

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 14 November 2011

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

Summary

The complainant asked the Crown Prosecution Service (the “public authority”) to provide information relating to cases brought against the Director of Prosecutions. The public authority provided the majority of the requested information but withheld one part using the exemption in section 40(2) of the Freedom of Information Act (the “Act”). The Commissioner’s decision is that the exemption at section 40(2) is not engaged. The complaint is therefore upheld. The public authority’s handling of the request also resulted in breaches of certain procedural requirements of the Act as identified in this Notice.

The Commissioner’s role

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

2. On 23 September 2010 the complainant made the following information request:

*“Please disclose under the FOI Act:
The number of cases brought against the Director of Public Prosecutions in **each** of the last 5 years.*

Please provide the following details for each case:

- the nature of the initial case, with a brief outline of the complaint.*
- was the case settled out of court? If so for what amount?*
- the outcome of each case.*

... If you need to clarify any aspect of this request please contact me on the numbers below. If you anticipate this request may take you over the cost limit please contact me as soon as possible and advise me how I might narrow it down to enable you to answer my questions within the limit".

3. On 27 September 2010 the public authority sought further clarification from the complainant stating that cases against the Director of Public Prosecutions (the "DPP") would include judicial reviews and general criminal case appeals and it asked her whether she also wanted this information.
4. On 28 September 2010 the complainant clarified that she was not interested in either of these categories.
5. On 22 October 2010 the public authority sent out its response. It provided some information but withheld some on the basis of section 40(2), saying that its disclosure would breach the Data Protection Act (the "DPA").
6. On 28 October 2010 the complainant sought an internal review.
7. On 23 December 2010 the public authority sent out its internal review. It released further information, but still relied on section 40(2) for the remainder.

Background

8. Some information has already been provided to the complainant. Examples of the brief description in each case, that she has accepted as fulfilling her request, are as follows.
 - Claim for damages due to decision not to prosecute alleged assault.
 - False imprisonment claim.
 - CPS not respondent.
 - Personal injury & wrongful imprisonment.

The investigation

Scope of the case

9. On 8 February 2011 the complainant contacted the Commissioner to complain about the way her request for information had been handled. She specified:

"I believe the CPS should disclose information about this case where £350,000 was paid out to an individual. The CPS have disclosed brief details about all the other cases but for this particular one"

She also asked him to consider the time taken to undertake an internal review.

Chronology

10. On 9 March 2011 the Commissioner advised the public authority that he had received a complaint. He asked to be provided with the withheld information in advance of commencing his investigation.
11. On 11 May 2011 the Commissioner wrote to the complainant to advise that he was ready to commence his investigation and he asked her to confirm that she still wished to have her complaint investigated. She confirmed, on the same day, that she did.
12. On 12 May 2011 the Commissioner commenced enquiries with the public authority. Having already been provided with the withheld information he put forward a proposal of wording which he believed could be released to the complainant to resolve her complaint. He also sought more information regarding a Court Order which the public authority had provided to him.
13. On 27 May 2011 the public authority wrote to the Commissioner apologising for its delay in responding.
14. On 8 June 2011 the public authority responded and declined the proposal suggested by the Commissioner.
15. Following further correspondence the Commissioner wrote to the complainant on 21 June 2011. He advised her that the CPS was particularly concerned about release of information regarding the outstanding case because this might lead to the onward identification of the parties concerned. He pointed out that he had been made aware of a Court Order prohibiting the identification of any claimant

associated with this particular case. In view of this he invited the complainant to withdraw her complaint.

16. On the same day the complainant responded saying:

"Thank you for informing me of this. Why did the CPS not inform me of this earlier?"

I would like you to continue to a Decision Notice. I am not convinced that releasing a small amount of information about this case would breach this Court Order, as the Court Order merely prohibits the identification of the claimant. There can be information that can be revealed that would not lead to the claimant's identification, as has been proved by the fact the CPS revealed how much had been paid to the claimant. If they can disclose the existence of the payment, and how much it was, then I do not see why they cannot provide a few more details about the nature of the case".

Analysis

Exemptions

Section 40(2) – personal information

17. The complainant has already confirmed that she is content for any information to be anonymised.

18. Section 40(2) provides that:

"Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and*
- (b) either the first or the second condition below is satisfied".*

19. The exemption provided by section 40(2) is an absolute exemption in combination with section 40(3)(a)(i) or 40(3)(b). This is where disclosure of information which falls under the definition of personal data contained in section 1(1) of the Data Protection Act 1998 (DPA) would breach any of the data protection principles.

20. In order to decide whether or not this exemption is engaged, the Commissioner shall consider whether the requested information is the

personal data of one or more third parties and whether the release of this information would be fair and lawful.

Is the information personal data?

21. Section 1(1) of the Data Protection Act 1998 (the DPA) provides the following definition of personal data:

"personal data' means data which relate to a living individual who can be identified-

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller."

22. This provides two criteria that must be fulfilled for information to constitute personal data; the information must relate to a living individual, and that individual must be identifiable either from that information directly, or from that information combined with other information available to the holder of that information.
23. The information sought consists of anonymised details of a claim brought against the DPP - examples of such details can be found in the 'Background' section above. Information in all the cases except this one has already been provided.
24. The Commissioner's views regarding the ability to anonymise the information in this case are appended to this Notice in a Confidential Annex which has been provided to the public authority only. Based on these views, the Commissioner concludes that the withheld information is not 'personal data' and he therefore finds that this exemption is not engaged.

Procedural Requirements

25. In failing to disclose, within the statutory timescale, information which the Commissioner has decided was not exempt by virtue of section 40(2), the public authority breached sections 1(1)(b) and 10(1).

The Decision

26. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act:
- in failing to disclose, within the statutory timescale, information which the Commissioner has decided was not exempt, the public authority breached sections 1(1)(b) and 10(1).

Steps required

27. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- the public authority should disclose the withheld information (the Commissioner has provided suggested wording in the Confidential Annex).
28. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

29. 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

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

Internal review

31. 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'*,

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.

32. The Commissioner does not consider this case to be 'exceptional', so is concerned that it took over 20 working days for an internal review to be completed.

Right of Appeal

33. 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@tribunals.gsi.gov.uk.

Website: 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.

Signed

Gerrard Tracey
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