

6 January 2021

Dear

Freedom of Information Act (FOIA) Request – 201217022

Thank you for providing clarification further to your email of 25 November in which you asked for the following information from the Ministry of Justice (MoJ):

I refer to previous FOI replies concerning the health and security of detainees in Belmarsh, in particular due to Covid-19, and the lethal risks taken with their lives. My previous FOIs were focused on journalist Mr Assange (DOB 03.07.1971; Prisoner no: A9379AY), but also on conditions affecting the whole prison population.

It seems that State agents in the UK fail to understand their obligations under the law concerning the right to life and security. The situation is currently out of control.

For the past two days Mr Assange's fiancée, Ms Stella Moris, has tweeted the following:

Nov 23: There are 70 people on Julian's wing, and <200 people on Julian's house block.

If it's accurate the 49 prisoners are now infected, it means 25% of the house block, or alternatively (if the number corresponds to the wing only), over 70% of prisoners.

Nov 24: #BelmarshCOVID outbreak: Today I've been told the number of people infected with #COVID on Julian's house block is 56, including staff.

By the Human Rights Act 1998, European Convention Human Rights ("ECHR") are incorporated into UK law. Section 6 of the Human Rights Act 1998 (HRA) makes it unlawful for a public authority to act in a way that is incompatible with a person's ECHR rights. Article 2 of the ECHR, in particular, enjoins the State not only to refrain from the intentional and unlawful taking of life but also to take appropriate steps to safeguard the lives of those within its jurisdiction.¹ The European Court of Human Rights ("ECtHR") has found the positive obligation under Article 2 to take appropriate steps to safeguard the lives of those within its jurisdiction to apply in the context of any activity, whether public or not, in which the right to life may be at stake; for

¹ *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], § 130

example, in the context of medical care and assistance given to vulnerable persons institutionalised in State facilities.²

Recently, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") published a statement of principles relating to the treatment of persons deprived of their liberty in the context of the Covid-19 pandemic.³ It is public knowledge that those principles have been disregarded in the case of vulnerable detainees, such as Mr Assange, notably the following principles:

"5) ...authorities should make greater use of alternatives to pre-trial detention..."

6) ...special attention will be required to the specific needs of detained persons with particular regard to vulnerable groups and/or at-risk groups..."

9) Fundamental safeguards against the ill-treatment of persons in the custody of law enforcement officials (access to a lawyer, access to a doctor) must be fully respected in all circumstances and at all times..."

If Mr Assange's house block has indeed been afflicted with such a critical Covid-19 outbreak (evidently resulting from consistent failure to heed the above precautions) and if any of 56 individuals die, in my view, a court would very likely find that they were killed by State agents or with their connivance or acquiescence, making them and the UK liable for their death. Even in circumstances where the ECtHR might not be able to establish beyond reasonable doubt that any State agent was involved in the killing, the Court may nonetheless find the UK responsible, if it considers that the authorities failed to take reasonable measures available to them to protect the detainees' right to life.

Given that grave dangers (to *life and limb* of Belmarsh prisoners) were abundantly clear from the outset, as communicated by experts such as Professor Richard Coker in his report ("Coker Report"), the public will expect clear answers as to how the LTHSPG, Oxleas NHS Foundation Trust and other State agents prepared for this pandemic outbreak within Belmarsh prison.

Therefore, regarding the said Belmarsh prison Covid-19 crisis, pursuant to the Freedom of Information Act 2000, and in respect of the preceding 12-month period, I hereby request the following:

1. a list of all diagnostic facilities and therapeutic support available in or at Belmarsh Prison since the date of submission or publication of the "Coker Report";
2. the number of Covid-19 positive cases in Belmarsh Prison of detainees;
3. the number of Covid-19 positive cases in Belmarsh Prison of personnel;
4. information on measures taken to mitigate risks in custody and to shield vulnerable individuals from Covid-19;
5. information on breaches, deviations or non-compliance from the following:
 - a. the Standard Minimum Rules for the Treatment of Prisoners (the "Standard Minimum Rules"),
 - b. the Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment (the "Body of Principles"), and
 - c. the Basic Principles for the Treatment of Prisoners (the "Basic Principles");
6. information as to how many prisoner file audits have been conducted by an independent oversight authority, and if so, on which dates?

² *Nencheva and Others v. Bulgaria*; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC]; *Dumpe v. Latvia* (dec.)

³ <https://rm.coe.int/16809cfa4b>

7. Information as to whether and in what manner the Nelson Mandela Prison Rules are implemented in Belmarsh prison.

Please provide the information in digital form via email.

Any refusal notice under the FOIA needs to explain exactly which exemption is engaged and why.

"The prison system should be regarded as a public service. It should be transparent and open to public scrutiny."⁴ The general need for transparency regarding public bodies (such as Belmarsh prison and other State agents such as Oxleas NHS Foundation Trust) constitutes a sufficiently pressing public interest in transparency about the issues the information relates to. The fact that other methods of scrutiny are available does not in itself weaken the public interest in disclosure.

If it is not possible to provide the information requested due to the information exceeding the cost of compliance limits identified in Section 12, please provide advice and assistance, under the Section 16 obligations of the Act, as to how I can refine my request.

If you can identify any ways that my request could be refined I would be grateful for any further advice and assistance.

If you have any queries please don't hesitate to contact me via email and I will be very happy to clarify what I am asking for.

Thank you for your time and I look forward to your response.

You then clarified in your email of 17 December:

Q: In your email you ask for clarification as to "all diagnostic facilities" available in or at HMP Belmarsh.

A: Yes. I was referring specifically to facilities available at or to HMP Belmarsh for diagnosing COVID-19 (as said expression was defined in the Coker Report: access to diagnostic facilities that include haematology, biochemistry and virology laboratory services, and radiology services that include chest X-ray and CT scan capabilities).

Q: You also seek clarification as to "therapeutic support" available in or at HMP Belmarsh.

A: Yes I seek information on the "therapeutic support" available at or to HMP Belmarsh prisoners affected by COVID19 or at risk of COVID-19 (as said expression was defined in the Coker Report: i.e., therapeutic support for cases should include, at a minimum, appropriate pharmaceuticals and respiratory support. The full complement of support, including ventilation, available in intensive care units may well be needed for severe cases). As Coker's list of diagnostic and therapeutic support services is not exhaustive, a list of the services available to prisoners in or at HMP Belmarsh to support their emotional and mental wellbeing should also be furnished under my request.

I confirm the timeframe for my request as commencing on 1st April 2020 (the date of signature of the 'Coker Report').

As stated from the outset, I have been informed that a more specific report was drafted in relation to HMP Belmarsh. I maintain my request for that specific report and all subsequent or related reports. I look forward to your response in relation to the entire FOI request referred to in the subject-matter above.

Your request has been handled under the FOIA.

I can confirm that the MoJ holds some of the information that you have requested and I have provided it below.

Q1 - In relation to diagnostic facilities and medically therapeutic support available at HMP Belmarsh for diagnosing and treating Covid-19, the MoJ does not hold any information in the scope of your request. This is because we are not the appropriate authority to contact on this subject. It may help if I explain that the Ministry of Justice is not responsible for the commissioning of healthcare services in public prisons and this is the responsibility of NHS England and the Welsh Government. The commitment to working with health and justice partners is set out in the National Partnership Agreement for Prison Healthcare in England, which was published in April and is available for the public to view through the Government website (www.gov.uk). Prisoners do however receive the same healthcare and treatment as anyone outside of prison. Therefore, you may wish to contact Oxleas NHS Foundation Trust, the healthcare provider for HMP Belmarsh. Their contact details are: Oxl-tr.FOI@nhs.net.

Separately, outside of the FOIA and on a discretionary basis, I can confirm that all prisons in England are supplied with nose and mouth swab tests in order to diagnose Covid-19 in prisoners and staff. The prisoner tests are carried out by a member of healthcare staff.

Also, in relation to Q1, I can confirm the following services are available to prisoners at HMP Belmarsh to support their emotional and mental wellbeing:

HMP Belmarsh Chaplaincy Department provide daily cover and will see anyone referred to them.

Prisoners can make an application to see a chaplain wherever they are, and a chaplain will come as soon as possible after receiving the application.

The Chaplaincy Department provides support for people's faith and are also available for people who just want someone to talk to or need general support, such as a listening ear, or during a particularly difficult time.

Chaplains are available daily to prisoners who are separated from the main residential areas, such as Healthcare In-patients or those in the Segregation Unit.

HMP Belmarsh has a Safer Custody Team who provide regular visits to residents identified as particularly vulnerable. Safer Custody also follow up any concerns residents, family members or staff may raise about mental health issues.

Safer Custody also provide distraction packs, library books, stress balls and colouring pencils to those prisoners that request them.

HMP Belmarsh also runs a Listener service for prisoners. This is a service where a prisoner can request to speak to Listeners who are other residents trained by the Samaritans, who are available for those prisoners who are in need of someone to talk to.

Prisoners at HMP Belmarsh also have access to Mental Health Teams, provided by NHS Oxleas Foundation Trust.

Further information about these services can be found in the following Prison Service Instructions (PSIs), which are available to view through the Government website using the links I have provided:

- PSI 05-2016 Faith & Pastoral Care for Prisoners:
<https://www.gov.uk/government/publications/faith-and-pastoral-care-for-prisoners-psi-052016>
- PSI 64-2011 Management of Prisoners At Risk of Harm to Self, To Others and From Others (Safer Custody): <https://www.gov.uk/government/publications/managing-prisoner-safety-in-custody-psi-642011>

Q2 – I can confirm that as of 30 November 2020, 68 prisoners had tested positive for Covid-19 at HMP Belmarsh. Please note that prisoner testing data is currently published as weekly Management Information through the Government website:

<https://www.gov.uk/government/collections/hmpps-covid-19-management-information-weekly>. As such, although care is taken when processing and analysing the returns, the detail collected is subject to the inaccuracies inherent in any large-scale recording system. Much of the data collected during the COVID-19 pandemic has been done at pace, with recording practices evolving as we understand more about the requirements and conditions we are facing. In order to present the timeliest information, the data presented has not been subjected to the usual standard of quality assurance associated with official statistics.

Q3- I can confirm that as of 31 October 2020, 17 members of staff at HMP Belmarsh had tested positive for Covid-19. The MoJ also holds the data from 31 October 2020 onwards, however, it is exempt from disclosure.

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). 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 staff data held in its final form which we intend to publish. The staff data is intended for publication in the HMPPS COVID-19 Experimental Statistics Annex on 18 February 2021. 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 MoJ produces official statistics under the standards set by the UK Statistics Authority (the Authority). The Authority is obliged under Section 7 of the SRS Act to promote and safeguard the production and publication of official statistics that serve the public good, with particular reference to good practice and quality. The Authority achieves this through the Code of Practice for Official Statistics (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 MoJ intends to publish information on staff cases of Covid-19 in prisons as part of Official Statistics. Therefore, to now disclose as part of your FOI request, will undermine the provisions of Section 7 of the SRS Act and violate the Pre-Release Access Order to Official Statistics 2008 and as such engages the exemption under Section 44(1)(a).

Please be advised the information is due to be published by 18 February 2021 in the HMPPS COVID-19 Experimental Statistics Annex and can be accessed via the following link: <https://www.gov.uk/government/collections/national-offender-management-service-workforce-statistics>.

You may wish to resubmit your request for the subset of that published data, once the information has been published on 18 February 2021.

Q4 – I can confirm that the MoJ holds the information that you have requested. However, it is exempt from disclosure under section 21 of the FOIA, because it is reasonably accessible to you. The MoJ and HMPPS response to the coronavirus pandemic has been published in the COVID-19: National Framework for Prison Regimes and Services, which can be accessed via the following link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/889689/prisons-national-framework.pdf.

For your awareness, please note that HMP Belmarsh has recently been moved back to Stage 4, as have all prisons located in Tier 4 areas.

Q5 - I can confirm that MoJ does not hold any information in the scope of your request. This is because there is no legal or business requirement for MoJ to do so. Pursuant to Section 16 of the FOIA, we have a duty to provide advice and assistance and we are able to explain that the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment and the Basic Principles for the Treatment of Prisoners are useful sets of non-legally binding guidelines which are considered relevant to the entire prison estate, including HMP Belmarsh. HMPPS aims to provide all prisoners with a safe and decent environment in which all individuals are treated with respect and dignity. HMPPS is bound by relevant UK legislation on prisons, namely the Prison Act 1952 and the Prison Rules 1999, as well as the Human Rights Act 1998.

Q6 – I can confirm that MoJ does not hold any information in the scope of your request. This is because there is no legal or business requirement for MoJ to do so. Separately, outside of the FOIA and on a discretionary basis, I can confirm that Her Majesty's Inspectorate of Prisons (HMIP) conducted a Scrutiny Visit at HMP Belmarsh on 26 May 2020. You can find out further information about the work of HMIP, including copies of their published inspection reports by visiting their website: <https://www.justiceinspectorates.gov.uk/hmiprisons/>.

Q7 - The MoJ previously replied to your request for this information on 8 July, reference FOI 200610013. In accordance with section 14(2) the FOIA, the MoJ is not required to reply to you, if any substantially similar or identical request is received within a reasonable time period since complying with your original request.

Regarding your request for a “more specific report” than the Coker report, which relates to HMP Belmarsh, I can confirm that MoJ does not hold any information within the scope of your request. This is because we have been unable to identify any such report.

Appeal Rights

If you are not satisfied with this response you have the right to request an internal review by responding in writing to one of the addresses below within two months of the date of this response.

data.access@justice.gov.uk

Disclosure Team, Ministry of Justice

You do have the right to ask the Information Commissioner's Office (ICO) to investigate any aspect of your complaint. However, please note that the ICO is likely to expect internal complaints procedures to have been exhausted before beginning their investigation.

Yours sincerely

Tatum O'Leary

Long Term and High Security Prisons Group