to provide this to you in the attached Excel file. The two exceptions are the offence of failing to notify DWP of a change in circumstances (benefits).and the offence of harassment.

Table 1, with the two exceptions mentioned above, provides the sentence and previous convictions of those who were convicted at Chesterfield Magistrates Court between January and June 2016 of the offences you specified but did not receive a custodial sentence on their last conviction for that offence, and had the most previous convictions of the people in that group.

When reading the table please note the following:

* The table looks at convictions, not appearances. It will exclude appearances at which the offender was not convicted.
* Previous convictions are counted as at the offender’s last conviction for the specified offence.
* The offences of driving while in excess of the alcohol limit and driving under the influence of drugs have been combined as, for some offences in this group, it is unclear whether the driver was unfit through alcohol or unfit through drugs.

The figures provided have been drawn from an extract of the PNC data held by the Department. The PNC holds details of all convictions and cautions given for recordable offences and include a number of offences where it is not possible for offenders to be given a custodial sentence. As with any large scale recording system the PNC is subject to possible errors with data entry and processing so data provided may be subject to revision.

With regards to the offence of failing to notify DWP of a change in circumstances (benefits). I can confirm the department does not hold this information. This is because this is a non-recordable offence not routinely recorded on the Police National Computer (PNC), the MoJ’s source of information on previous offences. The only other source of information on offenders convicted of these offences held by MoJ is the courts data systems. These record details of those convicted of the offence but do not record details of any previous offences.

Please be advised that the FOIA does not oblige a public authority to create information to answer a request if the requested information is not held. It does not place a duty upon public authorities to answer a question unless recorded information exists. The FOIA duty is to only provide the recorded information held.

Information on those convicted of the offence may also be held by the Department for Work and Pensions. Their FOI team can be contacted:

By e-mail to freedom-of-information-request@dwp.gsi.gov.uk

Or by letter to

Caxton House
Tothill Street
London
SW1H 9NA

In regards to the offence of harassment we will not be providing it to you as it is exempt from disclosure. In this case there were fewer than 5 offenders convicted of a harassment offence at Chesterfield Magistrates Court between January and June 2016 and it is likely that an individual offender and details about them could be identified from the information. We are not obliged, under section 40(2) of the FOIA, to provide information if releasing would contravene any of the provisions in the Data Protection Act 1998 (DPA). In this instance we believe that the release of this information would be unlawful and contravene the first data protection principle, unnecessarily releasing personal information relating to another individual. Consequently, I am unable to provide you with the information for this offence. The terms of this exemption in the FOIA mean that we do not have to consider whether or not it would be in the public interest for you to have the information.

You can find out more about section 40(2) by reading the extract from the Act and some guidance points we consider when applying the 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/guidance/freedom-of-information.htm>.

**EXPLANATION OF INFORMATION HELD FOR THE PURPOSES OF THE ACT**

We have provided below additional information for information held for the purposes of the Freedom of Information Act. We have included some of the guidance we use when considering requests for information. I hope you find this information useful.

## Is the information 'held' for the purposes of the Act?

A person may request any information 'held' in any recorded form by a public authority (or held by another on behalf of a public authority).

If the requester is asking for an opinion on an issue or asking for information that is not already held to be created, this is not a Freedom of Information Act request.

# Information covered by the Act

**All recorded information 'held' by a public authority is within the scope of the Freedom of Information Act. It includes files, letters, emails and photographs and extends to closed files and archived material.**

## Recorded information

The right of access applies to information recorded in any form. This includes:

* information that is held electronically (such as on a laptop computer or an electronic records management system)
* information that is recorded on paper (such as a letter, memorandum or papers in a file)
* sound and video recordings (such as a CD or videotape)
* hand-written notes or comments, including those written in note pads or on Post-it notes

## Is the information 'held' under the Freedom of Information Act?

'Holding' information includes holding a copy of a record produced or supplied by someone else. However, if a public authority only holds information on behalf of someone else, for example a department holding trade union information on their computer system, then that public authority may not have to provide the information in response to a Freedom of Information Act request.

In some cases, it may not be clear whether information which is physically present on your premises or systems is properly to be regarded as 'held' by your public authority, for the purposes of the Freedom of Information Act. Examples include:

* private material brought into the office by ministers or officials
* material belonging to other people or bodies
* trade union material
* constituency material
* material relating to party political matters.

**EXPLANATION OF FOIA - SECTION 40(2) – INFORMATION RELATING TO THIRD PARTIES**

We have provided below additional information about Section 40(2) 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 40: Personal Information.**

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

## Guidance

Section 40 of the Freedom of Information Act applies to:

* requests for the personal data of the applicant him or herself
* requests for the personal data of someone else (a third party)

Personal data of a third party: Personal data of a third party is exempt under section 40(2) if its disclosure to a member of the public would contravene one or more of the data protection principles and a request must be refused.

The Data Protection Principles:

The data protection principles are a statutory code for the processing of personal data. They are set out in Part I of Schedule 1 to the Data Protection Act.

Three data protection principles require personal data to be:

* fairly and lawfully processed
* processed for specified and lawful purposes
* adequate, relevant and not excessive
* accurate, and kept up to date
* not kept longer than necessary
* processed in accordance with individuals' rights under the Data Protection Act
* kept secure
* not transferred to non-EEA (European Economic Area) countries without adequate protection

The principle most likely to be relevant to the disclosure of information under the Freedom of Information Act is the first principle. This requires personal information to be:

* processed ‘fairly’
* processed ‘lawfully’
* not processed at all unless one of the ‘conditions’ for fair processing is met

Processing in this context includes disclosure.

In most cases, personal data will be exempt if disclosure would be ‘unfair’. Disclosure of personal data relating to a third party will often breach the fair processing principle if there was a legitimate expectation by a third party that this information would remain confidential.