

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

20 January 2009

**Public Authority:** Crown Prosecution Service  
**Address:** CPS Headquarters  
50 Ludgate Hill  
London EC4M 7EX

### Summary

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The complainant requested information from the Crown Prosecution Service (the CPS) relating to the contents of a defence bundle of documents in R v Vernon Attwell, John Donaldson and Thomas Style. The CPS confirmed that it held the information and cited the exemptions of sections 30, 40(2) and 41 as its reason for withholding the entire bundle. During the Commissioner's investigation, the complainant confined his request to a single item, item 10, within the defence bundle. The CPS confirmed in its internal review that item 10 is exempt by virtue of section 40(2) of the Act. The Commissioner has determined that the CPS correctly applied section 40(2) of the Act. He considers that a disclosure of this information would be unfair to identifiable individuals and this would contravene the first data protection principle

The Commissioner finds that the CPS breached section 17(1) of the Act by failing to issue a Refusal Notice within the time for compliance with section 1(1). It also breached section 17(1)(b) of the Act by failing to specify that section 40(2) applied by virtue of section 40(3)(a)(i).

The Commissioner does not uphold the complaint and requires no steps to be taken.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

## The Request

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2. The complainant wrote to the Crown Prosecution Service (CPS) on 14 June 2006 to request a copy of the **'defence jury bundle of documents'** in the case of R v Vernon Attwell, John Donaldson and Thomas Style, tried at the Old Bailey from 20 April 1993 to 18 May 1993.
3. The CPS wrote to the complainant on 22 June 2006 informing him that the documents were archived and held in storage. The CPS stated that it would examine the documents and then consider the complainant's request.
4. In a letter dated 7 July 2006, the CPS told the complainant that documents relating to the R v Attwell had been examined and had been subject to a weeding exercise in 1996. The CPS explained that it had been unable to locate additional material which formed part of the defence jury bundle and that further enquiries would have to be made with its Casework Directorate with regard to disclosure of this material.
5. On 13 July 2006 the complainant wrote to the CPS to complain about its failure to respond appropriately to his requests.
6. The CPS wrote to the complainant on 14 July 2006, informing him that his request had been passed to its Freedom of Information Unit and that he would receive a reply in due course.
7. On 9 August 2006 the CPS confirmed to the complainant that it holds the information he had requested. The CPS refused to supply the information and issued a Refusal Notice in accordance with section 17 of the Freedom of Information Act 2000. The notice cited sections 30, 40(2) and 41 of the Act and outlined the reasons why each of these sections applied to the withheld information.
8. The complainant wrote to the CPS on 13 August 2006 seeking an internal review of its decision to withhold the defence jury bundle of documents. The complainant asked whether the defence jury bundle had been found and its contents examined. He also stated his disagreement with the CPS contention that this case had been fully reported in the media. At this point the complainant asked for transcripts of the trial. This request flowed from a statement contained in the refusal notice which informed him that these were available.
9. The CPS wrote to the complainant on 18 August. It confirmed that it held the 'defence jury bundle' and invited the complainant to request an internal review. The CPS informed the complainant that it did not hold transcripts of the trial but that these are available from the Crown Court shorthand writers for a fee. The CPS clarified the availability of the transcripts by adding the proviso that it is possible 'they have now been destroyed'.
10. On 21 August 2006 the complainant confirmed to the CPS that he had already requested an internal review.

11. On 30 August 2006 the CPS informed the complainant that the internal review process had begun. The complainant was invited to send the CPS further arguments he would like to have considered in relation to this review.
12. The complainant wrote again to the CPS on 5 September 2006. He confirmed that he had made a request for the trial transcripts to the appropriate body and that he had not, at that time, received a response to this request. The complainant commented about the contents of the defence jury bundle and their use in the trial of R v Attwell and others. He also refuted the CPS 'blanket approach' to the information and its application of sections 30, 40(2) and 41 of the Act. The complainant made the point that the CPS should have considered each document on its merits.
13. The CPS wrote to the complainant on 15 September 2006 to inform him that his request had been referred for internal review. No timescale for this review was given.
14. On 18 October 2006 the CPS wrote to the complainant to inform him of the outcome of the internal review. The CPS provided the complainant with a redacted copy of the index of the defence jury bundle containing 21 items. These consist of single page documents or groups of related documents.
15. The CPS confirmed the following:
  - Item 1 was not in the bundle.
  - Section 40(2) of the Act applies to items 2, 4, 5, 6, 7, 9, 10, 11, 12, 13, 15, 16, 18, 19 and 21 and therefore this information was being withheld.
  - Item 3 was sent to the complainant.
  - The CPS stated that the complainant already had copies of items 8 and 11.
  - Item 14 was sent to the complainant.
  - The CPS stated that the complainant already had a copy of item 20.

## The Investigation

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### Scope of the case

16. On 12 October 2006 the complainant contacted the Commissioner to complain about the public authority's refusal to supply him with the information he had requested. The Commissioner noted that the CPS had not at this stage completed its internal review and consequently the complaint was closed.
17. Having received the results of the CPS internal review, the complainant wrote to the Commissioner on 16 November 2006 asking for his complaint case to be re-opened. The complainant re-stated his initial request, making clear that he was limiting his request to items 6, 9b and 10. In relation to items 6 and 9b, the complainant stressed that he would be content for the information to be redacted to the extent that it would not reveal the identity of the person involved.

18. On 30 July 2008, and during the investigation of this complaint, the caseworker telephoned the complainant to discuss the progress of his case. During this conversation the complainant stated that he would be content to limit his request, and thereby his complaint, to item 10 of the defence jury bundle. Later that day the complainant sent an email to the caseworker confirming that he wanted the Commissioner to make a decision only in relation to item 10.
19. Subsequent to the events outlined above, and in accordance with the complainant's confirmation at point 18 above, this Decision Notice is limited to item 10 of the defence jury bundle of documents in the case of R v Vernon Attwell, John Donaldson and Thomas Style 1993.

## Chronology

20. On 7 February 2008 the Commissioner wrote to the CPS to request a copy of the defence bundle of documents. He also asked the CPS to provide him with its reasons for the application of section 40(2) of the Act to each piece of withheld information. The Commissioner specifically asked the CPS to comment on the relevance of the first data protection principle and the conditions relevant for the purposes of the first principle which are contained in schedules 2 and 3 of the Data Protection Act 1998 (hereafter 'the DPA').
21. The CPS responded to the Commissioners enquiries by letter dated 20 March 2008 and sent him the defence jury bundle. The CPS provided its rationale for the application of section 40(2) for each item listed in the complainant's original request.
22. On 4 August 2008 the Commissioner wrote to the CPS. The Commissioner informed the CPS that the complainant had limited his request (complaint) solely to item 10. He also asked further questions about the information contained within this item. These questions related to the following:
  - The page numbers and reference numbers shown on the documents;
  - The identities of the persons to whom the information relates; whether they are named in the documents, referred to, or relate in some way to these documents;
  - Whether any of these persons had died since the information had been created;
  - How disclosure of this information would contravene any legal obligations imposed on the CPS;
  - The expectations of the data subjects that their personal data would not be disclosed;
  - The conditions of schedules 2 and 3 of the DPA.
23. On 5 August 2008 the Commissioner telephoned the CPS. The Commissioner had reviewed the contents of item 10 and required clarification about its contents. The contents did not appear to reflect the complainant's description, which was:

*“Extracts from Defence Brief of Mr [X].” “I know from page 5 summing up of the trial judge that it contains some of Mr [X] notes – and from page 35 I note that it contains ‘Mr [X’s] own copies of annotated witness statements.”*

With a view to seeking an informal resolution of this complaint the Commissioner asked the CPS whether it would be open to providing a description or characterisation on the contents of item 10.

24. The CPS provided a detailed response to the Commissioner’s enquiries on 29 August 2008.

## Analysis

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25. A full text of the relevant statutes referred to in this section is contained within the legal annex at the end of this notice.

### Section 40- Personal data

26. The Commissioner has considered whether the CPS has correctly applied section 40 of the Act.

27. Section 40(2) of the Act provides that –

Any information to which a request for information relates is exempt information if –

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

The first condition is where the personal information would contravene one or more of the data protection principles as set out in Schedule 1 of the DPA, or section 10 of the DPA (the right to prevent processing likely to cause damage or distress).

The second condition is where the personal information would be exempt from disclosure to the data subject(s) by virtue of any provision of Part IV of the DPA.

28. Personal data is defined in section 1(1) of the DPA as:

“data which relate to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual”

29. The Commissioner has examined the contents of item 10 of the defence jury bundle of documents. He agrees with the CPS that these documents in their entirety constitute the personal data of a number of identifiable persons. Moreover, he agrees with the CPS that the contents of this bundle item satisfy the definition of sensitive personal data as stated at section 2(g) and (h) of the DPA.

30. Sensitive personal data is defined in section 2 of the DPA as:

“In this Act “sensitive personal data means personal data consisting of information as to –

- a) the racial or ethnic origin of the data subject,
- b) his political opinions,
- c) his religious beliefs or other beliefs of a similar nature,
- d) whether he is a member of a trade union,
- e) his physical or mental health or condition,
- f) his sexual life
- g) the commission or alleged commission by him of any offence, or
- h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

31. The content of item 10 of the defence jury bundle is characterised by the CPS as: *‘the recollection of an interview conducted by two police officers with a suspect of Guildford bombing on 5 December 1974. The document contains handwritten notes/annotations by an author that the CPS is unable to confirm, and consists of 4 pages’.*

The Commissioner agrees with this characterisation. He is satisfied that the contents of these documents relate to identifiable individuals. The purpose behind the creation of these documents and their use in legal proceedings confirm their contents as the sensitive personal data of the interviewing officers, the interviewees and of the persons referred to by the officers and interviewees.

### **The first data protection principle**

32. The CPS argues that disclosure of item 10 of the bundle would be unfair and unlawful.

33. At the conclusion of the trial in R v Attwell and others all the defendants were acquitted. There had been considerable media interest in this trial and consequently the data subjects would have an expectation that the fact of their trial and much of its detail would be in the public domain.

34. This said however, there would be a reasonable expectation on the part of the defendants that not all of the details of their trial would be placed in the public

domain. In the case of *Armstrong v The Information Commissioner & The Commissioners for Her Majesty's Revenue and Customs* [EA/2008/00256], the Information Tribunal, referring to information presented in court in the Abu Bakr Siddiqui trial in 2001, stated:

“... it does not necessarily follow that it [the information] remains in the public domain. We agree with the observation of the Commissioner in the Decision Notice that knowledge obtained in the course of criminal trials is likely to be restricted to a limited number of people and such knowledge is generally short lived”.

35. The Commissioner agrees with the CPS with regards to the disclosure of the details of the trial to the degree required by this request. He is particularly mindful of the prejudicial effects that such disclosure would have in relation to the data subjects' continued privacy and their legitimate interests. The Commissioner accepts that disclosure of item 10 could lead to speculation about the innocence of the defendants and would have the potential for a 'trial by media' even though the original trial was concluded many years ago.
36. The Commissioner considers that the disclosure of item 10 would be unfair to the defendants in the trial and therefore such disclosure would contravene the first data protection principle. For this reason the Commissioner has determined that the CPS was correct to withhold this information.
37. The Commissioner considers item 10 to be the sensitive personal data of the defendants in the trial. Because he has determined that disclosure of the documents would be unfair to the data subjects he is not required to consider whether any of the conditions of Schedule 3 of the Data Protection Act can be met.

## The Decision

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38. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

The Commissioner finds that the CPS was correct in its application of section 40(2) to item 10 of the defence jury bundle by virtue of section 40(3)(a)(i). Consequently he does not uphold the complaint.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

The Commissioner finds that the CPS breached section 17(1) of the Act by failing to issue a valid Refusal Notice to the complainant within the time for compliance with section 1(1). The Refusal Notice correctly cited section 40(2) of the Act as being relevant to the contents of the defence bundle of documents in its entirety, but not specifically to any particular numbered item. This was remedied by the CPS when the original decision received its internal review. The CPS confirmed



that section 40(2) applied to item 10 of the bundle but failed to explain to the complainant that this section applied by virtue of section 40(3)(a)(i). The CPS therefore breached section 17(1)(b) of the Act.

## **Steps Required**

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39. The Commissioner requires no steps to be taken.

## **Failure to comply**

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40. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.



## Right of Appeal

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41. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 20th day of January 2009**

**Signed .....**

**Gerrard Tracey  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### The Freedom of Information Act 2000

#### Section 1 General right of access to information held by public authorities

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

(4) The information—

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.

(5) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).

(6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

#### 10 Time for compliance with request

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied, the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

### **17 Refusal of request**

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

### **Section 40 Personal information**

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.