



EA/2018/0137

**CHRISTINE & MICHAEL DALTON**

**Appellant:**

and

**THE INFORMATION COMMISSIONER**

**Respondent:**

**Before: Brian Kennedy QC**

**Marion Saunders**

**Paul Taylor**

## **DECISION**

### **Introduction:**

[1] This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 (“the FOIA”). The appeal is against the decision of the Information Commissioner (“the Commissioner”) contained in a Decision Notice (“DN”) dated 21 June 2018 (reference FS50729705), which is a matter of public record.

[2] The Tribunal Judge and lay members sat to consider this case on 29 October 2018.

### **Factual Background to this Appeal:**

[3] Full details of the background to this appeal, Mrs and Mr Dalton’s request for information and the Commissioner’s decision are set out in the DN and not repeated here, other than to state that, in brief, the appeal concerns the question of whether the Crown Prosecution Service (CPS) was correct to withhold the requested information on the basis that it constituted the Appellants’ sensitive personal information.

## **Chronology:**

Jan 2016	CPS employ Anglo Thai Law to recover a bank account and property shares in Thailand held by the Appellant
22 Jan 2018	Appellant requests all invoices and costs incurred by the CPS in engaging Anglo Thai Law
14 Feb 2018	CPS refused request, citing s30(1)(c) (investigations and proceedings) and s40(1) (personal information)
1 March 2018	Internal review upholds refusal ss30 and 40
22 March 2018	Complaint to the Commissioner
21 June 2018	DN upholding the refusal

## **Relevant Legislation:**

### ***Freedom of Information Act 2000***

#### ***Section 1 - General right of access to information held by public authorities.***

- (1) Any person making a request for information to a public authority is entitled—
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
  - (b) if that is the case, to have that information communicated to him.

#### ***Section 30 - Investigations and proceedings conducted by public authorities.***

- (1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of—
- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained—
    - (i) whether a person should be charged with an offence, or
    - (ii) whether a person charged with an offence is guilty of it,
  - (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
  - (c) any criminal proceedings which the authority has power to conduct.

**Section 40 - Personal information.**

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

...

(5A) 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).

**Data Protection Act 2018**

**Section 3 – Terms relating to the processing of personal data**

(2) “Personal data” means any information relating to an identified or identifiable living individual (subject to subsection (14)(c)).

(3) “Identifiable living individual” means a living individual who can be identified, directly or indirectly, in particular by reference to—

(a) an identifier such as a name, an identification number, location data or an online identifier, or

(b) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

(5) “Data subject” means the identified or identifiable living individual to whom personal data relates.

**Commissioners Decision Notice:**

[4] The Commissioner’s Decision Notice was issued while the Data Protection Act 1998 was still in force, but this has since been superseded by the DPA 2018. As the request was made to the CPS while the DPA 1998 was still in force. However, the two main elements of personal data remain the same; namely, that the information must ‘relate’ to a living person and that the person must be identifiable.

[5] The present request was deemed to be personal data, as the information relates to on-going confiscation proceedings against both Appellants. They are identifiable, both being signatories to the request for information about “our case”, and the CPS confirmed that at the time of the request the proceedings remained live. The Commissioner also considered that the information constituted “sensitive personal information” under the 1998 regime.

Therefore, by even confirming or denying that the information was held, the CPS would put into the public domain the existence or otherwise of proceedings against the Appellants.

[6] The Commissioner notes that the Appellants submitted a subject access request at the same time as their FOIA request, and that it has been dealt with under the DPA. The Commissioner considered that this is the correct access regime, as the Appellants have asked for their own personal information. As such, the Commissioner did not consider s30(1)(c).

### **Grounds of Appeal:**

[7] The Appellants argued that the request did not “*implecate [sic] anything whatsoever*” with the Appellants, instead accusing the CPS of a cover-up of the misdeeds of the Thai law firm that they engaged to recover the Appellants’ property. They argued that the public interest lay in exposing corruption and illegality.

### **Commissioners Response:**

[8] The Commissioner reiterated the reasoning in her Decision Notice, adding that the request specifically refers to “our case” and all data held on them by name, and as such it is inextricably linked to the Appellants. She cited *Farrand v ICO & London Fire & Emergency Planning Authority* [2014] UKUT 0310 (AAC) to support the proposition that the context of the request as something that could identify the requester.

### **Tribunal Reasons:**

[9] The Appellants read at length from a prepared statement about their understandable concern in relation to what they allege amount to criminal activity by Anglo Thai. They confirmed they had reported the matter to the Police who they say are treating the matter as a Criminal investigation.

[10] The Appellants also confirmed they had also submitted a subject access request at the same time as their FOIA request, and that it was being dealt with under the DPA.

[11] The Tribunal explained the reasoning of the Commissioner in her DN and Response to their Grounds of Appeal and invited the Appellants to make their submissions on how the

Commissioner had erred, either on the facts or in Law. The Appellants failed to put forward any cogent arguments on these issues. They simply stated that it was in the Public Interest that the information sought should be released.

**[12]** The Tribunal accept that a response to the request, when read in the context of the wording of the request, would reveal information, if held, which is connected to the Appellants case and would therefore relate to and identify the Appellants themselves within the definition of personal data in section 1(1) DPA.

**[13]** The Tribunal accepts and adopts the Commissioners' reasoning in her DN and the Response to the Grounds of Appeal. In particular the Tribunal accept there is no presumption in favour of the release of personal Data, as is the case on the facts of this case, under the general obligation of FOIA as cited in; Commons Services Agency v Scottish Information Commissioner HL [2008] 1 WLR 1550.

**[14]** While we are sympathetic to the Appellants difficulties in understanding the particular decision the Commissioner has taken in this case, and appreciate that they are looking for an explanation, in light of our observations and conclusions we find that FOIA is not the means for finding that explanation.

**[15]** Accordingly we dismiss this appeal.

Brian Kennedy QC  
Tribunal Judge

5 November 2018.  
Promulgation date: 23 November 2018.