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| Ministry of Justice | **July 2017** |

**Freedom of Information Act (FOIA) Request – 111380**

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

**The total number of prison staff investigated for misconduct, by year, since 2012, broken down by type of misconduct (e.g. sexual assault)**

**If possible, the above information should be broken down by prison too.**

Your request has been handled under the FOIA. For ease of reference.

I can confirm that the MoJ holds the information you have requested.

Please find at Tables 1 and 2 below, the information on number and type of conduct investigation for the financial years 2012/13 to 2015/16.

As an individual can be investigated for more than one case of conduct and discipline, figures showing breakdown of number of staff by reason cannot be presented. Instead, Table 1 below shows information on the number of investigations of Prison Service employees for conduct and discipline broken down by reason and by financial year, whilst Table 2 presents figures on the total number of prison staff investigated by financial year.

To avoid the risk of deductive disclosure overall, figures have not been presented by prison establishment.

We are not obliged, under section 40(2) of the FOIA, to provide personal information, such as for conduct and disciplinary, 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 two people or fewer, 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 DPA. The figures if disclosed broken down by prison will be too low. As such we believe that a release in this format would through a jig-saw approach, risk identification of the individuals concerned and that would potentially result in harm to the individual/s concerned or their family.

Personal data can only be released if to do so would not contravene any of the data protection principles of the 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 broken down by prison 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.

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.

**Table 1: Number of conduct and discipline investigations of Prison Service employees by reason and financial year**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **2012/13** | **2013/14** | **2014/15** | **2015/16** |
| Abuse of Sick Leave | 28 | 42 | 51 | 19 |
| Abusive Language / Behaviour towards prisoners | 67 | 66 | 37 | 34 |
| Abusive Language / Behaviour towards staff | 90 | 89 | 57 | 86 |
| Abusive Language / Behaviour towards the public / visitors | 8 | 3 | 6 | 12 |
| Action or negligence which caused / contributes to the loss, damage or injury to the Prison Service / individuals | 48 | 70 | 55 | 37 |
| Asleep on duty | 18 | 16 | 16 | 22 |
| Assault / unnecessary use of force on a prisoner | 150 | 161 | 106 | 150 |
| Assault on staff | 11 | 18 | 10 | 12 |
| Assault on the public / visitor | 1 | 12 | 9 |  |
| Breach of flexible working procedures | 6 | 11 | 8 | 7 |
| Breach of security | 445 | 478 | 416 | 402 |
| Bringing discredit on the Prison Service | 75 | 90 | 89 | 62 |
| Bullying / Harassment | 142 | 85 | 88 | 80 |
| Corruption | 10 | 6 | 3 | 5 |
| Criminal Conviction | 35 | 32 | 22 | 21 |
| Exploitation of working relationships | 8 | 9 | 5 | 12 |
| Failure to obey a lawful and reasonable order or written instruction | 104 | 110 | 150 | 74 |
| Failure to report misconduct by others | 31 | 21 | 36 | 8 |
| Financial affairs | 7 | 3 | 5 | 6 |
| Fraud | 42 | 47 | 35 | 39 |
| Inappropriate relationship with a prisoner / ex-prisoner | 34 | 35 | 32 | 32 |
| Inappropriate relationship with a prisoners visitor | 2 | 2 |  | 2 |
| Making / Prompting false statements | 29 | 61 | 45 | 55 |
| Membership of a racist organisation |  | 1 |  |  |
| Misuse of IT | 31 | 23 | 28 | 18 |
| Negligence likely to endanger the security of an establishment / escape of a prisoner | 114 | 61 | 66 | 58 |
| Performance of duties | 261 | 378 | 347 | 361 |
| Police caution | 16 | 15 | 8 | 8 |
| Poor timekeeping | 7 | 3 | 2 | 8 |
| Racial harassment | 52 | 17 | 26 | 16 |
| Sexual harassment / assault | 20 | 29 | 13 | 28 |
| Theft / Fraud | 32 | 18 | 22 | 24 |
| Trafficking | 9 | 12 | 7 | 16 |
| Unauthorised absence ( AWOL) or lateness | 53 | 56 | 63 | 45 |
| Unauthorised disclosure of official information | 12 | 18 | 18 | 10 |
| Undefined | 33 | 4 | 1 | 3 |
| Undertaking secondary employment without permission | 11 | 15 | 8 | 9 |
| Unfit for duty through drink / drugs | 12 | 7 | 9 | 11 |
| Unprofessional conduct | 297 | 303 | 285 | 316 |
| Unknown  | 1 |  |  |  |

Note: An individual can be investigated for more than one conduct and discipline reason so the figures above cannot be added up to give total number of individuals.

**Table 2: Number of individuals employed by the Prison Service investigated for conduct and discipline, by financial year**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **2012/13** | **2013/14** | **2014/15** | **2015/16** |
| Number of individuals | 1,514 | 1,420 | 1,269 | 1,246 |

We take allegations of inappropriate behaviour extremely seriously, and will not hesitate to take action where there is evidence of misconduct

However, for the financial year 2016/17, we are not obliged to provide information if there are prohibitions on disclosure ‘by or under any enactment’ (Section 44(1)(a) of the FOIA). For this period, 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 is a subset of our staffing data held in its final form which we routinely publish. It is intended for release in the “NOMS Annual Staff Equalities Report: 2016 to 2017” scheduled for publication on 30 November 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.

The MoJ 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. 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 MoJ does publish the withheld information on assault as part of National Statistics. Therefore, to now disclose as part of your FOI request would 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) of the FOIA.

The terms of this section 44 exemption mean that we do not have to consider whether or not it would be in the public interest for you to have the information.