

Hearing 107-202500113

Decision

Judicial Administration

Sharon Roulstone
Ombudsman

31 October 2025

Summary

This decision concerns an appeal under section 43 of the Freedom of Information Act (2021 Revision) (“FOI Act”) regarding a request for records related to the importation and possession of guns and/or ammunition to the Judicial Administration (the Authority). The Applicant sought nine categories of information, including the number of convictions, sentencing details for Caymanians and non-Caymanians, and demographic data for cases where no convictions were recorded from 2019 to 2024.

The Authority disclosed the total number of convictions but refused the remainder of the request under section 9(c) of the FOI Act, citing that compliance would unreasonably divert its resources.

The Applicant requested an internal review, which upheld the refusal. Following intervention by the Ombudsman, the Applicant narrowed the scope of the request to cover the period 2022 to 2024. Despite this, the Authority maintained its position that compliance would still impose an unreasonable burden.

The Ombudsman considered whether the Authority made reasonable efforts to locate the requested records and whether compliance would unreasonably divert its resources.

The Authority demonstrated that the requested information is not maintained in a consolidated or searchable format and that fulfilling the request would require extensive manual review of numerous case files, even for the narrowed timeframe.

The Ombudsman found that the Authority met its burden of proof under section 43(2) of the FOI Act. Compliance would unreasonably divert resources, and the FOI Act does not require the creation of new records or compilation of data that does not already exist in the ordinary course of business.

Outcome: The appeal is dismissed. The Authority is not required to comply with the request under section 9(c) of the FOI Act.

Recommendation: The Ombudsman recommends that the Authority review its record-keeping practices to ensure compliance with section 6 of the National Archive and Public Records Act and consider implementing systems that allow efficient retrieval of conviction and sentencing data. Improved record management would enhance transparency and reduce the likelihood of similar refusals in the future.

Statutes¹ considered:

Freedom of Information Act (2021 Revision) (FOIA)

Freedom of Information (General) Regulation (2021 Revision) (FOI Regulations)

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A. INTRODUCTION

[1] This decision arises from an appeal under section 43 of the Freedom of Information Act (2021 Revision) concerning a request submitted to the Judicial Administration for records relating to the importation and possession of guns and/or ammunition. The request sought nine categories of information, including the number of individuals convicted of importation and/or possession of guns from 2019 to 2024, a breakdown of citizenship, sentencing information for Caymanians and non-Caymanians, and demographic data for cases where no convictions were recorded.

[2] On 9 December 2024, the Applicant submitted the request, specifically asking for:

1. Total Number of Convictions

Records confirming the total number of individuals convicted of importation and/or possession of guns and/or ammunition from 2019 to 2024.

2. Breakdown by Citizenship

Records showing the number of these convictions that were for Caymanians.

¹ In this decision, all references to sections are to sections of the Freedom of Information Act (2021 Revision) as amended, and all references to regulations are to the Freedom of Information (General) Regulations 2021, unless otherwise specified.

Records showing the number of these convictions that were for non-Caymanians.

3. Sentencing Information

Records showing the number of years imprisonment received for Caymanians.

Records showing the number of years imprisonment received for non-Caymanians.

4. No convictions recorded

Records showing the number of cases where no convictions were recorded for Caymanians.

Records showing the number of cases where no convictions were recorded for non-Caymanians.

5. Reasons for no convictions

Records showing reasons for not recording convictions against non-Caymanians.

6. Demographic Information

Records confirming demographic information (age, gender, nationality) for query number 4 above.

- [3] On 17 January 2025, the Information Manager (IM) provided the total number of convictions related to importation and/or possession of guns from 2019-2024 being 240 but refused to provide the remaining records, citing section 9(c) of the FOI Act. The IM explained that fulfilling the remainder of the request would unreasonably divert the Authority's resources.
- [4] On the same day, the Applicant requested an internal review. However, on 29 January 2025, the Applicant proposed an alternative solution: to manually inspect the relevant records in person. On 14 February 2025, the Chief Financial Officer upheld the original decision, stating that the request would still require significant time and manpower beyond the resources available to the Courts. The Authority also raised concerns about potential data breaches if manual inspection were permitted.
- [5] On 10 March 2025, the Applicant filed an appeal with the Office of the Ombudsman (OMB), which was accepted the same day. As part of our investigation, on 13 March 2025, the OMB requested that the IM consider the application of Regulation 10 of the Freedom of Information Regulations (2021 Revision) to ensure the proper application of section 9(c). On 21 March 2025, the OMB issued further correspondence reminding the IM of the obligation to provide a detailed explanation of how compliance would unreasonably divert resources and to invite the Applicant to consider narrowing the scope of the request.
- [6] On 25 March 2025, the Authority confirmed that it had contacted the Applicant in accordance with this guidance. On 2 May 2025, the Applicant agreed to narrow the scope of the request to cover the period 2022–2024. However, on 20 May 2025, the Authority maintained its refusal, asserting that the revised request would still require considerable time and manpower beyond what was reasonably available. On the same day, the OMB requested further clarification from the Authority regarding which aspects of the request were manageable and asked for additional information to assess the application of section 9(c).

- [7] On 26 May 2025, the Applicant submitted a formal hearing request. On 27 May 2025, the IM reaffirmed the Authority's position, stating that even with the narrowed scope, the request remained beyond the Authority's capacity when assessed against the factors outlined in Regulation 10(3).

B. ISSUES UNDER REVIEW

- [8] On 26 May 2025, the Applicant submitted a formal hearing request. On 27 May 2025, the IM reaffirmed the Authority's position, stating that even with the narrowed scope, the request remained beyond the Authority's capacity when assessed against the factors outlined in Regulation 10(3).

- [9] This hearing considers two key issues arising from the Authority's refusal to grant access to the requested records under the Freedom of Information Act (2021 Revision):

1. Whether the Information Manager made reasonable efforts to locate the requested records, as required by Regulation 6(1) of the Freedom of Information (General) Regulations (2021 Revision). This includes assessing whether the authority took appropriate steps to identify and retrieve the records responsive to the applicant's request, and whether any limitations in the Authority's record-keeping systems impacted its ability to do so.
2. Whether compliance with the request would unreasonably divert the Authority's resources, pursuant to section 9(c) of the FOI Act and Regulation 10(3)(b) of the FOI Regulations. This involves evaluating the authority's justification for invoking this exclusion, including:
 - The nature and size of the Authority and the resources available to process FOI requests;
 - The number, type, and volume of records falling within the scope of the request;
 - The estimated work time and effort required to locate, review, and prepare the records for disclosure;
 - Whether the Authority fulfilled its obligations under Regulation 10(1) to consult with the Applicant and explore options for narrowing the request to a more manageable scope.

- [10] In addressing these issues, I have considered the submissions of both parties, the pre-hearing investigation conducted by my office, and the relevant provisions of the FOI Act and Regulations. I have also taken into account the broader principles of transparency, accountability, and the public interest in access to information held by public authorities.

C. BURDEN OF PROOF

- [11] Under section 43(2) of the FOI Act, the burden of proof lies with the public authority—in this case, the Judicial Administration—to demonstrate that it acted in accordance with its obligations under the FOI Act.

D. CONSIDERATION OF ISSUES

The position of the Authority

[12] The Authority argued that:

The Judicial Administration has limited staff capacity. The Criminal Registry has one officer responsible for file retrieval across all divisions. This constraint must be assessed under Regulation 10.

The FOI Act provides a right of access to records held by public authorities, but only as those records exist at the time of the request. Section 6 establishes a general right of access, but it does not extend to requiring a public authority to create new records or to undertake complex collation and analysis. The Applicant's request goes beyond seeking existing records. He has asked for statistical compilations of conviction data broken down by nationality, sentencing length, acquittal reasons and demographic characteristics. These categories of information are not maintained in any structured or readily accessible format within the Judicial Administration's systems.

To comply with the request, staff would be obliged to retrieve and manually review hundreds of criminal case files, many archived off-site. They would then have to extract details of nationality and other demographics, redact confidential or sealed materials and finally collate the information into a new statistical dataset. Such an exercise is not a matter of producing an existing record but of creating new work product.

The FOI Act does not impose any obligation on public authorities to engage in such labour-intensive collation or to compile bespoke statistics for applicants. The Respondent has fulfilled its duty by providing the aggregate conviction totals that were reasonably available, but it was under no statutory duty to generate new statistical records in order to satisfy the broader scope of the Applicant's request.

[13] Further, the Authority continued to argue that the information is not available in a searchable format, and manual review is required due to records being dispersed across various case files. The Authority emphasised that fulfilling the request would take significant staff time, thereby diverting resources from essential judicial functions. Additionally, the Authority opined that allowing in-person inspection would still require staff oversight and pose data protection risks, and despite the Applicant's reduction in temporal span the burden of the task remains the same.

The position of the Applicant

[14] The Applicant submitted that:

The Respondent's reliance on section 9(c) of the FOIA is misplaced. While the regulations consider staff capacity and workload, the refusal fails to account for the public interest

override and the feasibility of narrowed access. The Applicant offered to review files personally, alleviating the burden, but this was dismissed without justification.

The requested data pertains to aggregate statistical information derived from public court records, which are inherently accessible under the principle of open justice... the Applicant plays a vital role in public accountability, particularly on matters of gun crime and judicial transparency, which engage significant public interest.

It is submitted that the Authority has a responsibility to maintain records in a manner that promotes transparency and accountability. The applicant's decision to narrow the scope of the request to the years 2022–2024 significantly reduced the burden of compliance. Furthermore, the Authority had several months to begin compiling the relevant data and could reasonably have completed the task within that timeframe. At a minimum, the Authority could have facilitated access through inspection under section 10(a) of the Freedom of Information Act. The refusal to disclose the information undermines the public interest in understanding patterns of convictions and sentencing, particularly in relation to Caymanians and non-Caymanians.

- [15] Further, the Applicant submits that the Authority should maintain records that enhance transparency and accountability. By limiting the review period to 2022–2024, the burden was notably lessened, and the Authority had adequate time to compile the necessary data. Additionally, it could have permitted inspections as specified under section 10(a) of the FOI Act. The refusal to do so compromises the public interest in understanding trends in convictions and sentencing, especially regarding Caymanians versus non-Caymanians.

Reasonable Efforts to Locate Records

- [16] The standard test whether reasonable efforts have been made to locate a record consists of three parts: (1) the quality of the public authority's initial analysis of the request, (2) the scope of the search that it decided to make on the basis of that analysis, and (3) the rigour and efficiency with which the search was then conducted. This test is decided on the balance of probabilities.²
- [17] The Authority properly understood the initial request. Its search was efficient and appropriately scoped since they located the records that contained the source data.
- [18] The Authority did not claim that the records did not exist; its refusal was based on the anticipated burden of processing. Therefore, I find no evidence that the Authority failed to identify the relevant records.
- [19] **On the question of the reasonableness of the search, since the responsive records were located, I conclude that the IM made reasonable efforts to locate the records, as required under Regulation 6.**

² Information Tribunal (UK) EA/2006/0072 Linda Bromley et al v Information Commissioner and The Environment Agency 31 August 2007 para 13. See also: Information Commissioner's Office Hearing 35-01213 and 35-01313 Ministry of Education, Employment & Gender Affairs 5 December 2013

Whether Compliance Would Unreasonably Divert Resources

- [20] Section 9(c) allows refusal where compliance would unreasonably divert resources. Regulation 10(3)(b) requires consideration of:
- Nature and size of the Authority: Judicial Administration is a small entity with limited FOI resources.
 - Volume of records: Multiple categories of data dispersed across numerous case files, not maintained in a searchable format.
 - Work time involved: Extensive manual review required, even for the narrowed scope.
- [21] Therefore, while the Authority does not hold the responsive records (the statistics), it does hold the source records that could be used to compile the requested statistics. The Authority could extract selected records from the case files and disclose them in redacted form. This would involve the following process:
- retrieve each file archived off-site;
 - remove various documents according to the nature of the request;
 - redact any irrelevant or exempted information from each document, i.e. names, addresses,
 - other identifiable and sensitive data;
 - return the files to appropriate location.
- [22] Their argument about limited staff is unpersuasive and irrelevant to the question of whether the records ought to be produced. If records are required to be produced under the FOI Act, the government is expected to find the resources. Lack of resources is not the same as an unreasonable diversion of them.
- [23] I estimate, in the best-case scenario, that it would take a single staff member up to 30 minutes per file and potentially considerably longer based on the redactions required. This amounts to at least 20 working days, or almost a month, using the most optimistic estimate of the work required.
- [24] **I find this cost excessive. Therefore, compliance with the request would unreasonably divert the Authority's resources, and the exclusion in section 9(c) applies.³**

Procedural Concerns

- [25] The Authority engaged with the Applicant to narrow the request, as required by Regulation 10(1)(b). Despite this, the revised request remained burdensome.
- [26] Furthermore, the FOI Act does not require a public authority to create new records or compile data that does not already exist in the ordinary course of business. Its purpose is to provide access

³ 30 minutes per file = 2 files per hour. 285/2 = 142.5 hours or 20 days (at 7.5 hrs per day)

to existing records, not to mandate the generation of statistical summaries or datasets. Where information is not maintained in a consolidated format, compliance may involve disproportionate effort, which the Act seeks to avoid under section 9(c). The Applicant asserts that the Authority has not considered the public interest; it should be noted that section 9 is not subject to a public interest test under the FOI Act. In fact, once it is determined that it is applicable, it has the potential of stopping the request altogether.

- [27] **I find that the Authority complied with its obligation to invite consultation and explained its position, and no procedural unfairness was identified.**

Other Considerations

- [28] I have considered the Applicant's arguments relating to the principle of open justice. Whilst the argument is well-founded, the public authority has a legitimate defence if the request would impose an unreasonable burden, especially when the requested data is not already held in a compiled or statistical format.
- [29] There is obviously a need for the Authority to develop systems that support transparency, ensuring routine accessibility rather than exceptions.

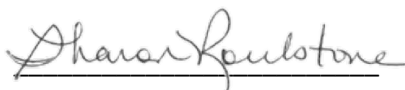
E. FINDINGS AND DECISION

I find that:

- The Authority met its burden of proof under section 43(2).
- Compliance would unreasonably divert resources; refusal under section 9(c) is upheld.

Decision: The appeal is dismissed. The Authority is not required to comply with the request under section 9(c) of the FOI Act.

Recommendation: The Authority should review its record-keeping practices to ensure compliance with section 6 of the National Archive and Public Records Act and consider implementing systems that allow efficient retrieval of conviction and sentencing data. Improved records management would enhance transparency, in the spirit of the Act, and reduce the likelihood of similar refusals in the future.



Sharon Roulstone
Ombudsman