

Assessment of compliance with the Code of Practice for Official Statistics

Statistics on Freedom of Information

(produced by the Ministry of Justice)

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About the UK Statistics Authority

The UK Statistics Authority is an independent body operating at arm's length from government as a non-ministerial department, directly accountable to Parliament. It was established on 1 April 2008 by the *Statistics and Registration Service Act 2007*.

The Authority's overall objective is to promote and safeguard the production and publication of official statistics that serve the public good. It is also required to promote and safeguard the quality and comprehensiveness of official statistics, and good practice in relation to official statistics.

The Statistics Authority has two main functions:

1. oversight of the Office for National Statistics (ONS) – the executive office of the Authority;
2. independent scrutiny (monitoring and assessment) of all official statistics produced in the UK.

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ASSESSMENT AND DESIGNATION

Under the provisions of the *Statistics and Registration Service Act 2007*, the UK Statistics Authority has a statutory function to assess sets of statistics against the Code of Practice for Official Statistics, with a view to determining whether it is appropriate for the statistics to be designated, or to retain their designation, as National Statistics.

Designation as National Statistics means that the statistics are deemed to be compliant with the Code of Practice. Whilst the Code is wide-ranging, designation may be broadly interpreted to mean that the statistics meet identified user needs; are produced, managed and disseminated to high standards; and are well explained.

Designation also signifies that, subject to any caveats in this report, the Statistics Authority judges that the statistics are readily accessible, produced according to sound methods and managed impartially and objectively in the public interest.

Assessment reports will not normally comment further, for example on the validity of the statistics as a social or economic measure; though reports may point to such questions if the Authority believes that further research would be desirable.

Designation as National Statistics will sometimes be granted in cases where some changes still need to be made to meet fully the requirements of the Code, on condition that steps are taken by the producer body, within a stated timeframe, to address the weaknesses. This is to avoid public confusion and does not reduce the obligation to comply with the Code.

Designation is granted on the basis of the information provided to the Statistics Authority, primarily by the organisation that produces the statistics. The information includes a range of factual evidence and also assurances by the producer organisation. The views of users are also sought. Should further information come to light subsequently which changes the Authority's analysis, the Assessment report may be withdrawn and revised as necessary.

Once designated as National Statistics, it is a statutory requirement on the producer organisation to ensure that the set of statistics continues to be produced, managed and disseminated in compliance with the Code of Practice.

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1 Summary of findings

1.1 Introduction

1.1.1 This is one of a series of reports prepared under the provisions of the *Statistics and Registration Service Act 2007*¹. The report covers two statistical bulletins produced by the Ministry of Justice (MoJ) on the implementation of the *Freedom of Information (FOI) Act 2000*² in central government. The bulletins, which are not currently designated as National Statistics, are:

- *Freedom of Information Act 2000 - Statistics on implementation in central government* quarterly bulletin³
- *Annual report on freedom of information in central government*⁴

1.1.2 The assessment of these statistics was at the request of MoJ.

1.1.3 This report was prepared by the Authority's Assessment team, and approved by the Board of the Statistics Authority on the advice of the Head of Assessment.

1.2 Decision concerning designation as National Statistics

1.2.1 The Statistics Authority has determined that the quarterly and annual statistics on the implementation of the FOI Act in central government can be designated as National Statistics, subject to the Ministry of Justice implementing the enhancements listed in section 1.5 and reporting them to the Authority by July 2010.

1.3 Summary of strengths and weaknesses

1.3.1 MoJ's FOI statistics strike an appropriate balance between meeting the needs of users and maintaining a proportionate burden on suppliers.

1.3.2 MoJ has responded to feedback from users, including recently announcing changes to the presentation of the statistics (on the longest running FOI cases), in response to user concerns, and following consultation with suppliers.

1.3.3 MoJ has a good relationship with data suppliers, many of whom are also users of the statistics. Most suppliers we heard from indicated they would collect at least some of the information for internal monitoring purposes even if MoJ did not require it.

1.3.4 The statistics do not cover all central government bodies, and there are some issues of comparability between organisations. These limitations are documented in the statistical publications, although more could be done to help users by putting these limitations in the context of different uses of the figures.

¹ http://www.opsi.gov.uk/Acts/acts2007/pdf/ukpga_20070018_en.pdf

² http://www.opsi.gov.uk/Acts/acts2000/ukpga_20000036_en_1

³ <http://www.justice.gov.uk/publications/freedomofinformationquarterly.htm>

⁴ <http://www.justice.gov.uk/publications/docs/foi-statistics-report-2008.pdf>

1.4 Detailed recommendations

- 1.4.1 The Assessment team identified some areas where it felt that MoJ could strengthen its compliance with the Code. Those which the Assessment team considers essential to enable designation as National Statistics are listed in section 1.5 below. Other suggestions, which would improve the statistics and the service provided to users but which are not formally required for their designation, are listed at annex 1.

1.5 Requirements for designation as National Statistics

Requirement 1	Document users' experiences of FOI statistics, data quality, and the format and timing of reports (para 3.4)
Requirement 2	Provide more information about the quality of the statistics in relation to the potential uses (para 3.9)
Requirement 3	Publish the name of the responsible statistician or the statistical Head of Profession in all statistical releases (para 3.22)

2 Subject of the assessment

- 2.1 The *Freedom of Information Act 2000* (FOI Act) came fully into force on 1 January 2005. The FOI Act covers England, Wales and Northern Ireland. There is equivalent legislation in Scotland (the *Freedom of Information (Scotland) Act 2002*⁵).
- 2.2 Quarterly and annual statistics on the implementation of the FOI Act in central government have been published routinely since the Act came into force, initially by the former Department for Constitutional Affairs (DCA) and latterly by the Ministry of Justice (MoJ), as lead department for freedom of information since 2007.
- 2.3 The FOI statistics are derived from data supplied to the Ministry of Justice by the 43 central government bodies that are covered by the statistics. These bodies include all ministerial government departments plus some non-ministerial bodies that are deemed to have ‘significant policy-making, regulatory or information-handling functions’ (as defined by MoJ). The list of monitored bodies is included as an annex to the statistical releases and is updated as necessary to reflect machinery of government changes which affect them.
- 2.4 The main central government users of the FOI statistics are MoJ officials with responsibility for FOI policy, who use the statistics to monitor the implementation of the FOI Act. FOI officers in the government departments and public bodies that are covered by the statistics are often both suppliers of data to MoJ and users of the statistics. They benchmark the performance of their own organisation against others. Other users include FOI campaign groups and the general public.
- 2.5 This Assessment covers only the FOI statistics published by MoJ. The MoJ statistics do not cover the National Assembly for Wales or the Northern Ireland Civil Service. The Welsh Assembly Government does not publish statistics about the implementation of the Act; instead it releases disclosure logs giving the details of requests received by the Assembly⁶. Statistics on FOI Act requests to Northern Ireland Departments are published by the Office of the First Minister and Deputy First Minister⁷. The Scottish Government publish statistics on the implementation of the *FOI (Scotland) Act*⁸.
- 2.6 Government departments and public bodies regularly supply large amounts of information (both proactively and on request). All requests for information are covered by the FOI Act but MoJ considers it unfeasible to attempt to count all requests. Instead, for the purposes of the statistics MoJ counts only ‘non-routine’ information requests. These are defined as requests where it was both necessary to take a considered view under the FOI Act about how to handle

⁵ http://www.opsi.gov.uk/legislation/scotland/acts2002/asp_20020013_en_1

⁶ <http://wales.gov.uk/publications/accessinfo/?lang=en>

⁷ <http://www.ofmdfmi.gov.uk/index/improving-public-services/central-freedom-of-information.htm>

⁸ <http://www.scotland.gov.uk/About/FOI/Reporting>

the request and where departmental freedom of information officers were informed of the request and where it was logged in their case management system.

- 2.7 There is a general time limit of 20 working days to respond to requests made under the FOI Act. The FOI Act contains 23 exemptions to the right of access to information. Some of these exemptions are absolute; others require consideration of the balance between the public interest in protecting the information from disclosure and the public interest in releasing the information. Extensions to the time limit for responding to FOI requests in order to consider the public interest should generally not exceed a further 20 working days. If information is withheld, a dissatisfied requester can appeal to the Information Commissioner. In such cases the government department or public body concerned is first given the opportunity to review their initial decision. Such internal reviews should also normally be completed within 20 working days.
- 2.8 The FOI statistics provide information on the number of requests received by each of the central government bodies and information on how these requests were handled. The quarterly statistics include information about:
- the number of 'non-routine' information requests received by the bodies covered;
 - the timeliness of processing;
 - the outcome (for example whether granted or withheld); and
 - if exemptions were applied, the type of exemption used⁹.
- 2.9 Annual (calendar year) statistics are published alongside the fourth quarter statistics. These include:
- additional summary statistics on durations of public interest tests and internal reviews held during the year, and
 - statistics about appeals made to the Information Commissioner regarding requests which were not initially granted by the body concerned.
- 2.10 One exemption to the disclosure of information under the FOI Act is for requests which fall under the separate information access arrangements in the *Environmental Information Regulations 2004* (EIRs). The number of FOI requests to which this particular exemption applies is detailed in the MoJ statistics. MoJ and Department for Environment, Food and Rural Affairs (Defra) are working together to see if a statistical collection on the implementation of EIRs in central government, comparable to the statistics on the implementation of FOI, could be developed.

⁹ More detail on exemptions can be found at: <http://www.justice.gov.uk/guidance/foi-exemptions-guidance.htm>

3 Assessment findings

Principle 1: Meeting user needs

The production, management and dissemination of official statistics should meet the requirements of informed decision-making by government, public services, business, researchers and the public.

- 3.1 The cross-government FOI practitioners' group is used to discuss statistical matters with suppliers. Other policy fora exist where external users, such as campaign groups, can discuss statistical matters if they wish, for example at the 'FOI Live' annual conference¹⁰.
- 3.2 MoJ has developed the presentation of the published statistics in response to users' views. Following concern expressed by the Constitutional Affairs Select Committee about the length of time internal reviews (IRs) were taking, MoJ began to publish information on IR durations.
- 3.3 MoJ has also responded to feedback received at the 'FOI Live' event held in June 2009 on the presentation of durations statistics for both public interest tests (PITs) and IRs. The FOI statistics had been criticised for not providing enough information about the duration of long-running cases, including those that were still open at the end of the reporting year and which were not recorded in the following year's statistics. MoJ published a statement pre-announcing the changes to these statistics in the annual publication from 2011 onwards¹¹.
- 3.4 The recently published statement about the changes to the annual statistics includes a description of the user feedback which led to the changes. There is however no other published information about users' experiences of other aspects of the statistics. The user consultation for this assessment revealed differing views about the frequency of publication of the statistics. As part of the designation of the FOI statistics MoJ should document users' experiences of these statistics, data quality, and the format and timing of reports¹² (Requirement 1) to help inform business planning.

¹⁰ <http://www.ucl.ac.uk/constitution-unit/events/2010/conferences/foilive10.htm>

¹¹ <http://www.justice.gov.uk/about/docs/foi-statistical-notice.pdf>

¹² In relation to Principle 1 Practice 5 of the Code of Practice

Principle 2: Impartiality and objectivity

Official statistics, and information about statistical processes, should be managed impartially and objectively.

- 3.5 FOI statistics appear to be published in an orderly and timely manner, via MoJ's website and the National Statistics Publication Hub, and are free of charge for all.
- 3.6 MoJ has published a revisions policy¹³ on its website. The annual statistics take account of updated data for each of the component quarters. The quarterly data themselves are not routinely revised to take account of updates, but are revised if errors are discovered.

¹³ <http://www.justice.gov.uk/publications/docs/statistics-revisions-policy.pdf>

Principle 3: Integrity

At all stages in the production, management and dissemination of official statistics, the public interest should prevail over organisational, political or personal interests.

- 3.7 No incidents of political pressure, abuse of trust or complaints relating to professional integrity, quality or standards were reported to or identified by the Assessment team.

Principle 4: Sound methods and assured quality

Statistical methods should be consistent with scientific principles and internationally recognised best practices, and be fully documented. Quality should be monitored and assured taking account of internationally agreed practices.

- 3.8 The FOI statistics cover ministerial departments and a selection of other non-ministerial bodies which are deemed by MoJ to have 'significant regulatory or information-handling functions'. Some departments' executive agencies are covered by the statistics; others are not. The statistics do not therefore give a full picture of FOI implementation across central government. MoJ has no plans to extend the coverage of the statistics, partly because of a wish to maintain a consistent time series. The Assessment team suggests MoJ provide information in the statistical releases on those bodies which are *not* covered by the statistics.
- 3.9 Whilst MoJ provides broad guidance to departments about the kinds of request which should be included in the figures ('non-routine' information requests), differences of judgement between policy officers in different departments will inevitably occur. MoJ statisticians believe these differences will be fairly subtle but it is not clear from the caveats given in the statistical releases the extent to which meaningful comparisons between departments can be made. As part of the designation as National Statistics, MoJ should provide more information about the quality of the statistics in relation to the potential uses¹⁴ (Requirement 2). The Assessment team also suggests MoJ consider the feasibility of undertaking an audit of departmental reporting differences and take steps to improve the robustness of the statistics.
- 3.10 The coverage of the FOI Act extends beyond central government and MoJ has developed guidance for bodies covered by the FOI Act (but not covered by the MoJ statistics), who may wish to collect and publish their own FOI statistics. This guidance is particularly aimed at local authorities. The purpose of the guidance is to enable statistics to be produced on a similar basis to, and therefore to be as comparable as possible with, the statistics published by MoJ.

¹⁴ In relation to Principle 4 Practice 2 and Principle 8 Practice 1 of the Code of Practice

Principle 5: Confidentiality

Private information about individual persons (including bodies corporate) compiled in the production of official statistics is confidential, and should be used for statistical purposes only.

- 3.11 FOI statistics are based on aggregate data supplied by ministerial departments and non-ministerial public bodies, which are not considered confidential. No information is collected about the individuals making the information requests, nor about the subject of any individual request.

Principle 6: Proportionate burden

The cost burden on data suppliers should not be excessive and should be assessed relative to the benefits arising from the use of the statistics.

- 3.12 The majority of suppliers who responded to our consultation said that the data were relatively easy to supply, and that at least some of the data would be collected for internal monitoring purposes anyway even if it was not required by MoJ.
- 3.13 MoJ used the results of a pilot data collection to determine which 'other monitored bodies' would be covered by the statistics. On the basis of this pilot study MoJ decided to omit some bodies from the statistics (notably those without a central FOI secretariat) due to concerns about the resource burden their inclusion would impose and concerns about data quality.
- 3.14 MoJ consulted data suppliers during 2009 on proposed changes to the collection and presentation of statistics on durations of public interest tests and internal reviews. Responses to this consultation indicated that retrospective changes to requirements for durations statistics would be burdensome. MoJ has taken account of this and is applying the new data requirements only for data relating to 2010 onwards.

Principle 7: Resources

The resources made available for statistical activities should be sufficient to meet the requirements of this Code and should be used efficiently and effectively.

3.15 The production of FOI statistics appears to be sufficiently resourced.

Principle 8: Frankness and accessibility

Official statistics, accompanied by full and frank commentary, should be readily accessible to all users.

- 3.16 In response to users' feedback, MoJ is changing the presentation of durations statistics for both public interest tests (PITs) and internal reviews (IRs). The presentation of these statistics has been criticised for obscuring the length of time taken to resolve the longest running cases. The uppermost time band used to present the durations of PITs and IRs is 40 days or more and 60 days or more respectively. It is not possible to distinguish the number and proportion of cases which take significantly longer than this from those which are only just outside the time band. Additionally those cases which remain open at the end of the year are not currently included in the following year's statistics so the length of such cases cannot be determined from the statistics either. MoJ has recently pre-announced changes to the annual statistics in response to these concerns¹⁵. The uppermost time band for both PITs and IRs will be extended to 100 days or more. MoJ will also collect and publish new statistics from monitored bodies on the eventual durations of PITs and IRs which had not been resolved in the previous year's statistics.
- 3.17 The statistical reports contain tables, charts, commentary describing the statistics and some useful guidance notes. The reports are available in PDF format and are easily accessible on MoJ's website. The tables for the most recent quarterly data (June to September 2009) are also available on MoJ's website in Excel format. We understand that MoJ plans to routinely release Excel versions of tables alongside the PDF reports from now on to facilitate re-analysis of the statistics.
- 3.18 Issues of comparability between departmental figures were discussed under Principle 4 in this report.

¹⁵ <http://www.justice.gov.uk/about/docs/foi-statistical-notice.pdf>

Protocol 1: User engagement

Effective user engagement is fundamental both to trust in statistics and securing maximum public value. This Protocol draws together the relevant practices set out elsewhere in the Code and expands on the requirements in relation to consultation.

3.19 The requirements for this Protocol are covered elsewhere in this report.

Protocol 2: Release practices

Statistical reports should be released into the public domain in an orderly manner that promotes public confidence and gives equal access to all, subject to relevant legislation.

- 3.20 The FOI statistics are pre-announced on MoJ's website and the Publication Hub and appear to be released in an orderly and timely manner. A list of those who have access to the statistics prior to release is published on MoJ's FOI statistics web page. Ministers are informed in advance of scheduled dates for statistical publications. We are assured that this is on a 'for information' basis and that decisions on the timing of releases are taken solely by the statistical Head of Profession¹⁶.
- 3.21 The figures are released as soon as possible after the end of the reporting period to which they refer. The collection of monitoring data does not begin until the 21st working day after the last day of the period to which the collection refers, since 20 working days is the statutory deadline for public bodies to respond to FOI requests. The annual release, which relates to the previous calendar year, has recently been brought forward from publication in June to publication in April.
- 3.22 As part of the designation as National Statistics, MoJ should publish the name of the responsible statistician or the statistical Head of Profession in all statistical releases¹⁷ (Requirement 3).

¹⁶ Heads of Profession are the senior statistical advisers in government departments

¹⁷ In relation to Protocol 2 Practice 6 of the Code of Practice

Protocol 3: The use of administrative sources for statistical purposes

Administrative sources should be fully exploited for statistical purposes, subject to adherence to appropriate safeguards.

- 3.23 The FOI statistics are derived using information from departmental FOI request tracking systems. Each department operates a different administrative system using different software and it is not considered feasible to extract data directly from more than 40 different systems. Instead data are collected using an Excel spreadsheet.
- 3.24 MoJ has published its Statement of Administrative Sources on its website and this includes the FOI statistics. MoJ has indicated that it intends to provide further detail in the statement on quality assurance procedures.
- 3.25 The quality assurance of these statistics was discussed at para 3.9.

Annex 1: Suggestions for improvement

A1.1 This annex includes some suggestions for improvement to the Ministry of Justice's Freedom of Information statistics, in the interest of the public good. These are not formally required for designation, but the Assessment team considers that their implementation will improve public confidence in the production, management and dissemination of official statistics.

Suggestion 1 Provide information in the statistical releases on those bodies which are *not* covered by the statistics (para 3.8).

Suggestion 2 Consider the feasibility of undertaking an audit of departmental reporting differences and take steps to improve the robustness of the statistics (para 3.9).

Annex 2: Summary of assessment process and users' views

A2.1 This assessment was conducted from November 2009 to April 2010.

A2.2 The Assessment team – Penny Babb and Amanda Charles – agreed the scope of and timetable for this assessment with representatives of the Ministry of Justice in November 2009. The Written Evidence for Assessment was provided on 15 January 2010. The Assessment team subsequently met with the Ministry of Justice during February 2010 to review compliance with the Code of Practice, taking account of the written evidence provided and other relevant sources of evidence.

Summary of users contacted, and issues raised

A2.3 Part of the assessment process involves our consideration of the views of users. We approach some known and potential users of the set of statistics, and we invite comments via an open note on the Authority's website. This process is not a statistical survey, but it enables us to gain some insights about the extent to which the statistics meet users' needs and the extent to which users feel that the producers of those statistics engage with them. We are aware that responses from users may not be representative of wider views, and we take account of this in the way that we prepare assessment reports.

A2.4 The Assessment team received 20 responses from the user consultation. The respondents were grouped as follows:

Ministry of Justice (FOI policy)	2
Other government departments	16
Campaign groups	2

A2.5 The majority of users who responded to our consultation were FOI officers in government departments and other monitored bodies, who are both suppliers of data to MoJ and users of the statistics produced. Users appeared satisfied with statistics themselves and also with the level of engagement with MoJ statisticians. The responses received from FOI campaign groups noted weaknesses in the presentations of durations statistics of long-running FOI cases which have been reviewed under Principles 1 and 8 in this report. The responses received from internal MoJ policy officials indicated that their need for quarterly statistics could be reviewed as an annual publication might suffice.

Key documents/links provided

Written Evidence for Assessment document

List of assessment reports published to date¹⁸

1. Statistics from the National Drug Treatment Monitoring System
National Treatment Agency for Substance Misuse
2. Recorded Crime in Scotland
Scottish Government
3. Statistics on Enrolments at Schools and in Funded Pre-School Education in Northern Ireland
Department of Education, Northern Ireland
4. Road Casualty Statistics
Department for Transport
5. UK Energy Sector Indicators
Department of Energy and Climate Change
6. Statistics on Road Freight
Department for Transport
7. Prison Population Projections
Ministry of Justice
8. Migration Statistics
Office for National Statistics
9. Statistics on International Development and the ODA:GNI Ratio
Department for International Development
10. The Scottish Health Survey
Scottish Government
11. Scottish House Condition Survey
Scottish Government
12. Scottish Crime and Justice Survey
Scottish Government
13. Statistics on Children Looked After by Local Authorities in England
Department for Children, Schools and Families
14. Statistics on Children Looked After by Local Authorities in Scotland
Scottish Government
15. Statistics on Children Looked After by Local Authorities in Wales
Welsh Assembly Government
16. Statistics on Children Looked After by Health and Social Care Trusts in Northern Ireland
Department of Health, Social Services and Public Safety, Northern Ireland
17. Wealth in Great Britain
Office for National Statistics
18. Statistics on the National Child Measurement Programme
NHS Information Centre
19. Average Weekly Earnings
Office for National Statistics
20. Energy Statistics
Department of Energy and Climate Change
21. 18 Weeks Referral to Treatment Statistics
Department of Health
22. Agriculture in the UK and selected crop and livestock statistics
Department for Environment, Food and Rural Affairs

¹⁸ Published reports are available at: <http://www.statisticsauthority.gov.uk/assessment/assessment-reports/index.html>

23. Child Benefit Statistics
Her Majesty's Revenue and Customs
24. Producer Price Indices
Office for National Statistics
25. Services Producer Price Indices
Office for National Statistics
26. Scottish Household Survey outputs
Scottish Government
27. Scottish Labour Market Statistics
Scottish Government
28. Special Assessment of the 2011 Censuses in the UK: Phase 1
Office for National Statistics, the General Register Office for Scotland and the Northern Ireland Statistics and Research Agency
29. Labour Market Statistics for Northern Ireland
Department of Enterprise, Trade and Investment, Northern Ireland
30. Child and Working Tax Credit Statistics
Her Majesty's Revenue and Customs
31. Emissions Statistics
Department of Energy and Climate Change
32. Council Tax Levels set by Local Authorities
Department for Communities and Local Government
33. Welsh Labour Market Statistics
Welsh Assembly Government
34. UK Labour Market Statistics
Office for National Statistics
35. Statistics on Freedom of Information
Ministry of Justice
36. Statistics on Court Activity
Ministry of Justice
37. Statistics on Cancer in Scotland
NHSScotland
38. Statistics on Cancer Screening in Scotland
NHSScotland
39. Statistics on NHSScotland Workforce
NHSScotland
40. Statistics on Road Conditions in England
Department for Transport
41. Statistics on School and Pupil Characteristics, and Absence and Exclusions, in England
Department for Children, Schools and Families

