

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 January 2024

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

Decision (including any steps ordered)

1. The complainant requested information from the Crown Prosecution Service (CPS) relating to rape crimes scenarios or accusations/ allegations of offences conducted by members of the UK Police and HM Armed forces and UK Government Security Services against women, falling under HM Covert Intelligence Sources (Criminal Conduct) Act of 2021 between 22 May 2012 and 22 May 2022. The CPS refused to comply with the request citing section 12 (cost limit) of FOIA.
2. The Commissioner's decision is that the CPS was entitled to refuse to comply with the request in accordance with section 12(2) of FOIA. The Commissioner also finds that the CPS complied with its obligations under section 16 to offer advice and assistance.
3. The Commissioner does not require the CPS to take any steps.

Request and response

4. On 1 March 2023, the complainant made the following request for information to the CPS:

"Today has been two years since the creation of HM Covert Intelligence Sources (Criminal Conduct) Act of 2021 and below are three accusations.

Those accusations are: -

Accusation I - A Police force in The UK have powers under the criminal conduct act to rape, murder and torture adults plus children in pursuance of the covert criminal conduct act.

Accusation II - A hired member of one of the British Governments security services did torture, rape, and attempt to murder a woman and a UK government including said services ordered the police and crown to cover it up & destroy the evidence for a secure conviction. All in pursuit/in connection to the cited criminal conduct act to protect the accused for the security of the secret services and the wider defence of the realm.

Accusation III - A hired member of one of the UK governments security services has raped a woman with the full knowledge and approval of one of British Armed Forces in pursuance of the act.

All three have been brought forth against the United Kingdom by three British women. Two are false and one is true. Due to certain reasons I cannot state which accusation is true and what ones are false.

While some persons and organisations are known to have or still have information on these 2 accusations I cannot state at this moment if it is this organisation or not neither can I confirm nor deny if it is this organisation that is known to have co-perpetrated the actions described. However, I can state that this request has been asked the same verbatim relevant other organisations and their personnel.

Those organisations and persons might or might not be responsible for one of the actions accused and may or may not be this organisation plus its personnel.

After receiving imparted impartial information from a member of the Queens Council of the Law Society of England I request the following under HM Freedom of Information Act of 2000:

Please provide all and any information on these accusations, the enquiries into them and the subsequent findings in their regard. Please also supply any mention of the CPS, The Attorney General for England & Wales, or the director of public prosecutions n their concern.

Between 22/5/2012 - 22/5/2022"

5. The CPS responded on 24 March 2023 and stated that the cost of complying with the request would exceed the cost threshold of £600 for central government departments. In accordance with this finding, CPS issued a section 12 refusal notice in reply to the complainant's request for information.
6. The Crown Prosecution Service upheld its initial application of section 12 of FOIA via internal review on 14 April 2023. Specifically, the CPS relied on section 12(1).

Scope of the case

7. The complainant contacted the Commissioner on 28 July 2023 to complain about the way their request for information had been handled. The complainant disagrees with the CPS's application of section 12 of FOIA.
8. The Commissioner considers that the scope of this case is to determine if the CPS has correctly cited section 12 of FOIA in response to the request. The Commissioner has also considered whether the CPS met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). The CPS has relied on section 12(1) of FOIA to refuse the request, but, in its submissions to the Commissioner, it has stated that it was "unable to confirm whether the information was held as the CPS does not collate data that falls within the broad scope" of the request. The Commissioner therefore considers that the CPS should have relied instead on section 12(2) of FOIA. He will therefore address this below.
10. Section 12(2) provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the "appropriate limit" as set out

in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).

11. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.
12. Section 12(2) of the FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
13. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations) at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. The appropriate limit for the CPS is £600.
14. Where section 12(2) is relied upon, Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following activity:
 - determining whether the information is held.
15. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of “Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004”, the Commissioner considers that any estimate must be **“sensible, realistic and supported by cogent evidence”**.
16. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
17. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

Would the cost of compliance exceed the appropriate limit?

18. The task for the Commissioner here is to determine whether the cost estimate by the CPS was reasonable. If it was, then section 12(2) was engaged, and the CPS was not obliged to confirm or deny whether the requested information was held. In the Commissioner's view, section 12(2) will only be relevant where the public authority is entirely unaware of whether it holds any recorded information within the scope of the request.
19. The Commissioner asked the CPS to provide a more detailed estimate of the time and cost of determining whether the requested information falling within the scope of this request was held.
20. In its initial responses to the complainant, the CPS provided information on a sampling exercise conducted for 4,324 rape flagged cases identified in 2022. It estimated that to locate, identify and review all relevant rape flagged case files that:

"It would take a staff member approximately 20 minutes per case, at the very least to identify the required information.

The time period of your request (22/5/2012 - 22/5/2022) the case numbers for initial review would therefore be many times higher and the time it would take would exceed the appropriate limit."
21. In its submission to the Commissioner, the CPS stated that it was unable to confirm whether the information relating to accusations of rape was held by CPS as they do not record information in such a way as to comply with this part of the request. As the CPS prosecutes criminal cases investigated by the police and other organisations in England and Wales, it only records information related to these cases.
22. All prosecution criminal cases are recorded on its case management system using personal details of victims and defendants and case reference numbers and therefore without these, the CPS would be unable to identify information within the scope of the request using automated word search filter processes on its IT system and would require a manual review of all relevant files.
23. The CPS additionally stated that it had estimated that there were potentially 49,892 rape flagged suspect and defendants pre-charge decisions, not including torture and attempted murder offences for the 10-year period (2013 to 2022) requiring a review. It would take a minimum of five minutes to locate, review, and determine whether the information was held with many files taking longer dependant on the material content and information contained within it. The CPS calculated that this meant that 49,892 potential files x 5 minutes

equates to 249,460 minutes or 4,157 hours required to complete the task.

24. Even if the CPS applied the revised search and review time estimate to the files identified in 2022 for the sampling exercise, this would still exceed the cost limits i.e., 4,324 case files x 5 minutes equating to 21,620 minutes or 360 hours.
25. The Commissioner is unable to judge whether the revised 5-minute estimate to search and review files is correct, conservative, or excessive. However, he accepts that the cost limit is met due to the volume of records and the fact that a manual review is required. He accepts that it would not be possible to conduct a manual review of nearly 50,000 case files within the cost limit. Each file would need to be checked and the relevant information extracted in less than 2 seconds per case.
26. The Commissioner therefore finds that the CPS was entitled to refuse to comply with the request in accordance with section 12(2) of FOIA.

Section 16(1) – The duty to provide advice and assistance.

27. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
28. The Commissioner accepts that due to the nature of the request, and due to the length of time it would take to search and manually review each record, the requests could not be meaningfully refined to allow the information to be provided within the cost limit.
29. In its initial response to the complainant on 24 March 2023, CPS stated.

“If you are in a position to provide the accused or complainants names regarding the three accusations, then we could take this forward as a new FOI request.”

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

30. In its responses to the Commissioner, the CPS additionally stated.

“The IAT is satisfied that the fastest (and only) way of gathering the requested information would be for (Name redacted) to provide details of the case such as the defendant or victims name this would allow the IAT to conduct a check on our CMS system.”

31. As such, the Commissioner is satisfied that the CPS offered advice and assistance to the complainant as to how they could refine their request and have met their section 16(1) of FOIA obligations.

Other matters

32. The Commissioner is also satisfied that some of the information requested concerns a scenario that the complainant has proposed, rather than an actual request for a specific rape flagged case file that CPS may hold.

33. Finally, the Commissioner would like to remind the complainant that FOIA covers the provision of recorded information and does not require public authorities to provide opinions or explanations, generate answers to questions, or create or obtain information it does not hold.

Right of appeal

34. 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

35. 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.
36. 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

Michael Lea
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