

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2016

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

Decision (including any steps ordered)

1. The complainant has requested information about two people convicted of various offences in 1983. The Crown Prosecution Service withheld the information under section 40(2) (third party personal information) of the FOIA. During the Commissioner's investigation, it also applied section 38 (health and safety) of the FOIA.
2. The Commissioner's decision is that the Crown Prosecution Service has applied section 40(2) of the FOIA appropriately to all of the information.
3. The Commissioner does not require the Crown Prosecution Service to take any steps as a result of this decision.

Background

4. In 1983, Stephen Cecil King and Graham Gordon Gillard were convicted of two counts of murder and various other crimes. Stephen Cecil King went on to kill again in 2014.

Request and response

5. On 24 April 2015, the complainant wrote to the Crown Prosecution Service (CPS) and requested information in the following terms

*"*Please provide a copy of the request from Devon & Cornwall police to prosecute offences against Stephen Cecil King and Graham Gordon Gillard. They were convicted of various offences at Exeter Crown Court in 1983. My request is for a copy of the request in whatever form it is*

held and any attached documents.

** Please provide a letter from the Office of the DPP to the chief constable of Devon & Cornwall police confirming that the office will assume responsibility for the prosecution or disposal of the murder offences against Stephen Cecil King and Graham Gordon Gillard.*

**Please provide copies of any subsequent correspondence between the Office of the DPP and the chief constable regarding the case."*

6. The CPS responded on 26 May 2015. It withheld the information under section 40(2) (personal information).
7. In his request for an internal review of 28 May 2015, the complainant asked for a review of the CPS' application of section 40(2) and also explained that he considered the information could be disclosed to him under schedule 3 of statutory instrument 2000 No.417, The Data Protection (Processing of Sensitive Personal Data) Order 2000 (the Order), as he is a journalist.
8. Following an internal review the CPS wrote to the complainant on 25 June 2015. It upheld its application of section 40(2) and explained that it did not consider that disclosure under the Order applied in this case as it would involve taking into account the identity of the requester. It also pointed to the Commissioner's guidance "Consideration of the identity or motives of the applicant"¹ which states that '*In dealing with a Freedom of Information request there is no provision for the public authority to look at from whom the application has come, the merits of the application or the purposes for which it is to be used*'.

Scope of the case

9. The complainant contacted the Commissioner on 7 July 2015 to complain about the way his request for information had been handled.
 10. He explained that the CPS has refused to disclose information on convicted murderer Stephen Cecil King, who recently committed another murder whilst held in a psychiatric unit. The complainant explained that it was necessary to have transparency around such issues.
 11. During the Commissioner's investigation the CPS explained that it was also applying section 38(1)(a) (health and safety) to the withheld
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¹ <https://ico.org.uk/media/for-organisations/documents/1043418/consideration-of-the-identity-or-motives-of-the-applicant.pdf>

information. It also confirmed that when it had advised the complainant that his request concerned 21 individuals' personal data, this was an error. It clarified that it meant that there were 21 letters being withheld.

12. The Commissioner will consider the CPS's application of sections 40(2) and 38 (1)(a).

Reasons for decision

Section 40 – personal data

13. Section 40 (2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and its disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (DPA).

Is the information personal data?

14. The definition of personal data is set out in section 1 of the DPA:

" ...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 intention of the data controller or any other person in respect of the individual."

15. The two main elements of personal data are that the information must 'relate' to a living individual and the individual must be identifiable. Information will relate to an individual if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
16. In this case, the CPS told the complainant that it considered that the requested information constitutes the personal data of Stephen Cecil King and Graham Gordon Gillard and that it would be unfair to disclose it.
17. The Commissioner has considered the withheld information. He is satisfied that it constitutes information which falls within the definition of 'personal data' as set out in section 1(1) of the DPA as the information comprises personal data relating to Stephen Cecil King, Graham Gordon Gillard and other individuals.

Is the information sensitive personal data?

18. Sensitive personal data is defined in section 2 of the DPA. It is personal information which falls into one of the categories set out in section 2 of the DPA. Of relevance in this case is that section 2 relates to personal data consisting of information as to:

(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.

19. The Commissioner is satisfied that all of the withheld information is sensitive personal data. This is because it relates to various offences, including murder.

20. Having accepted that all of the information comprises the sensitive personal data of third parties, the Commissioner will go on to consider whether disclosure would breach one of the data protection principles.

Would disclosure breach one of the data protection principles?

21. The CPS told the complainant that it considered that disclosure of the requested information would contravene the first data protection principle. The Commissioner agrees that the first data protection principle is relevant in this case.

Would disclosure contravene the first data protection principle?

22. The first principle deals with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. It 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".

23. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and would meet one of the DPA Schedule 2 conditions and, in this case, one of the Schedule 3 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

Would it be fair to disclose the requested information?

24. When considering whether disclosure of personal information is fair, the Commissioner takes into account the following factors:
- the individual's reasonable expectations of what would happen to their information:
 - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
25. Under the first principle, the disclosure of the information must be fair to the data subject. Assessing fairness involves balancing the data subject's rights and freedoms against the legitimate interest in disclosure to the public.
26. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.

Has the data subject consented to the disclosure?

27. The Commissioner is not aware of anything to suggest that consent has been given for disclosure of the requested information by any of the data subjects.

Has the data subject actively put some or all of the requested information into the public domain?

28. Where a data subject has put some or all of the requested information into the public domain, the Commissioner considers that this weakens the argument that disclosure would be unfair.
29. In this case the Commissioner has not seen any evidence that any of the data subjects have actively put some or all of the requested information into the public domain.

Reasonable expectations

30. In order to reach a view on whether the disclosure of this information would be fair in this case, the Commissioner has placed specific emphasis on the nature of the information itself.

31. The requested information, if disclosed, would reveal information about Stephen Cecil King and Graham Gordon Gillard and others, including the victims' family members. The Commissioner does not accept that disclosing this information would be fair and considers that it may cause distress to the individuals involved or have an unfair impact on them.
32. The Commissioner notes the complainant's comment about the need for transparency as a murder was carried out by Stephen Cecil King subsequently whilst in a psychiatric unit and that disclosure is necessary to meet those interests. He notes that there is very little in the public domain about the earlier killings.
33. The CPS argued that the individuals involved have an expectation that their own data will be treated fairly, with respect and in accordance with specific legislation including the DPA.

Consequences of disclosure

34. In looking at the consequences of disclosure on the data subjects, the Commissioner has considered what they might be.
35. The Commissioner notes the complainant's point that, given that Stephen Cecil King had gone on to kill again in 2014 the requested information might help in understanding why the latest killing had happened.
36. The Commissioner notes that there is information already in the public domain regarding the latest killing by Stephen King and that he has pleaded guilty to it. Regarding the requested information, the Commissioner considers that if it was disclosed, it would reveal information about Stephen Cecil King and Graham Gordon Gillard and others, including family members of both of the victims of the 1983 killings. The CPS explained that disclosure would also reveal information about neighbours, friends of the defendants and a defendant who was a prime witness. The Commissioner does not accept that disclosing this information would be fair and considers that it would be very likely to cause distress to the individuals involved or have an unfair impact on them. He also notes that the two people concerned were tried by a court.
37. The consequences for Stephen Cecil King and Graham Gordon Gillard would be to re-open a matter for which they have already been sentenced.

Conclusion

38. The Commissioner considers that there is some legitimate public interest in the disclosure of the requested information, especially as it concerns murders and one of the individuals concerned subsequently committed a further murder. However, he also notes that Stephen Cecil King pleaded guilty to the murder in 2014.
39. The Commissioner notes that all of the requested information is considered to be 'sensitive' personal data in terms of both Stephen Cecil King and Graham Gordon Gillard. Disclosure of sensitive personal data must have justification, whatever the circumstances of the individual. It is clearly possible for the disclosure of sensitive personal data to be fair. Individuals who have been charged or convicted of crimes will often have to expect disclosure of some information about them and their actions, particularly during the judicial process and sometimes after it. However, in the circumstances of this case the Commissioner accepts that it would be unfair to disclose the information requested, in terms of it being Stephen Cecil King and Graham Gordon Gillard's personal data and would contravene the first data protection principle.
40. The Commissioner also finds that it would be unfair to the other individuals concerned to disclose the withheld information related to them and to do so would contravene the first principle.
41. He has not gone on to consider whether disclosure is lawful or whether one of the Schedule 2 DPA conditions is met.
42. The Commissioner considers that the section 40(2) exemption is engaged and will therefore not consider the other exemption cited.
43. The Commissioner notes that the complainant has pointed to the Data Protection (Processing of Sensitive Personal Data) Order 2000 (the Order) as an authority for the disclosure of sensitive personal data. This Order provides that in some circumstances, sensitive personal data can be disclosed. The complainant argued that because he was a journalist, the sensitive personal data in this case should be disclosed to him. The Commissioner has not considered this condition as he has found the disclosure to be unfair and would breach the first principle. This is in contrast to the judgment of the First-tier Tribunal in the case of Wall, cited by the complainant; where the Tribunal found that disclosure would be fair and then went on to consider the Order. The Commissioner also reserves his position as to whether the Order is relevant to any disclosure under FOIA.

Other matters

44. The CPS also explained to the Commissioner that this case file has been selected and prepared for transfer to the national archives (TNA) and was due for TNA inspection. The CPS confirmed that a requested closure period of 99 years has been approved by the Advisory Council and the case file was closed until 2085.

Right of appeal

45. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

46. 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.
47. 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

Jon Manners
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SK9 5AF