

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 July 2013

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

Decision (including any steps ordered)

1. The complainant has made three information requests relating to a criminal case. As the information requested all relates to the same investigation the Commissioner has considered the requests in the same decision notice. The public authority has withheld the requested information citing the exemptions in sections 30(1)(c), 40(2) and 42(1) of the FOIA. The Commissioner has found that it was correct to withhold the requested information; he requires no steps to be taken.

Background

2. The Commissioner has also already made a decision in a related case, FS50462770. This can be found on his website¹.

Requests and response

3. On 20 November 2012, the complainant wrote to the public authority and requested information in the following terms:
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¹[http://www.ico.org.uk/~media/documents/decisionnotices/2013/fs_50462770.pdf](http://www.ico.org.uk/~/media/documents/decisionnotices/2013/fs_50462770.pdf)

"I am also now requesting under the same legislation the release of all communication between Mr Tarrant and any members of the Norfolk Constabulary in relation to the investigation into [a named individual's] alleged fraudulent [sic] activities at Cawston Park hospital".

4. On 23 November 2012, the complainant wrote to the public authority and requested information in the following terms:

"...my new FOI Act 2000 request is for the CPS to release to me [and the rest of the public] all written documentation [sic] of whatever kind which deals with the decision to charge [in the Police investigation: 'Operation Meridian'] and or review charge, and/or communicate with the Police investigators as to the provision of further information required to make the decision to charge clearer/more robust. And that also includes all communications with independent counsel, Mr Farmer and his assistant...and any notes made as a result of these".

5. On 22 March 2013, the complainant wrote to the public authority and requested information in the following terms:

"Please provide me with all communication.....and notes of/relating to any communication.... between the CPS [in the main from Mr Tarrant, but including all others too] and Independent Counsel in the matter of the Operation Meridian case, whether this be pre or post decision to charge [a named individual] and [name removed]".

6. In each case the public authority stated that the requested information was fully exempt from disclosure by virtue of the exemptions in section 30(1). It further cited sections 40(2) (personal information) and 42(1) (legal professional privilege) for some of the information.
7. Following internal review of the first two requests, the public authority maintained its position.

Scope of the case

8. The complainant asked the Commissioner to consider the application of exemptions to the information requested.

Reasons for decision

Section 30(1) – investigations and proceedings

9. Section 30 has been considered first as it has been applied to the withheld information in its entirety.

10. Section 30(1)(c) of FOIA states that:

"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 is exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation. It extends to information that has been obtained prior to an investigation commencing, if it is subsequently used for this purpose.
12. Section 30 of the 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. In order for the exemption to be applicable, any information must be held for a specific or particular investigation and not for investigations in general. Therefore, the Commissioner has initially considered whether the requested information would fall within the class specified in section 30(1)(c).
13. The public authority in this case is the Crown Prosecution Service. It was created by the Prosecution of Offences Act 1985 and it is responsible for prosecuting criminal cases investigated by the police in England and Wales. As such, it has the power to conduct criminal proceedings. The Commissioner is therefore satisfied that it has the power to carry out investigations of the sort described in section 30(1)(c).
14. He has also considered the interpretation of section 30(1)(c), and is mindful that the exemption applies to information that has *at any time* been held by the authority for the purposes of criminal proceedings. As the requested information clearly relates to a specific criminal investigation the Commissioner concludes that this exemption is properly engaged.

Public interest test

15. Section 30(1) provides a qualified exemption and is therefore subject to the public interest test under section 2(2)(b) of the Act. Section 2(2)(b) provides that such an exemption can only be maintained where:

"... in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information".

16. In considering where the public interest lies in this exemption, the Commissioner is guided by the Information Tribunal in the case of *Toms v Information Commissioner & Royal Mail* where it stated:

"... in striking the balance of interest, regard should be had, inter alia to such matters as the stage or stages reached in any particular investigation or criminal proceedings, whether and to what extent the information has already been released into the public domain, and the significance or sensitivity of the information requested".

17. The Commissioner, in considering the public interest test, starts by focusing on the purpose of the relevant exemption. The Commissioner's view is that the general public interest served by section 30(1) is the effective investigation and prosecution of crime, which inherently requires, in particular:

- the protection of witnesses and informers to ensure people are not deterred from making statements or reports by fear it might be publicised;
- the maintenance of independence of the judicial and prosecution processes;
- preservation of the criminal court as the sole forum for determining guilt.

In favour of disclosure

18. The public authority provided the complainant with the following arguments in favour of disclosure:

"The CPS acknowledges there is a public interest in increasing public understanding of the CPS decision making and prosecuting process. Disclosure would help meet this interest.

Furthermore, there is a strong public interest in providing information about cases where the CPS have acknowledged that they have made mistakes".

19. In its internal reviews the public authority further acknowledged:

"... that there is a considerable and justified public interest in favour of disclosing information about the conduct of such a high profile case..."

20. In correspondence with the Commissioner it advised:

"We acknowledge there are some public interest considerations in favour of disclosure in this case. The CPS offered no evidence part way through the proceedings and consequently there is a public interest in transparency at least in respect of the charging decision and how it was made".

In favour of maintaining the exemption

21. The public authority provided the complainant with the following arguments in favour of withholding the information:

"The public interest in disclosure of information relating to the decision to charge is greatly reduced by the fact that the Solicitor General made a statement in the House regarding the shortcomings of the CPS handling of the case.²

In addition, there is a considerable public interest in the importance of ensuring that the CPS sets out its charging decision frankly and clearly without concern that every detail will be routinely exposed to public scrutiny. The prospect of this kind of public disclosure would potentially compromise the rigour of the charging decision".

22. In its internal review the public authority also advised the complainant:

"There is a real importance in protecting a 'safe space' for free and frank communications between the CPS and police officers provided that such communications take place within the well established framework of the regime for disclosure in criminal proceedings. The confidential quality of such communications, particularly that they will not be routinely made available to the defence or others who might ask for them, enables police officers to be candid in their discussion of the evidence in the case. Such candour is vital for the proper conduct of the prosecution process.

² Further background information can be found in the earlier decision notice identified in paragraph 2.

The effective administration of criminal justice, and the effective prosecution of offenders, would be prejudiced if such free and frank communications were impeded by the anticipation of disclosure. This would not be in the public interest”.

23. The public authority also provided the following arguments to the Commissioner:

“Whilst it is true that some of this material will have been referred to in the criminal trial, it was not necessarily aired in its entirety. The actual material placed before the jury will be much more focused and limited than that which was actually served on the defence”.

“The public interest is not met by disclosure of material which goes beyond that of the trial process and which contains private and personal information of individuals. Such disclosure could lead to individuals suffering personal harm or distress. Disclosure is more likely to bring the criminal process into disrepute rather than improve public understanding of it. To do so may cause unnecessary distress to all those involved in the case. This material is held for the purposes of a criminal trial and it is vital that the trial process should be the only forum for determining guilt and innocence of defendants”.

“The CPS considers that it is generally anticipated that communications between the police and the CPS and counsel and the CPS will be confidential. There is a vital public interest in ensuring the full and frank exchange of advice and information between the CPS and the police and the CPS and counsel to ensure that all relevant matters are aired and discussed. Without this, there would be a danger that the CPS would make less well-informed decisions as to both the bringing of prosecutions and the litigation process thereafter. We also consider that these exchanges would be less likely to happen so fully (in writing at least) if this information was routinely disclosed”.

“However, the public interest in disclosure is greatly reduced by the fact that the Solicitor General made a statement in the House regarding the shortcomings of the CPS handling of the case. This, combined with the reasons given above, means the CPS believes the public interest favours withholding the information”.

Balance of the public interest

24. The Commissioner has already made an earlier determination about information related to this particular investigation (see 'Background'

above). His balancing arguments in that case are also relevant here and are therefore repeated.

25. The Commissioner acknowledges the validity of the public interest argument in favour of releasing the exempt information and he agrees that the admission of culpability by the public authority provides a strong argument in favour of disclosure on this occasion. Releasing the requested information could add to the public's knowledge of how the public authority deals with prosecutions and how things 'went wrong' this time. It would also throw more light on how it works with the police and counsel and how its decisions were made. He also accepts that this was a high profile case.
26. However, as referred to in his earlier decision notice, the Commissioner notes that the errors made have been openly acknowledged and public statements have been made which clearly exonerate the parties concerned of any guilt. Indeed, a public statement made by the Solicitor-General clearly accepts blame. These actions therefore reduce the public interest in support of further disclosure.
27. The Commissioner understands that there is a strong public interest in supporting protection of this public authority's internal processes which must remain full and frank without fear of being made routinely available to the public. Were the public authority concerned that the content of its detailed deliberative processes could find their way into the public domain then it seems likely that it may serve as a deterrent to it documenting honest and frank views and findings; the Commissioner believes this argument to be particularly weighty in favour of maintaining the exemption. This is not to say that he would never conclude that such information should be made available, but, on this occasion, he is of the opinion that sufficient detail about the case has been made available in order to keep the public fully informed.
28. The Commissioner recognises the complainant's understandable desire to have sight of the full information in order to properly understand how things went wrong on this occasion - and he does attach some weight to this in view of the errors that have been uncovered. However, the Commissioner also recognises the vital importance of the public authority being able to deliberate fully, and without any hindrance to the process, when considering its position in relation to a criminal trial.
29. Although he notes that there is a public interest in disclosure, on this occasion the Commissioner finds the public interest arguments in favour of maintaining the exemption to be more compelling. He therefore concludes that the public interest in maintaining the exemption outweighs that in disclosure.

30. As he has found the exemption at section 30(1) to apply the Commissioner has not gone on to consider the other exemptions cited.

Other matters

31. In order to expedite the latter case, the public authority agreed to forego an internal review, advising that it wished to maintain its position. The Commissioner would like to thank it for doing so as this has allowed all the cases to have been considered at the same time.

Right of appeal

32. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

33. 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.
34. 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

Jon Manners
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