

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 18 July 2013

**Public Authority:** The Crown Prosecution Service

**Address:** Rose Court  
2 Southwark Bridge  
London  
SE1 9HS

#### **Decision (including any steps ordered)**

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1. The complainant submitted two requests for information dated 20 and 21 December 2012 to the Crown Prosecution Service (CPS) about 'Operation Douglas'. The CPS has failed to provide a formal response which was compliant with the requirements of FOIA to either request. The CPS breached section 10(1) of FOIA by failing to provide a response to the requests within the statutory timeframe of 20 working days.
2. The Commissioner requires the CPS to take the following steps to ensure compliance with the legislation:
  - Provide a formal response to the requests of 20 and 21 December 2012 which is in compliance with FOIA.
3. The public authority 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.

#### **Request and response**

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4. On 20 December 2012 the complainant wrote to the CPS and submitted the following request:

*'I would like to know some more about the decision not to prosecute any of the West Yorkshire Police officers involved in*

*the Karl Chapman/supergrass misconduct which was investigated by North Yorkshire Police.*

*I have seen press reports which included a statement from Elizabeth Joslin from the special crime and counter terrorism division that said there was "insufficient evidence" to prosecute any officers.*

*Given the scale of misconduct identified in this case and comments made by the Supreme Court, it seems very odd that the CPS made the decision it did.*

*I would like to know more about how this decision was reached and why the evidence available did not pass the evidential test. There are specific examples of criminality cited by the Supreme Court against named officers.*

*If the most senior judges in the land reached these conclusions on the basis of the evidence provided by North Yorkshire Police, what led the CPS to reach an alternative conclusion? I would be grateful if the CPS would provide any written summary or other recorded information that explains how this decision was reached.*

*Which person in the CPS was responsible for reaching this decision and when was this decision reached?'*

5. The complainant contacted the CPS again on 21 December 2012 and explained that:

*'I should have added that I would like to know how many case files (ie how many officers) were referred to the CPS for a decision on charging.'*

6. The CPS responded to the requests on 15 February 2013 in the following terms:

*'Please see a statement on this below. I tried calling the numbers on the site, but couldn't get through.*

*Apologies, this is all we are able to say on this at this stage.*

*A CPS spokesperson said:*

*"We are currently considering a file, however it does not relate to police misconduct. For legal reasons, we are unable to comment further at this stage."*

7. The complainant contacted the CPS on 15 and 19 February 2013 in order to express his dissatisfaction with this response, in particular its failure to actually answer his requests.

8. The CPS acknowledged receipt of this correspondence on 19 February 2013 and explained that it would undertake an internal review of its response of 15 February 2013. The CPS confirmed to the complainant that an internal review was being undertaken in a further communication dated 21 February 2013.
9. The CPS contacted the complainant on 4 March 2013 and explained that it needed a further 20 working days, i.e. to 3 April 2013, in order to complete the internal review.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 5 April 2013 in order to complain about the CPS' failure to complete the internal review.
11. The Commissioner contacted the CPS on 19 April 2013 and noted that although it had indicated to the complainant that the internal review would be completed 3 April, to date, the internal review was still outstanding. The Commissioner asked the CPS to ensure that the internal review was completed within a further 20 working days.
12. The complainant contacted the Commissioner again on 20 May 2013 in order to complain about the CPS' failure to complete the internal review.
13. Although the Commissioner contacted the CPS in April 2013 and asked it to complete the internal review, having considered this matter further the Commissioner is now of the opinion that the CPS' response of 15 February 2013 cannot actually be considered as a response that complies with the requirements of FOIA.
14. This is because the response failed to comply with the requirements of section 1(1) of FOIA in not confirming whether the CPS held the requested information, and if held, by providing the complainant with the requested information. Alternatively, if the CPS wished to rely on any of the exemptions contained within FOIA in order not to comply with these duties, then it needed to provide the complainant with a refusal notice in line the requirements of section 17 of FOIA; the response of 15 February 2013 also failed to meet these requirements of section 17.
15. Therefore, although the CPS has indicated that it was undertaking an internal review of its response to these requests, in the Commissioner's opinion it has not yet actually provided an FOIA compliant response to the requests of 20 and 21 December 2012. Such a response is a prerequisite of any internal review actually being undertaken.

## **Reasons for decision**

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16. Section 1(1) of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and, if so, to have that information communicated to him. Section 10(1) of FOIA provides that this must be done within 20 working days of receiving a request.
17. For the reasons discussed above, the Commissioner does not believe that the CPS' response of 15 February 2013 meets the requirements of FOIA. Furthermore, the Commissioner not been provided with any evidence that the CPS has subsequently provided the complainant with a FOI compliant response.
18. Consequently, the Commissioner finds that the CPS has not responded to the complainant's requests of 20 and 21 December 2012 within the statutory time frame and so has breached section 10(1) of FOIA.
19. The Commissioner therefore requires the CPS to provide the complainant with a formal response to his requests of 20 and 21 December 2012 that is in compliance with FOIA.

## Right of appeal

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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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://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 .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**