

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 August 2022

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

Decision (including any steps ordered)

1. The complainant has requested from the Crown Prosecution Service ('the CPS'), information it holds regarding the prosecution of a 2017 tax avoidance case. The CPS cited sections 30(1)(c) (Investigations and proceedings), 32(1)(a) (Court records) and 40(2) (Personal information) of FOIA to refuse to disclose the information.
2. The Commissioner's decision is that the CPS was entitled to rely on section 30(1)(c) of FOIA to withhold the information in its entirety.
3. No steps are required as a result of this decision.

Request and response

4. On 7 September 2021, the complainant wrote to the CPS and requested information in the following terms:

"I am a researcher with an interest in tax, and in particular tax crime.

R vs Richards, Gold and others was the successful prosecution of the people involved in the Carbon Capital Limited tax avoidance scheme.

I would like to request copies of the records the CPS holds on this case, including the Crown's case, the indictment and the Defence (if available)

The case went to trial and was heard in public, and as such these documents should be considered in the public domain, and therefore there should be no issue with regard to confidentiality.”

5. The CPS responded on 21 September 2021. It refused to provide the requested information, citing sections 30(1)(c), 32(1)(a) and 40(2) of FOIA. It suggested that a copy of the Indictment in the case might be obtainable from Southwark Crown Court, and it advised him to apply there.
6. Following an internal review, the CPS provided an internal review of its decision on 11 November 2021, maintaining its original position.

Scope of the case

7. The complainant contacted the Commissioner on 17 November 2021 to complain about the way his request for information had been handled.
8. The analysis below considers whether the CPS was entitled to rely on the cited exemptions to refuse the request.
9. The Commissioner has considered the request for information and the responses the CPS provided to it. In view of the level of detail provided by the CPS in its responses to the complainant, he has not deemed it necessary to delay his decision by asking it for further information about its handling of the request; it would not affect his findings.

Reasons for decision

Section 30 - investigations and proceedings

10. 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.”

11. The phrase “at any time” means that information may be exempt under section 30(1)(c) if it relates to ongoing, closed or abandoned proceedings.
12. 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 specific or particular criminal proceedings and not for criminal proceedings in general.

13. As regards the engagement of section 30(1)(c), the CPS told the complainant:

"...this exemption relates to information held for the purpose of criminal proceedings which the CPS has power to conduct. Any information held by the CPS in relation to the prosecution outlined above is held by the CPS for the purposes of criminal proceedings (i.e. for the purpose of the exercise of its functions) and therefore falls under the exemption of s30(1)(c) in the Act. This exemption applies to information in relation to this matter held by the CPS "at any time" and even if the information were not originally obtained for the above purpose or if it were no longer being used for the specified investigation or proceedings (see Information Commissioner's Office (ICO) s30 guidance at paragraph 8)."

14. The CPS is listed in the Commissioner's guidance on section 30¹ as being a public authority that has the power to conduct criminal proceedings.
15. The request in this case is for the information the CPS holds regarding the prosecution of a particular criminal case. The Commissioner is satisfied that it is information which is held in connection with criminal proceedings stemming from a specific investigation.
16. The Commissioner is therefore satisfied that the exemption at section 30(1)(c) is engaged in respect of the information described in the request.

The public interest test

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

Public interest arguments in favour of disclosure

18. The CPS said that if it was to release the information requested this would increase public understanding of its decision making and prosecuting processes.

¹ <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf> paragraph 25

19. It also said that by disclosing the requested information, and being transparent, this may increase public confidence in the CPS.

20. When requesting an internal review, the complainant argued:

“As the trial was in held in public, many of the documents you hold would have already been put into the public domain. For example, the opening statement of the prosecution will have been read out in open court. As such I do not see how section 30 can apply in this case. The ICO guidance is clear in that once information is in the public domain, there is likely to be little justification for withholding the information in most cases and that the public interest in maintaining an exemption will be limited.”

Public interest arguments in favour of maintaining the exemption

21. The CPS told the complainant:

“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 can 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.

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

22. As regards the complainant’s assertion that the public interest in maintaining the exemption was limited because information about the case was in the public domain, it stated:

“ICO guidance outlines that information is only in the public domain if it is realistically accessible to a member of the general public at the time of the request. The IAT [Information Access Team] considers what information relating to a prosecution may already be ‘out there in the world at large.’ For example, there may have been media coverage regarding a case and details of it may be easily accessible in news articles.

In order to determine whether information held by the CPS is already 'out there' or is in the 'public domain,' the IAT will search for the details provided by a requester on an internet search engine. If details described by the requester do not appear on the internet following our searches, then we must consider that, even if the information is held by the CPS, details of it are not in the public domain.

The ICO outlines in their [sic] guidance 'Information in the public domain' at paragraph 14 that, if a member of the public could not actually get hold of the information at the time of the request, the Commissioner does not consider that it is in the public domain for these purposes. Furthermore, at paragraphs 25 and 26 it specifically outlines that even if information has entered the public domain some time before the date of the request, this does not mean it remains there indefinitely. Even if the information was at one time considered a matter of public record (eg by being revealed in open court) or was otherwise previously published or disseminated (eg in response to an earlier FOI request), this does not mean it is still available in practice at the time of the request. For example, information disclosed in court may briefly enter the public domain in theory, but its availability in practice is likely to be short-lived unless it passes into other more permanently available sources (eg online newspaper reports).

In our response to your FoI request, [reference number redacted], internet searches established that the information sought that is held by the CPS is not in the public domain."

Balance of the public interest

23. The Commissioner recognises the public interest in promoting transparency and public understanding with regard to decisions made by public authorities.
24. However, the Commissioner also understands that there is a strong public interest in supporting the protection of the CPS's prosecution processes.
25. The CPS explained that maintaining the confidentiality of communications between the police, HMRC and the CPS, as well as other public bodies, is an essential part of that process. The Commissioner agrees that it is important for officials to be able to freely discuss and justify their thought processes when making decisions on criminal cases, without fear of the routes leading to those decisions later being disclosed into the public domain. Discussions regarding the process and rationale for decisions must remain full and frank and without fear of being routinely available to the public.
26. Furthermore, were witnesses, victims and suspects concerned that any content of their detailed statements could find their way into the public

domain, it seems likely that this would act as a deterrent; witnesses and victims may be more circumspect regarding the information they are willing to provide during investigations, whilst suspects may be deterred from cooperating. The Commissioner believes this argument to be particularly weighty in favour of maintaining the exemption, as it could ultimately undermine the success of criminal proceedings if evidence is not sought and given in full expectation of confidence.

27. The Commissioner also has concerns that disclosing information considered as part of a criminal investigation, which identifies individuals who assisted with the investigation, could create a perception among the wider public that sensitive information about criminal investigations may be disclosed to the world at large after a trial has been completed. He considers that there is a real chance this may deter people (including witnesses, victims and suspects) from coming forward in the first place and from cooperating with prosecution authorities, if they are concerned that, following a trial, their information may be disclosed to the world under FOIA. This may adversely affect the quality of the evidence obtained during investigations, which would, in turn, prejudice the successful conduct of criminal proceedings by the CPS. There is a very significant public interest in avoiding that outcome and with this the Commissioner finds the public interest arguments in favour of maintaining the exemption to be more compelling.
28. As regards the extent to which the requested information is in the public domain, the CPS has correctly summarised the Commissioner's position. The Commissioner acknowledges that some information summarising the main points of the prosecution have been published. For example, in response to an internet search, he has been able to locate outline media reports, the judge's sentencing comments and an appeal court judgment. However, he has been unable to locate more particular information regarding the conduct of the criminal case. In his experience of dealing with requests of this nature, this is not information that he would expect would be placed in the public domain following the conclusion of proceedings, due to the concerns described above.
29. Taking all the above into account, the Commissioner has concluded that, in this case, the public interest in maintaining the exemption outweighs that in disclosure and that the CPS was entitled to rely on section 30(1)(c) to withhold the requested information.
30. As the exemption has been applied to the information in its entirety the Commissioner has not found it necessary to consider the other exemptions cited. However, again drawing on his experience of dealing with requests of this nature, he finds it highly likely that sections 32 and 40 of FOIA would also be engaged in respect of the withheld information.

Right of appeal

31. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. 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.
33. 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

Samantha Bracegirdle
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