

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 November 2019

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

Decision (including any steps ordered)

1. The complainant has requested information about the costs incurred in a judicial review. The Crown Prosecution Service ("the CPS") refused the request because it argued that it had responded to the same request already.
2. The Commissioner's decision is that the CPS was not entitled to rely on section 14(2) of the FOIA to refuse the request.
3. The Commissioner requires the CPS to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response, to the request, which does not rely on section 14(2) of the FOIA.
4. The CPS must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. In June 2019, the Commissioner issued decision notice FS50818429¹ finding that the CPS was entitled to rely on section 40(5A) of the FOIA (personal data of the requestor) to neither confirm nor deny holding information within the scope of the following request which the complainant had submitted:

"In Appeal Reference: [appeal reference number and link to First-tier Tribunal decision redacted] the following is stated at paragraph 1:

"On a date which it is not necessary to specify, criminal proceedings were brought by OP, the Appellant, against two individuals, QR and ST. Those proceedings were taken over by the Crown Prosecution Service ('CPS') and discontinued. That action was challenged by the Appellant through the medium of judicial review, which was successful. The prosecution was then resumed but subsequently, for a second time, taken over by the CPS and discontinued."

"I hereby request the following information under the Freedom of Information Act:

"A breakdown of the costs to the CPS of dealing with the judicial review mentioned above. Please include the notional cost of staff time spent on dealing with the case, and the cost of any external counsel."

Request and response

6. On 1 July 2019, the complainant wrote to the CPS and requested information in the following terms:

"In Appeal Reference: EA/2018/0095 published at <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2328/015%20071218%20Decision.pdf> the following is stated at paragraph 1:

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2615221/fs50818429.pdf>

"On a date which it is not necessary to specify, criminal proceedings were brought by OP, the Appellant, against two individuals, QR and ST.

"Those proceedings were taken over by the Crown Prosecution Service ('CPS') and discontinued. That action was challenged by the Appellant through the medium of judicial review, which was successful. The prosecution was then resumed but subsequently, for a second time, taken over by the CPS and discontinued.'

"I hereby request the following information under the Freedom of Information Act:

"A breakdown of the costs to the CPS of dealing with the judicial review mentioned above. Please include the notional cost of staff time spent on dealing with the case, and the cost of any external counsel.

"While I appreciate the same request was submitted to you in December 2018, I believe sufficient time has now elapsed such that the reasons you had for refusing that request will no longer be material." [sic]

7. The CPS responded on 8 July 2019. It stated that, as the new request was the same as the complainant's previous request, it was relying on section 14(2) of the FOIA to refuse the new request as "repeated".
8. The complainant sought an internal review on the same day, arguing that there had been material changes of circumstance such that he considered he would no longer be identifiable from information within the scope of the request and hence neither section 40(5A) nor 40(1) would be applicable.
9. Following an internal review the CPS wrote to the complainant on 29 October 2019. Quoting the Commissioner's official guidance on section 14(2) of the FOIA, the CPS upheld its original position.

Scope of the case

10. The complainant first contacted the Commissioner on 15 September 2019 to complain about the way his request for information had been handled. At that point the CPS had yet to issue its internal review and the Commissioner's intervention was necessary to prompt a response.
11. As well as recording the late internal review, the Commissioner's letter also set out that she considered it unlikely that the CPS would be able to

rely on section 14(2) to refuse the request. Having reviewed the arguments set out in the CPS' refusal notice and its approach documented in her previous decision notice, the Commissioner noted that the CPS did not appear to have complied with the previous request in the manner which would have been required to enable it to apply section 14(2) to the fresh request.

12. As the CPS had already benefitted from both formal and informal guidance from her, prior to completing its internal review, the Commissioner did not consider it necessary to seek further submissions from the CPS prior to reaching her decision.
13. The scope of the Commissioner's investigation has therefore been to determine whether the CPS is entitled to rely on section 14(2) of the FOIA to refuse the request.

Reasons for decision

14. Section 1(1) of the FOIA states that:

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.*

15. Section 14(2) of the FOIA states that:

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request."

16. It is common ground between all parties that both requests have been submitted by the same individual and that both requests seek the same information. The complainant argues that the new request is not "repeated" as a "reasonable interval" had elapsed since the previous request was responded to.
17. However, before considering whether a reasonable interval has elapsed, the Commissioner has had regard to the following section of her guidance.

"An authority can only apply Section 14(2) to a request where it has either;

- already provided the information to the same requester in response to a previous FOIA request; **or***
- previously confirmed that the information is not held in response to an earlier FOIA request from the same requester.*

"If neither of the above criteria applies, then the request is not repeated and the authority must process it in the usual manner."

18. The Commissioner has already issued a decision notice finding that the CPS dealt with the previous request in accordance with the FOIA. However, in the specific context of section 14(2), for a public authority to have *complied* with the previous request it is not sufficient for it to have issued a refusal notice. It must have either provided the information or told the requestor that it holds no relevant information.
19. The Commissioner finds it disappointing that, despite having referred to this specific point (and her guidance) at internal review stage, the CPS did not appear to take it into account when upholding the original refusal notice.
20. Accordingly, the Commissioner finds that the CPS is not entitled to rely on section 14(2) of the FOIA to refuse the request.

Right of appeal

21. 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

22. 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.
23. 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

Phillip Angell
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