

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 October 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 relating to a decision not to prosecute former bishop Peter Ball in 1993. The Crown Prosecution Service ("CPS") disclosed some information, but withheld the remainder under section 30(1) (investigations and proceedings) of the FOIA.
2. The Commissioner's decision is that the CPS was entitled to apply section 30(1) to withhold the remaining information.
3. The Commissioner does not require the CPS to take any steps.

Background

4. In October 2015, Peter Ball, the former bishop of Gloucester, was convicted of sex offences against young men between 1977 and 1992. Police had previously investigated allegations of abuse against Ball in 1993, when a decision was taken to caution him for gross indecency. The CPS has since admitted that the decision to issue a caution was wrong.

5. Following Ball's conviction in 2015, the case is being considered by the Independent Inquiry into Child Sexual Abuse¹ which is investigating claims that the Church of England and other senior public figures helped to cover up Ball's abuse prior to his conviction. The Church of England has also commissioned an independent review of its handling of the allegations against Ball².

Request and response

6. On 9 September 2015, the complainant wrote to the CPS and requested information in the following terms:

"Please provide copies of all information held relating to the decision not to prosecute Peter Ball (bishop) in 1993;

Please provide copies of all internal communications relating to the decision not to prosecute Peter Ball in 1993.

I understand and accept that the names of Ball's victims will be redacted from the information provided."

7. The complainant did not receive a response and the Commissioner issued a decision notice requiring the CPS to respond³.
8. The CPS eventually responded on 7 March 2016. It disclosed some information in response to the first part of the request, while redacting sections which it said were exempt under section 40 (personal information) and section 38 (health and safety). It refused to disclose the information it held in respect of the second part of the request, considering it exempt under section 40, section 30(1)(c) and section 42 (legal professional privilege).

¹ https://www.iicsa.org.uk/sites/default/files/note-for-anglican-preliminary-hearings_0.pdf

² <https://www.churchofengland.org/media-centre/news/2016/02/dame-moira-gibb-announced-as-chair-of-independent-review-into-peter-ball-case.aspx>

³ <https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1560632/fs50604582.pdf>

9. The complainant requested an internal review on 8 March 2016. In respect of the first part of the request he asked the CPS to check whether all the relevant information it held had been disclosed. However, he did not challenge its decision to redact parts of the disclosed information under section 38 and section 40.
10. In respect of the second part of the request he challenged the CPS's decision not to disclose any information, arguing that there was a compelling public interest in its disclosure.
11. The CPS wrote to the complainant on 4 April 2016. It confirmed that more information was held in respect of the first part of the request, but that it was exempt from disclosure under section 30 of the FOIA. It upheld its original decision in respect of the second part of the request.

Scope of the case

12. The complainant contacted the Commissioner on 4 April 2016 to complain about the way his request for information had been handled.
13. While the request was constructed in two parts, the Commissioner considers the second part of the request to be a subset of the first. When dealing with a request for "*...copies of all information held relating to the decision not to prosecute*", the CPS should, as a matter of course, consider for disclosure copies of any internal communications relating to that decision. The Commissioner has therefore considered the two parts of the request together.
14. Since the CPS cited section 30(1)(c) as applying in respect of all of the withheld information (aside from the specific redactions for section 38 and 40 made to the information which was disclosed to the complainant, and which he has not challenged) the Commissioner has firstly considered whether the CPS was entitled to rely on section 30(1)(c) to withhold the requested information.

Reasons for decision

Section 30 – investigations and proceedings

15. Section 30(1)(c) of FOIA states:

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of –

(c) any criminal proceedings which the authority has power to conduct."

16. The phrase "*at any time*" means that information can be exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation.
17. Section 30(1) is a class-based exemption, which means that there is no need to demonstrate harm or prejudice in order for the exemption to be engaged. However, information must be held for a specific or particular investigation and not for investigations in general.
18. The Prosecution of Offences Act 1985 created the CPS, which is responsible for prosecuting criminal cases investigated by the police in England and Wales. As such, the Commissioner is satisfied that the CPS has the power to conduct criminal proceedings.
19. Turning to whether the information in this case is held by the CPS for the purpose of *specific* criminal proceedings which it has the power to conduct, the Commissioner notes that the very wording of the request predetermines that any relevant information will fall within the scope of section 30(1)(c). She has also seen samples of the withheld information and is satisfied that it relates to how the CPS should proceed with regard to specific criminal allegations against Peter Ball. The Commissioner is therefore satisfied that the information is held for a specific investigation and consequently that the exemption is engaged as regards the information requested.

The public interest test

20. Section 30(1)(c) is a qualified exemption and is subject to the public interest test. The Commissioner must consider whether, in all of the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

21. The complainant considers the public interest in disclosure to be particularly strong. He states:

"This is a case which involves justice being delayed by 20 years by the CPS and police decision to issue a serial paedophile with a caution. There is a compelling public interest in disclosure of information capable of demonstrating how CPS thinking has moved on since 1993 and what actions it has taken to consider why the 1993 decision was made. There is a compelling and overriding public interest in transparency surrounding the actions of the present-day CPS in dealing with mistakes made in the past. The public must have

confidence that the CPS is being open and transparent about this case - a case which has attracted claims of a widespread cover-up involving the CPS, police and Church of England. There is also a compelling public interest in disclosure of information showing why the CPS did not proceed with all charges against Ball”.

22. The CPS acknowledged that disclosure of the information would enhance public understanding of the decisions it made in 1993 when it was considering proceedings against Ball. It acknowledged that in this context, disclosure would demonstrate its commitment to openness and accountability. It commented that Ball’s position in society, coupled with the nature of the allegations against him, meant that there is a heightened public interest in the public having access to the reasons for decisions made about whether to prosecute him.

Public interest arguments in favour of maintaining the exemption

23. The CPS stated that it had already disclosed a significant amount of information in response to the request which should help the public to understand the process which led to its decision to caution Ball, rather than formally charge him. It said it has also publically admitted that this decision was wrong and that its decision-making has changed substantially since 1993, as evidenced by its decision to prosecute Ball in 2015.
24. The CPS went on to outline “safe space” and “chilling effect” public interest arguments. It stated that the case against Peter Ball was reinvestigated by police in 2012; this led to prosecution proceedings which concluded in October 2015. As a result of this activity most of the internal communications held by the CPS are much more recent than the offences themselves.
25. The CPS said that it is important to preserve the ability to have free and frank communications between the CPS and the police (provided that such communications take place within the well-established framework of the regime for disclosure in any subsequent criminal proceedings). The confidential quality of such communications (ie the fact that such communications will not routinely be made available to the defence or other persons who ask for them) enables CPS lawyers and police officers to be candid in their discussion of evidence. Such candour is vital for the prosecution process. The effective administration of criminal justice, and the effective prosecution of offenders, would be prejudiced if such free and frank communications were impeded by an anticipation of disclosure. This would not be in the public interest. The CPS considered this to be a strong factor in favour of maintaining the exemption.

26. Finally the CPS commented that there was a strong public interest in the courts being the sole forum for determining guilt.

Balance of the public interest arguments

27. When considering the application of the exemptions at section 30(1), the Commissioner believes that consideration should only be given to protecting what is inherent in that exemption (the effective investigation and prosecution of crime), which requires the following:
- 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;
 - allowing the investigating body space to determine the course of an investigation; and
 - information that deals with specialist techniques.
28. The Commissioner considers that there are significant public interest arguments which touch on the first, third and fourth bullet points. She considers that they weigh heavily in favour of maintaining the exemption in this case.
29. The Commissioner recognises the wider detriment that could be caused to the CPS by the loss of the ability to consider case options and reach decisions away from external interference and scrutiny. Here, the recent nature of much of the information is particularly relevant. The expectation that recent deliberations could routinely be disclosed could have an inhibiting effect on free and frank discussions between CPS caseworkers and the police, and that loss of frankness and candour would damage the quality of advice and deliberation, and lead to poorer decision-making.
30. The Commissioner accepts this as a possible outcome. However, it is tempered by a reasonable expectation that public servants involved in decision-making of this nature should be sufficiently robust to perform their duties in the knowledge that they may subsequently be subject to public scrutiny. And it would, of course, never be in the public interest to use the FOIA to conceal evidence of deliberate wrongdoing by those in public life.

31. The withheld information contains descriptions of the offences Ball committed against named individuals. The Commissioner finds there is a very strong public interest in ensuring, as far as possible, that witnesses do not suffer unwarranted distress or mental anguish by the disclosure of information they have given, via the police, to those that prosecute. Disclosure under the FOIA is a disclosure to the world at large. The damage and distress that it may cause to particular witnesses, and their families, even if their identities are redacted from the disclosed information, is in itself a significant factor for maintaining the exemption. The perception that information provided by witnesses may be disclosed in an uncontrolled manner to the world at large may have a deterrent effect on them coming forward and cooperating with prosecuting authorities, particularly in connection with such sensitive offences as those under consideration here.
32. Although the request relates to criminal matters which came to light in 1993 the CPS has demonstrated that the investigation into them is still very recent. Two independent public inquiries will consider the circumstances and agencies which enabled Ball to continue offending. The Commissioner considers it reasonable to believe that, as a result of the findings of these inquiries, there is a possibility that further charges might be brought. Any disclosure of sensitive and detailed evidential information pertinent to the inquiries before they have had the opportunity to consider it could interfere with their investigations into the true extent of Ball's offending and the agencies which enabled him to evade prosecution. It would clearly not be in the public interest to disclose information which might undermine the work of these inquiries or prejudice any future criminal cases which might arise as a result of their findings.
33. The Commissioner acknowledges that a lot of information about the case has appeared in the public domain, and the CPS's admission that the decision to caution was wrong received widespread publicity. There is therefore a significant public interest in understanding how the decision came to be made and the steps that have been taken to change the CPS's decision-making processes in the intervening period since 1993. The Commissioner accepts that Ball's position, the nature of his crimes and the suggestion that they may have been covered up by senior people and public institutions add to the weight of this public interest argument.
34. The CPS commented that it was in the public interest that the courts be the sole forum for determining guilt. The complainant has not disclosed his precise reasons for why he requires the information, but his comments to the Commissioner suggest that he is looking to uncover evidence of wrongdoing in the decision taken to caution rather than charge Peter Ball. He is, of course, free to do so, but the decision for the

Commissioner is whether disclosure is sufficiently in the wider public interest to outweigh the very strong public interest arguments in favour of maintaining the exemption.

35. The CPS has already publically confirmed that the decision to caution rather than charge was wrong, and so disclosure of the requested information would not reveal, for the first time, that fact itself.
36. Furthermore, in responding to the request the CPS has disclosed to the complainant a document created in 1993 by the Director of Headquarters Casework, setting out the various options for proceeding against Ball, and their pros and cons. The document contains several brief redactions in respect of sections 38 and 40, but the Commissioner considers it nevertheless gives a frank and candid outline of the thought processes which led the CPS to favour cautioning Ball, rather than pursuing other courses of action. She considers it gives a valuable insight into the CPS's position at the time.
37. The wider public interest in transparency and openness about the circumstances surrounding the decision to caution Ball is served to a large extent by the Independent Inquiry into Child Sexual Abuse, the largest such inquiry in British legal history. It has been confirmed that part of the Inquiry will consider the institutional responses to Ball's offending which enabled him to evade prosecution for so long.⁴ The decision to caution Ball will be a central part of those considerations.
38. Set against this, the Commissioner does not find a compelling public interest in the complainant attempting to uncover evidence of institutional weakness or wrongdoing. And as stated in paragraph 32 above, it would not be in the public interest to disclose information which might prejudice or jeopardise the work of that inquiry, which will publish a report and make recommendations as part of its outcomes.
39. Having given due consideration to the arguments put forward, on this occasion the Commissioner accepts that the public interest favours maintaining the exemption at section 30(1)(c).
40. In light of the Commissioner's findings in respect of section 30(1)(c) she has not gone to consider the CPS's reliance on section 40(2) or 42.

⁴ <http://www.telegraph.co.uk/news/2016/07/30/goddard-inquiry-outrage-as-bishop-jailed-for-sex-offences-given/>

Right of appeal

41. 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

42. 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.
43. 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
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF