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| Ministry of Justice | **June 2017** |

**Freedom of Information Act (FOIA) Request – 112158**

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

***Can you please supply us with the following information.***

***Number of Prison Disciplinary actions hearings for staff in total for the years 2014/15, 2015/16 and 2016/17.***

***Is it also possible to get a breakdown of the reasons for disciplinary action and the results of disciplinary hearings in terms of the numbers of no further action, written warnings, final warnings, demotions and dismissals and a breakdown of recorded reasons for these dismissals for the Prison Service.  Alternatively can you tell us if this information is publically available?***

Your request has been handled under the FOIA. I can confirm that the MoJ holds the information that you have requested.

For the period 2014/15 and 2015/16, please find in the attached Excel spreadsheet, four tables providing the information you have requested. Whilst table 1 provides the total numbers, tables 2-4 provide the breakdowns requested. Please note that conduct and disciplinary cases may have multiple charges and as such the number of cases may be greater than the total number of staff. Some figures have been replaced with the sign ‘~’ to prevent individuals involved from being identified.

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 Data Protection Act 1998 (DPA). We believe that the release of the withheld number would risk identification of the individuals concerned and that identification would potentially result in harm to the individual/s or their family. For this reason, MoJ has chosen not to provide an exact figure where the true number is two or fewer. However, it should not be assumed that the actual figure represented falls at any particular point within this scale of 'two or fewer'.

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 breach the first data protection principle and 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. This is an absolute exemption and does not require a public interest test.

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

In relation to the period 2016/17, the information requested is exempt from disclosure. We are not obliged to provide information if there are prohibitions on disclosure by or under any enactment further to section 44(1)(a) of the FOIA. The 2016/17 information requested on staff conduct and disciplinary is contained within the NOMS Annual Staff Equalities Report 2016/17 which is intended for publication on 30 November 2017. As such, we are required to comply with your request, as per 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 designated 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 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).

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.