

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 September 2017

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

Decision (including any steps ordered)

1. The complainant requested information from the Crown Prosecution Service (the 'CPS') relating to a number of deaths at a specified care home. The CPS refused to provide the requested information citing section 30(1)(c) (criminal proceedings conducted by public authorities), section 40(2) (personal information) and section 42(1) (legal professional privilege) of the FOIA.
2. The Commissioner's decision is that section 30(1)(c) is engaged in respect of the information in its entirety and the public interest favours maintaining the exemption. No steps are required.

Background

3. All of the information requested by the complainant was generated by the CPS in the course of advising the police on an investigation and deciding whether there should be a prosecution of any of the suspects. The CPS told the Commissioner that this particular case was an advice case in which it made a decision to take no further action.
4. The Commissioner has viewed the withheld information which consists of Charging Decision documentation and advice in respect of the defendants associated with this case.

5. The CPS explained that it does not retain paperwork on cases where it does not authorise a charge; in such cases, the papers are sent back to the police. It said that there will be some material which has been uploaded electronically and which is held digitally on its Case Management System ('CMS'). The CPS advised that it is not logistically feasible for it to keep the full file of evidence provided by the police; if it were to retain the full file CPS offices would be inundated with redundant paperwork that there is no legitimate need to hold, which would of course have associated ramifications under the principles of the Data Protection Act 1998. It said it therefore follows that the vast majority of papers are returned to the police who apply the appropriate retention period in line with their policy.

Request and response

6. On 9 January 2017 the complainant wrote to the CPS and requested information in the following terms:

"I seek all information (that is legally possible for the CPS to provide me with) pertaining to their investigation (if any) into the 19 deaths (or any other figure) that took place at [name redacted] care home ([name redacted] scandal). I am seeking info held on the individuals deceased, any police statements, and any possible decisions on CPS prosecutions (or not if the case may be) of the [named care home] owners/staff etc."

7. The CPS responded on 11 January 2017 and refused to provide the requested information citing sections 30(1)(c), 40(2) and 42(1) of the FOIA.
8. Following an internal review the CPS wrote to the complainant on 13 January 2017 and maintained its original position.

Scope of the case

9. The complainant contacted the Commissioner on 15 January 2017 to complain about the way her request for information had been handled.
10. During the Commissioner's investigation, the CPS advised it had cross-referenced the full CMS case record against the withheld information it had already provided her with. Subsequently, it had located three further documents, pertaining to the charging decision and associated advice, which it wished to withhold. It said that sections 30(1)(c) and

section 40 applied to all three documents in their entirety, and that section 42 also applied to two of the three documents.

11. The Commissioner set out to consider whether the CPS was entitled to rely on sections 30(1)(c), 40(2) and 42(1) to withhold the requested information.

Reasons for decision

Section 30 – investigations and proceedings

12. The CPS has cited section 30(1)(c) in respect of the withheld information.

13. Section 30(1)(c) of FOIA states that:

“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.”

14. The phrase “*at any time*” means that information can be exempt under section 30(1)(c) if it relates to an ongoing, closed or abandoned investigation.
15. 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.
16. The CPS itself does not have any powers to investigate. It said it is relying upon section 30(1)(c) of FOIA in relation to ‘criminal proceedings which the authority has the powers to conduct’ and said it is necessary for the CPS to maintain confidential communications between the police, and other third parties, in order to effectively conduct a prosecution.
17. The CPS has advised the complainant that section 30(1)(c) applies because:

“All of the information you have requested was generated by the CPS in the course of advising the police on their investigation and deciding whether there should be a prosecution of any of the suspects.”

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 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 CPS recognised that disclosure would increase public understanding of the CPS decision making and prosecuting process. It also acknowledged that transparency could increase public confidence in the CPS.
22. As part of her internal review submission, the complainant commented that is highly unlikely that anyone will ever be prosecuted in relation to the events at [named care home] and that many of the names are already in the public domain. The complainant has not provided any further arguments in favour of disclosure.

Public interest arguments in favour of maintaining the exemption

23. The CPS has argued that:

"There is a strong public interest in safeguarding the prosecution process. Maintaining the confidentiality of communications between the Police and the CPS, as well as other public bodies is an essential part of this process. It is important for officials to be able to freely justify and maintain their thought process when making decisions on criminal cases, without fear of the routes leading to those decisions later being disclosed into the public domain. Additionally, it is important to remember that to release case information may dissuade witnesses from assisting in future investigations. Witnesses are a vital part of the prosecution process and it is crucial that they are able to approach the investigative body and provide statements without fear that they

may one day be placed into the public domain, save through the court process. Releasing this sort of information would be likely to prejudice future prosecutions."

24. The CPS has also argued that:

"There is a particularly strong public interest in not releasing information which forms part of an investigation when it has been decided not to charge; to release would be extremely unfair to the individual involved.

There is a strong public interest in the courts being the sole forum for determining guilt".

25. It told the Commissioner that the information already available in the public domain significantly reduces the public interest in releasing the requested information.

Balance of the public interest

26. When considering the application of the exemption 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.

27. The Commissioner considers that there are public interest arguments which touch on the second, third and fourth bullet points in this case.

28. 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. The expectation that deliberations could routinely be disclosed could have an inhibiting effect on witness participation in future investigations and the loss of that frankness and candour could damage the quality of information and deliberation, and lead to poorer decision-making. It could also impede any potential trial process where the correspondence may have a direct

bearing on whether or not there will be a criminal prosecution, as is the case here. The Commissioner accepts this prejudice as a real and possible outcome.

29. The Commissioner understands that there is a very strong public interest in supporting the protection of the CPS's prosecution processes, which includes its dealings with witnesses. Such discussions must remain full and frank and without fear of being made routinely available to the public. Were these parties concerned that any content of their detailed statements could find their way into the public domain, it then seems likely that it may serve as a deterrent to the documenting of honest and frank provision of evidence. The Commissioner believes this argument to be particularly weighty in favour of maintaining the exemption, as it could ultimately undermine the right to determine the course of investigations if such evidence is not sought and given in a full expectation of confidence. In addition, on this occasion, she is of the opinion that as no-one was charged, it is inappropriate to release any information about the case, beyond that already in the public domain.
30. The Commissioner recognises the complainant's wish to have more information about the investigation into the named care home. The Commissioner can advise that she has had full sight of the relevant correspondence and there is nothing in its content to suggest that the investigation has been anything other than professional. She can therefore see limited public interest in releasing information pertaining to an investigation in which no individual has been charged.
31. It is a very weighty argument for maintaining this exemption that the criminal court is maintained as the sole forum for determining guilt rather than the general public at large. Unfettered disclosure of this information under the terms of the FOIA could mean that it is misinterpreted by the public and could result in those parties concerned being sought out and put under unnecessary and unfair personal risk.
32. Accordingly, on this occasion the Commissioner finds the public interest arguments in favour of maintaining the exemption to be more compelling. She therefore concludes that the public interest in maintaining the exemption outweighs that in disclosure and that the CPS is entitled to rely on section 30(1)(c) to withhold the requested information.
33. As this exemption has been applied to the information in its entirety the Commissioner has not found it necessary to consider the other exemptions cited.

Other matters

34. In relation to the information in scope of the request, the CPS has explained that the MG3A refers to charging advice provided by the CPS, and the MG5 is a 'Case Summary'. It said that this is all the information held by the CPS in scope of this request. In light of this, the CPS advised that its original response should have explained to the complainant that the CPS does not hold any police statements in relation to this case due to the approach outlined within paragraph 5 of this notice. It suggested that the police would be best placed to answer the complainant's request as they are likely to hold more detailed information.

Right of appeal

35. 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

36. 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.
37. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF