

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 April 2015

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

Decision (including any steps ordered)

1. The complainant has requested information in relation to his court case.
2. The Commissioner's decision is that the Crown Prosecution Service has applied section 30(1)(c) appropriately.
3. The Commissioner does not require the Crown Prosecution Service to take any steps.

Background

4. On 6 December 2005 the complainant was convicted of murder. He launched an unsuccessful appeal.
5. Initially the complainant made a request for information relating to his conviction on 20 April 2009. In a decision notice dated 15 November 2010,¹ the Commissioner considered that the request was for the complainant's own personal information and was therefore exempt under section 40(1) (personal information).

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2010/563920/fs_50273690.pdf

6. The complainant appealed this decision to the First-tier Information Tribunal (the tribunal). The tribunal upheld his appeal and issued a substitute decision notice – the CPS had to either disclose the information or issue a new refusal notice.
7. The CPS issued a new refusal notice setting out reasons for not supplying the request information on 15 July 2011. The complainant complained to the Commissioner who issued a decision notice on 21 March 2012², upholding the application of section 30(1)(c). The complainant appealed to the tribunal which upheld the CPS's application of section 30(1)(c).³

Request and response

8. On 14 May 2014, the complainant wrote to the CPS and requested information in the following terms

"A The precise time 999 operator received (sic) the phone call from [named person] on the 13/10/04.

B All material or information that [named person] disclosed to police and what was disclosed from the police to [named person] including witness statements, audios, dialogue, well fair (sic) visits and DVDs.

C The end cell ID end site postcode of mobile [mobile number] (mobile 530) code red."

9. The CPS responded on 29 May 2014. It stated that the tribunal had issued a decision dated 20 December 2012 which found that section 30(1)(c) applied to all of the information the complaint had requested previously, relating to his case.
10. Following an internal review the CPS wrote to the complainant on 1 July 2014. It upheld the application of section 30(1)(c) and confirmed that, in relation to part C of his request, all of his personal data had been disclosed to him previously.

² https://ico.org.uk/media/action-weve-taken/decision-notice/2012/708640/fs_50406815.pdf

³ www.informationtribunal.gov.uk/DBFiles/Decision/i913/EA-2012-0075_2012-12-20.pdf.

Scope of the case

11. The complainant contacted the Commissioner on 23 June 2014 to complain about the way his request for information had been handled.
12. The Commissioner considers that part C of the request can be considered section 30(1)(c) as it relates to the complainant's conviction. The Commissioner will consider whether the CPS has applied section 30(1)(c) appropriately to the request.

Reasons for decision

13. 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."

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, it has the power to conduct criminal proceedings.
15. The information is held by the CPS for the purpose of criminal proceedings that it has power to conduct. In this case, the particular criminal proceedings relate to a conviction for murder. The exemption is therefore engaged as regards the information requested.
16. Section 30(1)(c) 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 in maintaining the exemption

17. The CPS pointed to the decision by the tribunal, referred to in paragraph 7 above, in which it upheld the CPS' application of section 30(1)(c) previously.
18. The tribunal noted the complainant's allegations that the disclosure was necessary because the court reached the wrong conclusion as to his

guilt and the criminal disclosure process was not carried out fairly. The tribunal acknowledged that "...*although in a sense these were private interests, a wrong or unfair conviction would be a matter of great public disquiet.*" (paragraph16).

19. However, with regard to the complainant's contention that disclosure was necessary because the court had reached the wrong conclusion regarding his guilt, the tribunal observed that (i) [the complainant's] appeal and approach to the CCRC were both rejected, (ii) [the complainant] failed to identify to the tribunal any sound basis for suggesting there had been a miscarriage of justice, (iii) [the complainant's] solicitors ought to still have in their possession any information disclosed as part of the criminal process and (iv) the CPS were willing to supply any information that [the complainant] might reasonably require in relation to a further appeal outside the terms of the FOIA.
20. The CPS also confirmed that the complainant had appealed to the CCRC three times in total and each time, his appeal had been rejected. The complainant was notified that the CCRC had withdrawn his application.

Public interest in disclosure of the requested information

21. Disclosing the information may better inform the public and encourage others to come forward to report criminal offences if they know a proper prosecution will follow.
22. Disclosure may help the complainant appeal his conviction.

Balance of the public interest

23. The Commissioner has considered the public interest. His 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;
 - the preservation of the criminal court as the sole forum for determining guilt.
24. The Commissioner acknowledges the public interest arguments in favour of disclosing the exempt information.

25. The proper detection, investigation and prosecution of crimes are cornerstones of a modern democratic society. The Commissioner considers that disclosing the information would lead to a perception and belief that statements given to the police by witnesses (whether used in court or not) could or would be disclosed to the public at some future date. He considers that this perception would inhibit or dissuade some witnesses from giving statements or assistance to the police in future investigations.
26. Furthermore, the lack of public assistance would impact on the prosecution of crimes and in time, leading to a reduction in the public's confidence in the criminal process. The Commissioner finds there is a very strong public interest in protecting the process. Additionally, there is a very strong public interest in ensuring, as far as possible, that witnesses are not placed in physical danger or suffer mental anguish by the disclosure of information they have given, via the police, to those that prosecute. Disclosure under FOIA is a disclosure to the world at large. The particular dangers that this may cause to particular witnesses are not necessarily always apparent.
27. Whilst the Commissioner accepts that there may be limited public interest arguments for disclosing the information in this particular case, the complainant's reasons for seeking the information clearly relate to his own private interests. These private interests can be properly considered in other judicial processes, outside the scope of FOI.
28. The Commissioner notes that the complainant has already appealed his conviction without success and appealed to the CCRC three times, also without success. Furthermore, the Commissioner notes that the complainant has appealed to the tribunal previously, regarding the CPS' application of section 30(1)(c) to his request for information relating to his conviction. The tribunal upheld the application of section 30(1)(c). The Commissioner therefore places limited weight in favour of disclosure. The Commissioner considers that the public interest arguments in favour of maintaining the exemption for the specific information requested, are compelling.
29. Taking all of the above into account, the Commissioner considers that the public interest in maintaining the exemption outweighs the public interest in disclosure.

Other matters

30. The Commissioner notes that the complainant requested information about a mobile telephone which appears to be his own. He considers that, if this was the case, the CPS could have explained to the complainant that he should have made a subject access request for it, under the Data Protection Act 1998.

31. However, given that this information also relates to the complainant's conviction, the Commissioner is satisfied that it could also be considered under section 30(1)(c).

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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Rachael Cragg
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