

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 April 2024

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

Decision (including any steps ordered)

1. The complainant has requested a variety of information relating to transgender rights and gender-critical views. The Crown Prosecution Service ("the CPS") refused to comply with the request, citing section 12(1) (cost of compliance) of FOIA as its basis for doing so.
2. The Commissioner's decision is that the CPS was entitled to rely on section 12(1) of FOIA to refuse the request. The Commissioner also finds that the CPS complied with its section 16 obligation to offer advice and assistance.
3. The Commissioner does not require the CPS to take any further steps.

Request and response

4. On 10 July 2023, the complainant wrote to the CPS and requested information in the following terms:

"1. Amendments to domestic abuse policy described above

Did the CPS carry out an impact assessment with regards to the protected characteristics of sex and belief in the immutability of sex before making these amendments? If so please share this assessment. What groups were consulted prior to these amendments?

2. [redacted]

What assessment has been made of [redacted] impact on CPS employees holding gender critical beliefs? What action are you taking to ensure that employees with gender critical beliefs within the CPS are able to "speak out" given [redacted] declared opposition to these views?

3. Hate crime advisors

Do you condone the social media posts of your advisors, which refer in derogatory and discriminatory terms to those who hold a protected belief?

Please explain why an activist who primarily campaigns for transgender rights sits on a VAWG panel, when women's and transgender rights are currently in conflict?

What steps have you taken to ensure that people with gender critical beliefs are represented on CPS panels and forums?

4. VAWG and Hate Crime Scrutiny Panels and ECGs

Please provide for each panel and ECG:

Names of the members

Details of the process for their selection for the role including any vetting that takes place

The length of term members serve

5. Newsletters and contempt

Why did the newsletters of 12 May and 23 June 2023 refer to two live criminal cases as examples of transphobic hate?

Do you agree that these references constitute contempt of court?

Who approved these documents for publication?

6. Stonewall

Please detail the CPS' relationship with Stonewall including details of meetings between the CPS and Stonewall in the last three years and details of any policies or practices on which Stonewall has been consulted.

Please detail all meetings with other organisational or individual campaigners for transgender rights in the past three years and provide details of any policies or practices on which they have been consulted.

7. Global narrative

Please explain what you understand to be the 'Global narrative attacking the rights of all protected characteristics'?

8. Hostile environment to those with gender critical views

Please detail any action by the CPS not previously mentioned that is aimed at making the CPS an inclusive environment for those with gender critical views and ensuring these are taken into account in

policy and practice.

What steps have been taken to educate staff and panel members on the need to be inclusive of those with protected 'gender critical' views. Please provide copies of any CPS employee guidance or other documents that refer to gender critical views."

5. The CPS responded on 10 August 2023. It stated that it held relevant information, however complying with the request would exceed the appropriate limit, therefore it cited section 12(1) of FOIA.
6. Following an internal review the CPS wrote to the complainant on 9 October 2023. It maintained its reliance on section 12(1) of FOIA.

Reasons for decision

Section 12 – cost of compliance

7. Section 12(1) of FOIA provides 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").
8. The appropriate limit is set in 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.
9. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours for the CPS.
10. 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 permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
11. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required.

12. However, it must be a reasonable estimate. In accordance with the First-tier Tribunal in the case *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”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
13. 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.
14. 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?

15. In its internal review, the CPS confirmed that its searches identified that there is a large volume of information that may fall within the scope of the request. The CPS advised that in order to comply with the request, its Headquarters Directorates and each of the 14 CPS areas would be required to consider multiple sets of material and it estimates that such a review would take in excess of 30 hours.
16. During the Commissioner’s investigation, the CPS expanded on how it had reached its position that section 12(1) of FOIA was engaged in this case. The CPS initially liaised with several of its departments to determine if they held information relevant to all parts of the request. Some departments were able to provide information, however further enquiries were required to identify and extract information relevant to each part of the request. Once it was recognised that the cost limit would be met for just one part of the request, CPS did not continue any further with those enquiries.
17. The CPS received advice from an advisor with responsibility for Hate Crime policy in its Strategy and Policy Directorate (SPD), that to comply with part 6 of the request alone about which policies involved consultation with Stonewall and other transgender rights campaigners, a significant manual review process would be required to examine all meeting minutes.
18. SPD confirmed that no central record was held regarding this information, and that the relevant records were held both in the

Directorate itself and by the individual inclusion and community engagement managers for each of the 14 prosecuting areas. The SPD advisor also explained that CPS guidance on minimum standards for the local scrutiny panels indicated that local panels must meet at least quarterly. Accordingly, there would be a minimum of 64 individual sets of minutes from the relevant consultation groups that the CPS would need to review to determine if they contained information within the scope of the request.

19. CPS estimated that it would require a minimum of 30 minutes to carry out the four permitted activities detailed at paragraph 10 of this notice for each set of minutes, therefore the total time to comply with part 6 of the request alone would be approximately 32 hours. Therefore, the cost of compliance with all parts of the request would clearly far exceed the 24 hour/£600 cost limit.
20. The complainant argued that the CPS should have broken down each part of the request and treated them as individual requests, answering as many of the parts as it could.
21. The Commissioner's guidance¹ sets out that multiple request within a single item of correspondence are separate requests for the purpose of section 12. This was confirmed by the Tribunal in the case of Ian Fitzsimmons vs ICO & Department for Culture, Media and Sport (EA/2007/0124, 17 June 2008). However, section 12(4) of FOIA provides that where two or more requests for information are made to a public authority by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them. Regulation 5(2) of the Fees Regulations goes on to prescribe that you can aggregate two or more separate requests if they relate "to any extent" to the same or similar information.
22. The Commissioner's guidance also advises that a public authority does not need to search up until it reaches the appropriate limit, and it should also avoid providing information located through searches already conducted and then claiming section 12 for the remainder of the information. Instead the public authority should inform the applicant as soon as they are away that section 12 applies. Where possible, the

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/#aggregate>

applicant can then choose to reframe their request to target the information most pertinent to them.

23. The Commissioner is satisfied that the broad nature of the request means that there is in fact a large volume of information that the CPS would need to review to determine whether or not it falls within the scope of the request. The Commissioner considers that the CPS estimated reasonably that it would take far more than the 24 hours/£600 limit to comply with the request. The CPS was therefore entitled to rely on section 12(1) of FOIA to refuse such a broad and wide-ranging request.

Section 16 – the duty to provide advice and assistance

24. 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 practice² in providing advice and assistance, it will have complied with section 16(1).
25. The Commissioner notes that the CPS advised that requests relating to multiple organisations and/or individuals covering a significant period of time are more likely to reach the cost limit. In both its initial response to the request, and its internal review response, the CPS directed the complainant to an assortment of policies and publications available on its website which broadly relate to the subjects that the complainant appears to be interested in. CPS also provided advice to the complainant regarding valid requests, as it had noted that several parts of the current request appeared to be asking questions or for opinions, rather than seeking recorded information held by the CPS.
26. The Commissioner is satisfied that the CPS met its obligations under section 16 of FOIA.

² <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

27. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Michael Lea
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF