

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 April 2018

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

Decision (including any steps ordered)

1. The complainant requested information relating to costs incurred by the Crown Prosecution Service (CPS) in relation to specified criminal and judicial review proceedings.
2. The CPS refused to either confirm or deny holding information within the scope of the request, citing section 40(5) (personal information) of the FOIA.
3. The Commissioner's decision is that the CPS was correct to neither confirm nor deny holding information within the scope of the request by virtue of section 40(5)(a) of the FOIA.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 14 September 2017, the complainant wrote to the CPS and requested information in the following terms:

"I would like to request a breakdown of the cost to the CPS of dealing with the case of [name redacted] v [names redacted], both in the criminal proceedings in Camberwell Green Magistrates' Court and the subsequent judicial review proceedings brought in the High Court. This should include the notional cost for staff time spent dealing with the matter, as well as fees paid to external counsel."

Please could you brake [sic] this down by expenditure by CPS London and expenditure by the CPS appeals unit".

6. The CPS responded on 21 September 2017. It neither confirmed nor denied holding the requested information citing section 40(5) of the FOIA (personal information).
7. As a result of further correspondence with the CPS, the complainant requested an internal review on 22 November 2017.
8. Following an internal review, the CPS wrote to the complainant on 13 December 2017 maintaining its position.

Scope of the case

9. Following earlier correspondence, the complainant contacted the Commissioner on 13 December 2017 to complain about the way his request for information had been handled. He disputed that the requested information was personal data.
10. The analysis below considers the CPS's application of section 40(5) of the FOIA to the requested information.

Reasons for decision

Section 40 personal information

11. Section 40(5) of the FOIA sets out the conditions under which a public authority can give a "neither confirm nor deny" response where the information requested is, or would be, personal data. It includes provisions relating to both personal data about the requester and personal data about other people.
12. In this case, the CPS has not specified which limb of section 40(5) applies. However, with due regard to the wording of the request, the Commissioner considers section 40(5)(a) applies as the request is for information concerning the complainant.
13. Section 40(5) of the FOIA states:

"The duty to confirm or deny –

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)...".

14. Section 40(5)(a) of the FOIA excludes a public authority from complying with the duty imposed by section 1(1)(a) of the FOIA - confirming whether or not the requested information is held - in relation to information which, if held by the public authority, would be exempt information by virtue of subsection (1).

15. Section 40(1) of FOIA states that:

"Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject".

16. The definition of personal data is set out in section 1 of the Data Protection Act 1998 (DPA). Section 1 defines personal data as:

"...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."

17. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person 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.

18. In correspondence with the complainant, the CPS told him:

"If any information were held, confirming this would reveal to the world at large that you were involved in the criminal justice system; this would constitute your sensitive personal data. To disclose under the FOI Act would be to put this information into the public domain".

19. Sensitive personal data is personal data which falls into one of the categories set out in section 2 of the DPA. The relevant category in this instance is:

"(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".

20. The Commissioner is satisfied from this that the withheld information, if held, would comprise sensitive personal data. This is because the

requested information, if held, relates to proceedings involving the data subject.

21. Having considered the wording of the request in this case, the Commissioner is satisfied that the complainant is, or would be, the subject of the requested information. This is because the information he has requested is, by its own definition, about or connected to the complainant himself.
22. It follows that the Commissioner considers that the complainant is the data subject within the meaning of the section 40(1) exemption.
23. In relation to such information, the provisions of section 40(5) of the FOIA mean that the public authority is not required to comply with the duty to confirm or deny that the information is held, as the duty to confirm or deny does not arise in relation to information which is (or, if it were held by the public authority, would be) exempt information by virtue of subsection (1).
24. The Commissioner is satisfied that complying with section 1(1)(a) in this case would effectively confirm or deny whether the requested information is held in connection with the complainant as he is one of the individuals named in the request. It would not be possible to confirm or deny the details of any costs incurred by the CPS without revealing whether or not the data subject had any involvement in the criminal justice system.
25. The Commissioner considers that context is important here. She considers it inescapable that confirmation or denial in response to the request would disclose whether or not the CPS holds information relating to the criminal and judicial review proceedings specified in the request. This would inevitably put into the public domain the existence, or otherwise, of information about the named individual, which in turn would constitute disclosure of sensitive personal information that would relate to him. She therefore considers that the section 40(5) exemption was correctly relied upon by the CPS in this case.

Other matters

26. In the Commissioner's view, it is appropriate that any decision as to whether or not a data subject is entitled to be told if personal data about them is being processed should be made in accordance with the subject access provisions of the DPA.
27. If a data subject is dissatisfied with the outcome of a subject access request, they can raise their concern about how the organisation handled that request with the ICO.

28. The Commissioner is satisfied that the CPS advised the complainant in this case with respect to making a subject access request under the DPA.

Right of appeal

29. 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

30. 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.
31. 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

**Deborah Clark
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Wycliffe House
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SK9 5AF**