

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 August 2012

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 concerning dropped charges against a named individual for driving without a valid MOT certificate. The CPS refused to disclose the information, citing the exemption provided by section 40(2).
2. The decision of the Commissioner is that the exemption that should have been cited was section 40(5) and that the CPS should have neither confirmed nor denied whether it held this information.

Request and response

3. On 9 March 2012 the complainant wrote to the CPS and requested information in the following terms:

"[named individual] was being prosecuted for driving an unroadworthy vehicle without a current MOT certificate...the CPS dropped the charges, apparently claiming there was insufficient evidence.

Did [named individual] have a current MOT certificate or not at the time he was stopped".

4. The CPS responded on 10 April 2012. It stated that the request was refused and cited the exemptions provided by sections 30(1)(c) (information held for the purposes of any criminal proceedings which the authority has the power to conduct) and 40(2) (personal data of a third party).

5. Following an internal review the CPS wrote to the complainant on 20 June 2012. It stated that the refusal of the request under the exemptions cited previously was upheld.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He indicated at this stage that he was dissatisfied with the refusal to disclose the requested information.
7. Whilst it is evident from the wording of the request that the complainant was aware that the CPS was considering possible prosecution against the individual named in the request, and this was also the subject of media coverage, the view of the Commissioner is that the correct approach to this information request would have been for the CPS to neither confirm nor deny whether this information was held and cite the exemption provided by section 40(5) of the FOIA.
8. As covered below any information held by the CPS falling within the scope of this request would be sensitive personal data according to the definition in section 2 of the Data Protection Act 1998 (DPA). This means that it would be necessary for a condition from Schedule 3 of the DPA to be fulfilled through the disclosure of confirmation or denial as to whether information was held.
9. The view of the Commissioner is that it will be unlikely for it to be possible for a DPA Schedule 3 condition to be fulfilled through disclosure made under the FOIA. Therefore, confirmation or denial should have been withheld in this case and the Commissioner has considered section 40(5) below. In any event, the result of this decision is that the CPS is not required to take any remedial steps.

Reasons for decision

10. Section 40(5) of the FOIA provides an exemption from the duty to confirm or deny where to do would involve the disclosure of personal data and that disclosure would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process: first, addressing whether confirmation or denial would involve the disclosure of personal data, and secondly, whether that disclosure of personal data would be in breach of any of the data protection principles.

11. Covering first whether confirmation or denial would disclose personal data, section 1(1) of the Data protection Act 1998 (DPA) defines personal data as follows:

“personal data’ means data which relate to a living individual who can be identified:

(a) from those data, or

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

12. The view of the Commissioner is that it is clear from the wording of the request without it being necessary to go into detailed analysis that the confirmation or denial would disclose information that both identifies and relates to the individual named in the request. Confirmation or denial would therefore disclose information that constitutes the personal data of the individual named in the request according to the definition given in section 1(1) of the DPA.
13. The next step is to address whether disclosure of that personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first principle, which requires that personal data shall be processed fairly and lawfully and in particular whether disclosure would be fair to the individual named in the request. In forming a view on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subject, the consequences of disclosure upon the data subject and whether there is legitimate public interest in the disclosure of this confirmation or denial.
14. Section 2 of the DPA lists what is to be considered sensitive personal data for the purposes of that Act. Included in this list is information concerning the commission or the alleged commission of an offence by the data subject.
15. Any relevant information in this case would have been held by the CPS with a view to proceedings for the alleged commission of an offence by the data subject through driving without a valid MOT certificate. This information would therefore be the sensitive personal data of the data subject, as defined in section 2 of the DPA.
16. That this information would be the sensitive personal data of the individual named in the request is relevant here when considering their expectations about and the consequences of disclosure upon this individual. The view of the Commissioner is that it is highly likely to be the case that the data subject would hold a strong expectation that this

information would not be disclosed by the CPS and that disclosure despite this expectation would result in distress to this individual.

17. Sensitive personal data is, by its very nature, information that individuals regard as the most private information about themselves. Further, as disclosure of this type of information is likely to have a detrimental or distressing effect on the data subject, the Commissioner considers that it would be unfair and in breach of the first data protection principle to disclose the confirmation or denial.
18. In conclusion, the Commissioner finds that the confirmation or denial would be the personal data of an individual other than the complainant and that the disclosure of that personal data would be unfair and in breach of the first data protection principle. The exemption provided by section 40(5) of the FOIA is, therefore, engaged and the CPS should have neither confirmed or denied whether the requested information was held.
19. As this conclusion has been reached it has not been necessary to go on to also address section 30(1)(c).

Right of appeal

20. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

21. 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.
22. 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

**Jon Manners
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Information Commissioner's Office
Wycliffe House
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SK9 5AF**