

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 November 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 copies of correspondence between David Cameron MP and the Attorney General about one of his constituents. The CPS disclosed some of the information and applied section 40(2) (third party personal information) of the FOIA to the remainder.
2. The Commissioner's decision is that the Crown Prosecution Service has applied section 40(2) of the FOIA appropriately to the remaining withheld information.
3. The Commissioner does not require the Crown Prosecution Service to take any steps as a result of this decision.

Request and response

4. On 24 August 2015 the complainant wrote to the Crown Prosecution Service (CPS) and requested information in the following terms:

"I write concerning a Freedom of Information request that was made to you in 2011. Your references:

- [redacted]
- [redacted]

Please see the attached documentation.

I make the following related FOI requests:

- 1. A copy of Mr Cameron's letter, written to the Attorney General, in relation to one of his then constituents. Please redact all names and all personal data of any third party such that the exemption under section 40(2) does not apply.*
- 2. A copy of the response (or if none was sent, any draft thereof) to Mr Cameron. Please again make the relevant standard redactions."*
5. The CPS responded on 22 September 2015. It neither confirmed nor denied holding the information by virtue of section 40(5) (personal information) of FOIA.
6. Following an internal review the CPS wrote to the complainant on 23 December 2015. It upheld its original decision.

Scope of the case

7. The complainant contacted the Commissioner 12 November 2015 to complain about the way his request for information had been handled. He explained that he considered that the requested information should be disclosed. However, he also accepted that it might be necessary to redact some of the information but considered that the CPS had not considered this.
8. The complainant also explained that his interest in the requested correspondence does not relate to the constituent, but to whether it contains any suggestion of Mr Cameron seeking to influence the way in which the CPS conducts its affairs (whether generally, or specifically in relation to the Hunting Act).
9. The Commissioner notes that the requested information concerns an allegation of an offence being committed under the Hunting Act 2004.
10. During the Commissioner's investigation, the CPS explained that it was no longer relying upon section 40(5). It disclosed some information to the complainant and confirmed that it was relying upon section 40(2) (personal information) of the FOIA to withhold the rest.
11. The Commissioner will consider the CPS' application of section 40(2). She will also consider the length of time taken to deal with the request.

Reasons for decision

Section 40 – personal data

12. 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?

13. 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.”

14. 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.
15. In this case, the CPS explained that it considered that the requested information constituted the personal data of an identifiable individual and that it would be unfair to disclose it.
16. The Commissioner has considered the withheld information. She is satisfied that it constitutes information which falls within the definition of 'personal data' as set out in section 1 of the DPA as the information comprises personal data of an identifiable individual.

Is the information sensitive personal data?

17. 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

18. The Commissioner is satisfied that the remaining withheld information in its entirety is sensitive personal data. This is because it relates to an identifiable individual and an alleged offence.
19. In light of this finding Commissioner will go on to consider whether disclosure of the personal data would breach one of the data protection principles.
20. She will also consider whether disclosure of the personal data of the other third parties would breach 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 for sensitive personal data. 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 party concerned.

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

28. Where the 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 the data subject has 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 an identifiable individual. 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 individual involved or have an unfair impact on him.

32. The CPS explained that, in line with the ICO's 'Guidance On Dealing With Requests For MPs' Correspondence Relating To Constituents'¹ if an MP has written to a public authority passing on information from or relating to a constituent (as in the present case) the presumption should be that the information is not to be disclosed.
33. The CPS also argued that an individual would not expect the fact that he contacted his MP or the nature of his enquiry, to be subsequently put in to the public domain.

Consequences of disclosure

34. In looking at the consequences of disclosure on the data subject, the Commissioner has considered what they might be.
35. The Commissioner accepts that disclosure of the remaining information could have a detrimental or distressing effect on the individual concerned, particularly as she has found that disclosure of the information would not have been within the individual's reasonable expectations.

Conclusion

36. The Commissioner considers that there is some legitimate public interest in the disclosure of the remaining withheld information, as it concerns correspondence between David Cameron MP and the Attorney General. She also notes the complainant's concern is about whether David Cameron tried to influence the way in which the CPS conducts its affairs (whether generally, or specifically in relation to the Hunting Act).
37. The Commissioner also notes that the remaining withheld information is considered to be 'sensitive' personal data of an identifiable individual.
38. 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. The Commissioner has not seen anything to suggest that there have been any allegations of Mr

¹ https://ico.org.uk/media/for-organisations/documents/1645/guidance_on_dealing_with_requests_for_mps_6_august.pdf

Cameron trying to influence the way in which the CPS conducted its affairs generally or the way it handled the alleged offence in question. The Commissioner therefore accepts that, in the circumstances of this case, it would be unfair to disclose the information requested as it is the personal data of an identifiable individual and disclosure would contravene the first data protection principle.

39. She has not therefore gone on to consider whether disclosure is lawful or whether one of the Schedule 2 DPA conditions is met.
40. As the Commissioner is satisfied that disclosure would breach the first data protection principle, she upholds the CPS' application of the section 40(2) exemption to the remainder of the information.

Other matters

41. The Commissioner notes that the applicant requested an internal review on 30 September 2015 and the CPS did not respond until 23 December 2015.
42. Part VI of the section 45 Code of Practice makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information. She considers that the procedure should encourage a prompt determination of the complaint.
43. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, she has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
44. The Commissioner is concerned that it took over 20 working days for the internal review to be completed and will be monitoring the time taken by the CPS to deal with future requests for internal reviews.

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