

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 31 August 2010**

**Public Authority:** Crown Prosecution Service  
**Address:** 50 Ludgate Hill  
London  
EC4M 7EX

### Summary

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The complainant originally submitted a request to the Crown Prosecution Service (the "public authority") for information relating to a trial during 1997 and 1998. This was refused under the exemptions at sections 30 (criminal proceedings) and 40 (personal information) of the Freedom of Information Act 2000 (the "Act"). He subsequently made a refined request which the public authority did not respond to within the terms of the Act.

The Commissioner's decision is that the public authority failed to comply with section 1(1) of the Act and must now do so within 35 calendar days of the date of this Notice. The Commissioner also found that the Council breached section 10(1) of the Act.

### The Commissioner's role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The request

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2. On 1 October 2009, the complainant wrote to the public authority and asked:

*"I would like to see all of the papers that the Crown Prosecution Service holds relating to the prosecution during 1997 and 1998 of Nicholas John Griffin (dob 19.03.59). Mr Griffin was successfully prosecuted under the 1986 Public Order Act, with his trial taking place at Harrow Crown Court between April 27<sup>th</sup> and 30<sup>th</sup> 1998".*

3. On 29 October 2009 the public authority confirmed that it held the information but stated that it was exempt under the sections 30(1)(c), 30(2)(a)(ii), 40(2) and 42.
4. On 4 November 2009 the complainant sought an internal review.
5. On 20 January 2010 the public authority responded. It upheld its previous position.
6. On 21 January 2010 the complainant again wrote to the public authority. As part of that correspondence he made a further request as follows:

*"I would now ask that you provide us with a full schedule of the material that you hold".*

7. In its response of 28 January 2010 the public authority made no specific reference to this additional request.
8. On the same day the complainant made the following response:

*"I see that you have not responded in any way to our request for a full schedule of the information that you hold relating to this matter. Can I ask whether you have any intention of responding to this request?"*

9. On 29 January 2010 the public authority advised the complainant that:

*"... it is not intended to respond further".*

## **The investigation**

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### **Scope of the case**

10. On 28 January 2010 the complainant wrote to the Commissioner. He complained about his original request as well as the further request.

11. On 21 June 2010 Commissioner commenced his investigation. Following initial enquiries with the public authority it advised the Commissioner that it now wished to apply section 12 to the information originally requested as it had ascertained that the information was in fact held in 29 boxes. It advised him as follows:

*"To extract the information would require me to go through the 29 boxes of approx 25,000 to 30,000 pages ... the totality of the information was part of a wider operation and includes information relating to 3 defendants, all intermixed. Each page would have to be reviewed to what or if any part of it relates to Mr Griffin only – this does not include any redaction.*

*When we send cases for Counsels review, we use the yardstick of 2 minutes per page reading time to appropriate costs. On this basis, we would therefore estimate a time in the region of 50,000 mins or 830 hours to ensure we were only extracting information re Mr Griffin, again this does not include redaction".*

12. Following further liaison with the public authority the Commissioner wrote to the complainant and advised him regarding the appropriate limit. Although disappointed, and surprised at the volume of material held, the complainant accepted the public authority's position. However, he again referred to it having made no response to his request of 21 January 2010 and asked that the Commissioner pursue this element of his complaint.

## **Chronology**

13. On 5 July 2010 the Commissioner advised the public authority that he was only considering the latter request which the complainant had made on 21 January 2010.

## **Analysis**

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### **Substantive procedural matters**

#### **Section 1**

14. Section 1(1) of the Act provides that a public authority in receipt of a request for information must inform the applicant whether the information is held, and if so, communicate the information to the applicant.

15. The Commissioner considers that the public authority has not provided a response to the complainant's request of 21 January 2010 within the terms of the Act. It has therefore failed to comply with section 1(1)(a) of the Act.

## **Section 10**

16. Section 10(1) provides that a public authority must comply with section 1(1) within 20 working days following the date of receipt.
17. The complainant submitted his request for information to the Council on 21 January 2010. The Commissioner's view is that the public authority has not yet provided a response under the Act. Consequently, the Commissioner finds that the Council has breached section 10(1).

## **The Decision**

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18. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with section 1(1)(a) of the Act as it has not informed the complainant whether information is held in response to his request within the terms of the Act.
19. The public authority has also breached section 10(1) of the Act in failing to comply with section 1(1) within 20 working days following receipt of the request.

## **Steps required**

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20. The Commissioner requires the public authority to respond to the complainant's request in accordance with section 1(1)(a) of the Act by informing the complainant whether it holds the information, or issuing a refusal notice explaining why it is excluded from the section 1(1)(a) duty to confirm or deny if information is held. If the exclusion from the duty to confirm or deny does not apply, and the information is held, then the public authority should respond to the complainant's request in accordance with section 1(1)(b) by either communicating the information to him or issuing a valid refusal notice. Any refusal notice issued should comply with the requirements of section 17.
21. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## **Failure to comply**

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22. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Other matters**

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23. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

### *Internal review*

#### *Original request*

24. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his 'Good Practice Guidance No 5', published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner notes that in this case the internal review took 52 days.

#### *Latter request*

25. Seven calendar days after making his second request, the complainant contacted the authority to ask whether it had any intention of replying. Having not received a direct response, the complainant repeated this question on the 28 January 2010. On the 29 January 2010, the CPS advised that it did not intend to respond further.
26. The Commissioner considers that the public authority could have usefully reviewed its decision to decline to deal with the complainant's second request at this point. Part VI of the section 45 Code of Practice advises that any written reply from the applicant expressing dissatisfaction with an authority's response to a request should be

dealt with as a complaint, even if the applicant does not expressly state his or her desire for the authority to carry out an internal review. In this specific case, having queried the lack of response on two occasions, the complainant was clearly dissatisfied with the CPS' approach. Had an internal review been carried out, the matter may have been resolved without further recourse to the Commissioner.

## Right of Appeal

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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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

**Dated the 31<sup>st</sup> day of August 2010**

**Signed .....**

**Gerrard Tracey  
Principal Policy Adviser**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## **Legal annex**

### **General Right of Access**

**Section 1(1)** provides 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."

### **Time for Compliance**

**Section 10(1)** provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."