

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 March 2012

Public Authority: Crown Prosecution Service
Address: Rose Court
2 Southwark Bridge
London
SE1 9HS

Decision (including any steps ordered)

1. The complainant had requested information relating to his conviction for murder, held by the Crown Prosecution Service ("CPS"). The CPS relied on, sections 30 (1)(c) (information held for the purposes of a criminal investigation) and 40 (1) (complainant's personal data).
2. The Commissioner's decision is that the Crown Prosecution Service correctly relied on sections 30 (1)(c) and 40 (1) to withhold the requested information.
3. The Commissioner also decided that the CPS were correct not to respond to two requests.

Background

4. On 6 December 2005, the complainant following a trial, was convicted of murder at the Old Bailey.
5. On 20 April 2009, he made a request expressly under FOIA for the following information relating to the conviction:
 - Previous convictions of the deceased and all of the prosecution witnesses in the case.
 - All material which discloses information that may have been communicated by lay witnesses e.g. previous witness statements, unused witness statements, CAD Messages, Officers IRB's and CRIS.
 - All material which directly, or indirectly reveals that the case against the defendant has been, obtained, prepared and

processed by the Police Officers, e.g. crime reports, CAD messages, memos, action and message forms and other operational documents.

- All documentation the defendant is entitled to.
 - Any information indicating the background to this offence which is consistent with the defendant innocence; for e.g. names and details of other suspects and their previous convictions.
 - All information indicating that the integrity of the evidence or of the integrity of the prosecution witnesses, or the inferences to be drawn from that or their evidence is in doubt.
 - Information as to the reliability of the observations made by the Prosecution witnesses; for e.g. any disciplinary or police complaint commission action on the investigation taken against any of the police officers involved in dealing with this offence.
 - Any and all, other information which could reasonably be expected to assist the defence. (sic)
6. The CPS released some of the requested information but withheld the majority citing section 30, 40(1), 40(2) and 42 of FOIA to do so. The CPS upheld its decision after a review and told the complainant of this in a letter dated 27 July 2009.
7. On 27 July 2009, the complainant wrote to the Commissioner complaining about the refusal of his request. The Commissioner's decision (FS 50273690) was that the CPS had correctly relied on section 40(1) to withhold requested information from the complainant. The complainant appealed to the Information Tribunal against the Commissioner's decision.
8. The Information Tribunal (EA/2010/0193) overturned the Commissioner's decision and directed that the CPS to-
- (1) Carry out a fresh consideration of the complainant's request.
 - (2) Supply the Complainant with any information that it considers ought properly to be supplied to him that has not already been;
 - (3) To the extent that it considers that any information requested is not required to be released, serve a notice under section 17 clearly identifying the information in

question, the exemption relied on and why it applies (including, where appropriate, any relevant public interest considerations).

Request and response

9. The CPS, in purported compliance with the tribunal's direction, wrote to the complainant on 15 July 2011. The specific information requests and replies from the CPS (given in italics) are as follows -

- a) Previous convictions of the deceased and all of the prosecution witnesses in this case

CPS Reply

This information is exempt under section 30(1)(c) and section 40(2) of FOIA.

- b) All materials which discloses information that have been communicated by lay witnesses (for example witnesses statements)

CPS Reply

This information is exempt under section 30(1) (c) and section 40(1) and (2) of FOIA

- c) All material which directly or indirectly reveals that the case against the defendant has been obtained and generated by the police

CPS Reply

This information is exempt under section 30(1)(c) and section 40(1) and (2) of FOIA

- d) All document the defendant is entitled to

CPS Reply

As the data subject in this case you are entitled to a copy of your personal data under the Data Protection Act 1998. If you were entitled to this it was provided to you under this Act in July 2009

- e) Any information indicating the background to this offence which is consistent with the defendant's innocence (for example names of other suspects and their convictions)

CPS Reply

This is a request for legal advice on which aspects of the case may be consistent with the hypothesis that the defendant is innocent. FOIA does not require public authorities to provide legal advice therefore this part of your request does not fall within the scope of FOIA

- f) All information indicating that the integrity of the evidence or prosecution witnesses or the inferences to be drawn there from is in doubt

CPS Reply

This information is exempt under section 30(1)(c) and section 40(2) of FOIA

- g) Information as to the reliability of the observations made by the prosecution witnesses

CPS Reply

This information is exempt under section 30(1)(c) and section 40(2) of FOIA.

- h) Any, and all, information which could reasonably be expected to help the defence

CPS Reply

Responding to this point would mean making judgements set against the relevant criminal law on which information could reasonably be expected to assist the defence. This is not a requirement under FOIA and therefore this part of your request does not fall within FOIA

Scope of the case

10. The complainant contacted the Commissioner to complain about the handling of his request for information on 20 July 2011. Notwithstanding the complainant had not asked the CPS to review its decision of 15 July 2011 the Commissioner decided, due to the passage of time and the

outcome of his appeal to the Information Tribunal, to consider his complaint nonetheless.

11. The Commissioner has considered the CPS' application of section 30(1)(c) and 40(1).

Reasons for decision

12. The Commissioner's decision, for the reasons laid out below, is that the requested information was correctly withheld from the complainant by virtue of sections 30(1)(c) and 40(1).
13. The CPS has informed the Commissioner that the withheld information is contained within 11 boxes of material that equates to approximately 6,000 – 7,000 pages of information.
14. The Commissioner finds that the CPS were correct not to respond to requests (e) and (h). These requests are wholly dependent on a subjective assessment by the CPS, therefore the complainant has not adequately described the information he is seeking and the CPS reasonably required further information before they could process the request. The Commissioner notes that the CPS did not ask the complainant to explicitly reframe the requests or provide further information. However, considering the other requests made the Commissioner does not consider it reasonable to order the CPS to formally comply with section 1(3)(b) of the Act.

Section 30(1) (c)

15. Section 30(1)(c) FOIA states that information held by a public authority is exempt information if the public authority has ever held it for the purposes of any criminal proceedings that the authority has power to conduct.
16. The CPS relies on section 30(1) (c) to withhold the information caught by the requests in paragraph 8 (a) to (c). (f) and (g).
17. The Prosecution of Offences Act 1985 created the CPS and it is responsible for prosecuting criminal cases investigated by the police in England and Wales. As such, it has the power to conduct criminal proceedings.
18. The information, by the definition of the requests, is held by the CPS for the purpose of criminal proceedings that the authority has power to conduct. The particular criminal proceedings relate to a conviction for murder. The exemption is therefore engaged as regards the information

sought by the complainant as referred to in paragraph 8 (a) to (c), (f) and (g).

19. Section 30(1) (c) is a qualified exemption and therefore it is subject to the public interest test. The Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.
20. The public interest arguments identified by the parties and/or the Commissioner are as below.

Public interest arguments in favour of disclosing the requested information

1. It would facilitate the public's ability to evaluate the effectiveness of the CPS' prosecution of offenders.
2. Releasing the information may better inform the public and encourage others to come forward to report criminal offences if they know a proper prosecution will follow.
3. The public funds the CPS and disclosing the information will aid the public's evaluation as to whether it has been well spent.
4. Releasing the information would improve the public's knowledge and understanding of the prosecution process.

Public interest arguments in favour of maintaining the exemption

5. Releasing the information would inhibit the co-operation of witnesses to all crimes.
 6. Releasing the information could jeopardise the physical and mental well being of witnesses in relation to this case.
 7. preservation of the criminal court as the sole forum for determining guilt
 8. Releasing the information would inhibit the flow of written information from the police to the CPS
21. The Commissioner in considering the public interest test starts by focusing on the purpose of the relevant exemption. The Commissioner's view is that the general public interest served by section 30(1) is the effective investigation and prosecution of crime, which inherently requires, in particular:

- the protection of witnesses and informers to ensure people are not deterred from making statements or reports by fear it might be publicised;
 - the maintenance of independence of the judicial and prosecution processes;
 - preservation of the criminal court as the sole forum for determining guilt
22. The Commissioner acknowledges the validity of some of the public interest arguments in favour of releasing the exempt information. In particular releasing the information would add to or reinforce the public's knowledge of how the CPS prosecutes matters.
23. The proper detection, investigation and prosecution of crimes are cornerstones of a modern democratic society. The Commissioner considers that releasing the information would lead to a perception and belief that statements given to the police by witnesses (whether used in court or not) could or would be released to the public at some future date. This perception would inhibit or dissuade some witnesses from giving statements or assistance to the police in future investigations. This diminution of public assistance would hamper the prosecution of crimes and, in time, lead to a reduction in the public's confidence in the criminal process. The Commissioner finds there is a very strong public interest in protecting the process. Additionally there is a very strong public interest in ensuring, as far as possible, that witnesses are not placed in physical jeopardy or mental anguish by the release of information they have given, via the police, to those that prosecute. Disclosure under the Act, is of course, a disclosure to the world. The particular dangers that this may cause to particular witnesses are not necessarily always apparent. It is for these principal reasons that the Commissioner's decision is that, by a significant margin, the public interest is best served by upholding the exemption than releasing the information.
24. Whilst the Commissioner accepts that there are some valid public interest arguments for disclosing the information the complaint's reasons for seeking the information relate mainly to a private interest. These private interests can be properly considered in other judicial processes, outside the scope of FOI. The Commissioner therefore only places limited weight in favour of disclosure. The public interest arguments in favour of maintaining the exemption, for the specific information requested, are compelling. The Commissioner concludes that the public interest in maintaining the exemption outweighs the public interest in disclosure.

Section 40(1)

25. Requested information is exempt from disclosure if it is the personal data of the requester.
26. The CPS did not rely on section 30 (1)(c) as regards the information requested at paragraph 8 (d) above the Commissioner therefore next considers whether it dealt with that particular request in accordance with the Act. The CPS' reply to that part of the request was that it considered it a request for the complainant's personal information and thus was exempt from disclosure under the Act by virtue of section 40(1).
27. As far as the requested information at paragraph 8 (d) is the complainant's own personal data, there is an absolute exemption from disclosure under FOIA by virtue of section 40(1). As to the information that does not constitute the complainant's personal data it, in any event, also constitutes information that was held by the CPS for the purpose of criminal proceedings and for the reasons given above the exemption provided by section 30 (1)(c) is engaged and the public interest was in favour of maintaining the exemption.

Right of appeal

28. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

Steve Wood
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