

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 March 2019

Public Authority: Crown Prosecution Service
Address: 102 Petty France
London
SW1H 9EA

Decision (including any steps ordered)

1. The complainant requested a police report and other information sent to the Crown Prosecution Service in relation to the decision not to prosecute former bishop Peter Ball in 1993. The Crown Prosecution Service disclosed some information, but withheld the remainder relying on the section 30(1) FOIA (investigations and proceedings) exemption.
2. The Commissioner's decision is that the Crown Prosecution Service was entitled to apply section 30(1) FOIA to withhold the remaining information.
3. The Commissioner does not require the Crown Prosecution Service to take any steps.

Request and response

4. On 20 July 2018 the complainant made a request to the CPS for information in the following terms:

"BACKGROUND:

I refer you to the Guardian online article:

<https://www.theguardian.com/uk-news/2015...>

"[name redacted], prosecuting, said: "The police report that accompanied the papers sent to the CPS in 1993 after the police had done their work stated they had received telephone calls supportive of Peter Ball 'from many dozens of people – including MPs, former public school headmasters, JPs and even a lord chief justice. She said there were many more letters of support, including from cabinet ministers and a member of the royal family."

I want understand why you chose not to prosecute Peter Ball.

REQUEST

Provide the police report and papers referred to above".

5. On 2 August 2018 CPS responded and refused to provide the requested information citing the section 12(1) FOIA (cost of compliance) exemption.
6. On 12 October 2018, following an internal review, CPS again refused to provide the requested information but instead relied on the section 30(1)(c) (investigations and proceedings conducted by public authorities) and 40(2) (personal information) FOIA exemptions.

Scope of the case

7. The complainant contacted the Commissioner on 12 October 2018 to complain about the way his request for information had been handled. He did not provide any reasons to explain why he was concerned about the CPS decision. He asked for a formal Decision Notice to be issued.
8. The Commissioner considered the application by CPS of the section 30(1)(c) FOIA exemption. During the course of her investigation she has considered representations by CPS and reviewed the withheld police report. She has also noted 17 letters of support, many of them from senior public figures, received by the police or CPS in support of Mr Ball and testifying to good works said to have been carried out by him. The letters were disclosed by CPS to the complainant on 12 October 2018

and had previously been made available to the Independent Inquiry into Child Sexual Abuse (IICSA).

9. The Commissioner has also had regard for a statement on this and related matters made by the CPS Director of Legal Services to IICSA on 2 July 2018 ("the CPS statement").¹ The CPS statement runs to 42 pages and sets out in considerable detail why, and how, the 1993 decision was taken.
10. The Commissioner has also recalled a previous decision in a closely connected matter, reference FSS50623445, issued on 10 October 2016².

Reasons for decision

Section 30 – investigations and proceedings

11. Section 30(1)(c) 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."*

12. The phrase "at any time" means that information can be exempt under section 30(1) FOIA if it relates to an ongoing, closed or even an abandoned investigation.
13. Section 30(1) FOIA 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.
14. 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.

¹ <https://www.iicsa.org.uk/key-documents/6098/view/CPS003477.pdf>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1625244/fs50623445.pdf>

15. Turning to whether the information in this case, which is held by 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) FOIA.
16. CPS confirmed that the withheld information is not in the public domain and that the section 30(1)(c) FOIA exemption applies to all of the withheld information. The Commissioner has reviewed the withheld information and she is satisfied that it relates to how the CPS would 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 has consequently decided that the exemption is engaged in respect of the information requested.

The public interest test

17. Section 30(1)(c) FOIA 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

18. CPS accepted that there were considerations favouring disclosure of the withheld information as doing so would increase public understanding of CPS decision-making and the prosecution process. Moreover increased transparency could increase public confidence in CPS.
19. CPS appreciated that there were specific public interest factors in this case which had received significant media attention on more than one occasion. The matter raised questions of inappropriate behaviour by a former senior figure of the Church of England who had been 'looked up to' by many. The 17 letters of support disclosed by CPS testify to this.

Public interest arguments in favour of maintaining the exemption

20. CPS told the Commissioner that, as was true with a lot of criminal case files considered by CPS, allegations made by victims and witnesses were relied upon to meet the evidential stage of the Code for Crown Prosecutors – which is the CPS guidance for prosecutors making charging decisions. CPS said that victims and witnesses needed to show courage when they came forward and gave evidence. Although CPS made every effort to make the experience as stress free as possible, it was likely that being involved in a criminal case was not an everyday experience and might cause damage or distress to the individuals CPS relied upon to supply evidence at trial. This was especially true of crimes

considered to be particularly sensitive, such as sexual assault cases like this one.

21. To disclose the specific details of the alleged incidents outside of the disclosure provisions associated with a criminal case would be entirely unfair to individual witnesses and could potentially deter them from having the courage to give evidence in the future. A fear that one day their sensitive information could be disclosed by the CPS into the public domain would damage witnesses' and informants' confidence in the ability of CPS to hold sensitive information confidentially. This would therefore prejudice the prosecution process as members of the public would be less likely to report incidents in future.
22. The provision of evidence to IICSA regarding the 1993 decision in the CPS statement, which is available to the general public, has added greatly to public knowledge of those events at that time and the reasons for them.

Balance of the public interest arguments

23. When considering the application of the exemptions at section 30(1) FOIA, 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 reporting incidents for fear that their reports might be published;
 - 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 a safe space in which to determine the course of an investigation; and,
 - information that deals with specialist techniques.
24. The Commissioner considers that these are significant public interest arguments which weigh heavily in favour of maintaining the exemption in this case.
25. The Commissioner recognised the detriment that could be caused to 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 later could inhibit free and

frank discussions between CPS and the police. A loss of frankness and candour would damage the quality of advice and deliberation, and lead to poorer decision-making, albeit the Commissioner expects that public servants involved in decision-making of this nature will perform their duties robustly in the knowledge that they may later be subject to public scrutiny. Moreover it would never be in the public interest to use FOIA to conceal evidence of deliberate wrongdoing by those in public life.

26. The wider public interest in transparency and openness about the circumstances surrounding the 1993 decision to caution Mr Ball is served to a large extent by the IICSA and the detailed evidence already made available to it in the CPS statement.
27. Having considered the arguments put forward by CPS, and with a lack of any counter-arguments from the complainant, the Commissioner decided that the balance of the public interest favoured maintaining the exemption at section 30(1)(c) FOIA in respect of the remaining information within the scope of the request.
28. In the light of her findings in respect of section 30(1)(c) FOIA, the Commissioner did not go on to consider the CPS reliance on section 40(2) FOIA.

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

Dr Roy Wernham
Senior Case Officer

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