

Reference: IC-416928-D9J8

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 June 2026

Public Authority: Ministry of Justice

Address: 102 Petty France

**London
SW2H 9AJ**

Decision (including any steps ordered)

1. The complainant requested various information regarding convictions including the total number of convictions broken down by nationality and headline offence groups. The Ministry of Justice (the MoJ) refused to provide the requested information citing section 40(2) (personal information) of the FOIA. However, during the course of the Commissioner's investigation, the MoJ also relied on section 12 (cost of compliance exceeds the appropriate limit) of the FOIA.
2. The Commissioner's decision is that the MoJ has failed to demonstrate that section 12 is engaged, and that section 40(2) applies to information where the numbers are less than five but does not apply to any numbers of five or above.
3. The Commissioner requires the MoJ to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information to the complainant.
4. The MoJ must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.



Request and response

5. On 22 June 2025, the complainant wrote to the MoJ and requested the following information:

"I wish to make a freedom of information request and would be grateful if you could supply the following information for the years 2018 - 2024:

- the total number of convictions (broken down by nationality) for the following headline offence groups, and also for each detailed offence category contained within them: "violence against the person", "sexual offences", "drug offences", "criminal damage and arson", "possession of weapons", "theft offences", "robbery".

(note - in any instance where [an] certain nationality has fewer than 5 results, please use FOI best practice and simply provide the appropriate response of "<5")."

6. The MoJ responded on 30 June 2025. It stated that it was refusing the request by virtue of section 40(2) (personal information) of the FOIA on the basis that disclosure could lead to the identification of individuals.
7. On 1 July 2025, the complainant requested an internal review of this response on the basis that responses to one of their previous requests was complied with by suppressing the data for all numbers less than five. The complainant also asked the MoJ how any indirect disclosure could take place by providing this information, especially if numbers are suppressed for anything less than five.
8. Following an internal review the MoJ wrote to the complainant on 10 July 2025. It upheld its original decision to refuse the request on the basis of section 40(2) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 23 July 2025 to complain about the way their request for information had been handled. In addition to the concerns raised in their request for an internal review, the complainant reasserted that there is no way individuals could be identified as a result of this information being disclosed, even if cross tabulated with other information previously disclosed.
10. During the course of the Commissioner's investigation, the MoJ provided details of the withheld information for the years 2021 to 2024. However, having collated this information, it informed the Commissioner that it also



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11. The scope of the Commissioner's investigation is to consider whether the MoJ was entitled to rely on section 12 of the FOIA in respect of this request. Only if he decides that section 12 is not engaged will he go on to consider whether the MoJ was entitled to rely 40(2) of the FOIA in respect of the withheld information.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate

limit 12. Section 12 of the FOIA states that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

13. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 'Regulations') sets the appropriate limit at £600 for the public authority in question. Under these Regulations, a public authority can charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 24 hours work in accordance with the appropriate limit set out above.
14. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
 - (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.
15. As previously stated, the MoJ has sought to rely on section 12 having spent time collating part of the withheld information. The Commissioner asked the MoJ to provide details and evidence of its time estimate.
16. In its representations to the Commissioner, the MoJ confirmed that its estimate was calculated using information regarding the work undertaken to produce the sample data, and stated:

“It took five working days to locate, retrieve and extract the sample data, which in itself is over the cost limit. To further provide the



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methodology to ensure the suppression is adequate, would be a further two days. As such, it exceeds the cost limit.”

17. The Commissioner has considered the estimate provided by the MoJ in light of the requirements of section 12(1) of the FOIA and the associated Fees Regulations. In order to engage section 12, a public authority must provide a reasonable estimate of the time required to carry out the permitted activities, namely locating, retrieving and extracting the requested information
18. While the Commissioner recognises that a public authority is not required to provide a precise calculation, it must nevertheless provide a sufficiently detailed and evidenced breakdown of the activities involved and the time attributed to each element. A bare assertion that work took a certain number of days, without further explanation of the underlying processes, will not normally be sufficient to demonstrate that the estimate is reasonable.
19. In this case, the MoJ has stated that it took five working days to produce a sample dataset, with further time required to complete the remaining data and to develop a suppression methodology. However, the Commissioner notes that the MoJ has not explained what specific steps were undertaken during this period, how long each stage of the process took, or why those steps were necessary in order to comply with the request.
20. Similarly, the estimate that a further three working days would be required to complete the remaining data has not been supported by any breakdown of the tasks involved. In the absence of such detail, the Commissioner is unable to determine whether the estimate has been calculated on a reasonable and objective basis.
21. The Commissioner acknowledges that the request is wide in scope and involves the manipulation of a complex dataset. However, complexity alone does not obviate the requirement to provide a properly evidenced estimate. In the absence of a coherent explanation of how the estimate has been calculated, the Commissioner cannot conclude that the cost limit would be exceeded.
22. Accordingly, the Commissioner finds that the MoJ has failed to demonstrate that section 12(1) is engaged in respect of this request.
23. As section 12 is not engaged, the Commissioner has gone on to consider whether the requested information is exempt from disclosure under

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Section 40 – personal information

24. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
25. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
26. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
27. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

28. Section 3(2) of the DPA defines personal data as:
"any information relating to an identified or identifiable living individual".
29. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
30. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
31. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
32. In this particular case, the MoJ has refused to disclose the data requested on the basis that disclosure could lead to the identification of individuals. The question here is whether the information requested by

the complainant, which excludes numbers of four or fewer, could lead to the identification of any individual. In other words, could disclosure of a number of at least five and in accordance with the other specifications of the complainant's request lead to the identification of any individual?



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33. The Commissioner's guidance 'is the request for personal data'¹ addresses the question of whether an individual can be identified and states:

"When assessing if a disclosure could lead to people being identified, you need to think about how **actual** identification is possible. You should consider all the practical steps and all the means reasonably likely to be used by someone who is motivated to identify the people to whom the information relates to.

This is called the 'motivated intruder' test."

34. In paragraph 37 of the *Information Commissioner v Magherafelt District Council*², the Upper Tribunal adopted the following definition of the 'motivated intruder':

"A person who starts without any prior knowledge but who wishes to identify the individual or individuals referred to in the purportedly anonymised information and will take all reasonable steps to do so."

35. When assessing the motivated intruder, the Commissioner has long established that this is not just the means that an ordinary person may use, but the means a determined person with a particular reason to want to identify an individual would use, for example, an investigative journalist.
36. The Commissioner's guidance also confirms that the means of identification are particularly relevant where the information relates to a group of people. Whether individuals can be identified will depend on the particular facts, such as the size of the overall dataset, the number of data points that have been requested and the information already in the public domain, that could potentially be cross-referenced with the disclosed information.
37. However, it is not sufficient for there to be only a hypothetical risk of identification. If there is no realistic route to identification, the information is not personal data, regardless of its sensitivity.
38. The Commissioner is also mindful that small numbers carry a greater risk of identification than larger ones. However, that does not mean that every small number identifies any individual. He notes that the request

¹ [Part one: Is the request for personal data? | ICO](#)

² [Information Commissioner v Magherafelt District Council \[2012\] UKUT 263 \(AAC\) \(14 June 2012\)](#)



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in this case is for numbers of 5 or above with numbers of less than 5 suppressed.

39. In its original response, the MoJ informed the complainant that it considers that the disclosure of some of the requested information, in combination with previous releases, would be likely to lead to identification of the individuals concerned even without small numbers, due to the ability to layer. It added that the ability to reidentify makes the requested information personal data.
40. The MoJ expanded on this in its internal review, informing the complainant that:
- “Due to the previous releases to both you and other requesters on this subject, the amount of data in the public domain now allows a far greater opportunity to layer and leads to a far greater risk of deductive disclosure.”
41. The MoJ further argued that taking together all disclosures on nationality of offender, it would now be possible to reidentify individuals even with small number suppression. It added that:
- “...overlaying slices of offenders by demographics, offence, institution and dates allows a motivated individual to drill down to isolate an individual, especially with some nationalities having small numbers.”
42. In its representations to the Commissioner, the MoJ confirmed that it receives this information from the Police National Computer (PNC) which uses nonstandard nationality classifications with either no or limited controls on what can be entered. Due to cost implications, the MoJ informed the Commissioner that it must present the data exactly as it is recorded. It added that this makes the dataset inherently more identifiable, as it contains numerous very small groups with distinct and unique classifications.
43. The MoJ further informed the Commissioner that when this unique data is further disaggregated by other variables such as age or when subtotals and totals are requested, it becomes much easier to reverse engineer any applied suppression.

44. The MoJ argued that when all such data in those jigsaw pieces is matched together, the consequence is that a motivated intruder could identify specific individuals, particularly for less common nationalities or rare offence types in particular time windows or institutions.
45. The MoJ further stated that while small-number suppression can mitigate some risks, in this case the identifiability risk stems not solely

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from low numbers but from the structure of the data and the ability to cross-reference it against open-source material. It considers that the risk persists even where individual cells contain larger figures, rendering partial disclosure ineffective in preventing re-identification.

46. The MoJ has argued that the risk of indirect identification is more than remote and it cannot guarantee anonymisation to the required standard, making withholding the only lawful outcome.
47. In later representations to the Commissioner, the MoJ added that in addition to past FOIA releases and other information that a person may have, if they work, or have worked in a prison, or if they have prison contact sources within the prison service, this increases the possibility of indirect identification of an individual.
48. Following a meeting between the MoJ and the Commissioner, the MoJ spent additional time considering whether it was possible to identify an individual from a combination of the data relevant to this request and by piecing together other information already available.
49. The MoJ provided the Commissioner with a specific example it identified within approximately 20 minutes, using only the dataset and basic internet searching.

The Commissioner's conclusion

50. The Commissioner has given careful consideration to the MoJ's arguments regarding the potential for identification through the "layering" of multiple datasets. While he accepts that the aggregation of different sources of information can, in some circumstances, increase the risk of identification, he does not consider that the MoJ has demonstrated that such layering would, in practice, result in a realistic and likely route to identification across the dataset as a whole.
51. In particular, the Commissioner notes that the MoJ's submissions rely largely on generalised assertions about the risks posed by the accumulation of prior disclosures, rather than evidence showing how specific individuals could be identified from the requested data where numbers are not very small. He emphasises that the motivated intruder

test requires more than a broad claim that data could theoretically be combined; it requires a demonstration that such combination would enable identification with a reasonable degree of certainty.

52. The Commissioner also considers it significant that the requested information comprises purely statistical outputs, with no direct identifiers such as names, dates of birth, case references or locations of offences.

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53. While indirect identification remains possible in principle, the absence of such key identifiers materially constrains the ability of a motivated intruder to isolate individuals, particularly within groups of five or more persons. In the Commissioner's view, this limits the practical utility of any cross-referencing exercise and weighs against a finding of identifiability for larger cell counts.
54. The Commissioner places weight on the fact that, for cell values of five or above, the data represents groups rather than individuals. The Commissioner considers that, in such cases, there is a dilution effect, whereby the presence of multiple individuals sharing the same characteristics creates uncertainty that cannot realistically be resolved by a motivated intruder using reasonably available means. This contrasts with very small numbers, where such uncertainty is significantly reduced.
55. The MoJ has placed particular reliance on the existence of unusual or highly specific nationality categories, arguing that these may render individuals effectively unique within the dataset.
56. The Commissioner accepts that uniqueness may, in some circumstances, increase identifiability risk. However, he does not accept that the presence of unusual data labels is, in itself, sufficient to establish identifiability. What matters is whether that apparent uniqueness can be translated into the identification of a real, living individual using reasonably accessible information.
57. In the absence of evidence that such unique classifications correspond to publicly identifiable individuals, the Commissioner considers that this argument carries limited weight except where the dataset is reduced to extremely small numbers.
58. The Commissioner has taken into account the MoJ's example of identification achieved within a short time using the dataset and open source material. The Commissioner notes that the example appears to rely on a combination of rare characteristics and very small numbers, which is consistent with his finding that identifiability risks are concentrated in cells with low counts. However, he does not consider that this example provides sufficient evidence to justify withholding all

data, including that relating to groups of five or more, which is what has been requested by the complainant.

59. The Commissioner accepts that court reporting, press coverage and other public sources may contain information about offences and offenders. However, he emphasises that the relevant question is not whether such information exists, but whether it can be systematically combined with the requested dataset to identify individuals.

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60. In the Commissioner's view, the MoJ has not demonstrated how a motivated intruder would move from general reporting of offences to the precise matching of individuals to aggregated statistical cells, particularly where those cells represent multiple individuals.

61. The Commissioner also considers whether disclosure would lead to a meaningful increase in the risk of identification, rather than merely adding incrementally to information already available.

62. He acknowledges that disclosure may marginally increase the level of detail available about certain groups. However, for cell values of five or above, he is not satisfied that this increase is sufficient to cross the threshold from possible to likely identification, as required for the information to constitute personal data.

63. The Commissioner notes that, in line with established practice, small number suppression (for example, values below five) is a recognised technique for mitigating identifiability risks in statistical disclosures.

64. He considers that the application of such suppression, which is inbuilt in the wording of the complainant's information request, strikes an appropriate balance in this case, addressing the areas of genuine risk while allowing disclosure of information that does not meet the threshold of personal data.

The MoJ has not demonstrated why this established approach would be insufficient when applied to the dataset in question.

65. Accordingly, the Commissioner has concluded that section 40(2) is not engaged for this dataset for numbers of 5 or above. Compliance with the step at para 3 above requires disclosure in accordance with the complainant's request, which excludes numbers of less than five.



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Right of appeal

66. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

67. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
68. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.