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| Ministry of Justice | February 2017 |

**Freedom of Information Act (FOIA) Request –** 109849

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

***For this FOI request I am asking for data from 1st April 2013 to 31st March 2016 and I consider children to be anyone under the age of 18.***

***Could you please provide me with the following information:***

***• How many Sexual Harm Prevention Orders (SHPO) have been issued to people who committed offences against children? I would like to know how many SHPO’s have been issued between 1st April 2013 and 31st March 2016? I would like this information broken down by year and by the offence they committed, and broken down by location of the court.***

***• How many SHPO’s issued to people who committed offences against children were breached between 1st April 2013 and 31st March 2016? I would like this information broken down* by year and the reason for the breach and broken down by location of the court.**

Your request has been handled under the FOIA.

I can confirm that the MoJ holds some of the information that you have requested. The MoJ does not hold information for years 2013 and 2014. Please note this sentencing disposal came into effect only on 8 March 2015, which is why there are no results presented for 2013 or 2014. The FOIA does not oblige a public authority to create information to answer a request if the requested information is not held. The duty is to only provide the recorded information held.

Question 1

On a principal disposal basis, five offenders were issued Sexual Harm Prevention Order in 2015. This refers to the most severe sentence given for the principal offence (i.e. the principal sentence).

The attached table 1 provides details of the number of Sexual Harm Prevention Orders including those given as a non-principal sentence broken down by offence. Table 2 provides details broken down by court, in England and Wales since 1st April to 2013 to 2015 (latest available).

Question 2

In 2015, only 1 person breached this order under secondary sentence. I am afraid that I am unable to provide you with further breakdown as it is exempt from disclosure under section 40(2) of the FOIA, because it contains personal data.

If a request is made for information and the total figure amounts to five 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 Data Protection Act 1998 (DPA). We believe that the release of some of this information would risk identification of the individuals concerned. For this reason, MoJ has chosen not to provide an exact figure where the true number falls between one and five. However, it should not be assumed that the actual figure represented falls at any particular point within this scale; 'five or fewer' is used as a replacement value from which it would be difficult to isolate or extract any individual data.

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. We do not have 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.

Information for 2016, is exempt from disclosure under section 44(1) (a) of the FOIA, which refers to prohibitions on disclosure ‘by or under any enactment’ of the FOIA. In this case, the information you are seeking is prohibited by the Statistics and Registration Services (SRS) 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 in May 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 (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 statistics designated as 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 information on sentencing outcomes, including sexual harm prevention orders 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) of the FOIA.

Section 44 is an absolute exemption and does not require a public interest test.

The information for 2016 is also exempt from disclosure under section 22(1) of the FOIA, because it is intended for future publication. Please note that whilst quarterly court proceedings and convictions headline data are published and are currently available up to end June 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 data are not available until the annual criminal statistics publication is published in May 2017.

This is a qualified exemption which means that the decision to disclose the information is subject to the public interest test. 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**

* Disclosure would improve transparency in the operations of Government, and of the justice system in particular.

**Public interest considerations favouring withholding the information**

* 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 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 FOIA at this time.