

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 April 2015

Public Authority: Crown Prosecution Service
Address: Rose Court
2 Southwark Bridge
Southwark
London
SE1 9HS

Decision (including any steps ordered)

1. The complainant has requested information relating to an enforcement case.
2. The Commissioner's decision is that the Crown Prosecution Service has applied section 32(1)(c) (Court records etc) appropriately.
3. The Commissioner does not require the Crown Prosecution Service to take any steps.

Request and response

4. On 6 March 2014 the complainant wrote to the Crown Prosecution Service (CPS) and requested information in the following terms:

"Under the Freedom of Information Act I seek a copy of all quarterly reports delivered to the CPS by the Enforcement receiver regarding this case, as are required under the Home Offices' best practice circular on the enforcement of confiscation orders from 2005.

Any reports or communications received in lieu or in the absence of quarterly reports.

I also seek a copy of any variation orders, contact on or on behalf of [named individual] and any details on the discharging of [named

individual] as the receiver on [given date]."

5. The CPS responded on 3 April 2014. It withheld the information under sections 32(1)(c) (court records) and 40(2) (personal information).
6. Following an internal review the CPS wrote to the complainant on 16 June 2014. It stated that it was applying section 32(1)(c) to all of the information.

Scope of the case

7. The complainant contacted the Commissioner on 16 June 2014 to complain about the way his request for information had been handled. The complainant also pointed out that the CPS had varied its original decision by removing a number of exemptions and applying a single exemption to all of the information.
8. The Commissioner will consider whether the CPS has applied section 32(1)(c) appropriately to the requested information. He will also consider whether the CPS was entitled to vary its original decision.

Reasons for decision

Section 32(1)(c)

9. Section 32(1) of FOIA states that:

"Information held by a public authority in exempt information if it is held only by virtue of being contained in –

(a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,

(b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or

(c) any document created by –

(i) a court, or

(ii) a member of the administrative staff of a court,

for the purposes of proceedings in a particular cause or matter."

10. Section 32(1) is a class based exemption. This means that any information falling within the category described is automatically exempt from disclosure. Section 32(1) is an absolute exemption and is therefore not subject to any public interest considerations.
11. The complainant explained that he considered that the enforcement receiver in question was not a member of the administrative staff as he was an employee of Grant Thornton UK LLP. He also pointed out that the reports in question were generated to satisfy the terms of a Home Office circular and were not produced at the behest of a court order.
12. Furthermore, the complainant explained that the CPS had already disclosed headline details of the outcome of the receivership; and as creditors of the accused, taxpayers were entitled to know how the receiver and the CPS sought to realise the defendant's assets. The complainant also explained that Southwark Crown Court had informed him that enforcement reports were not court documents and that he should ask the CPS for them.

Is the receiver a member of the administrative staff of a court?

13. The Commissioner considered the complainant's assertion that he did not consider that the receiver in this case was a member of the administrative staff for the purposes of section 32.
14. The Commissioner asked the CPS to explain how the enforcement receiver was selected.
15. The CPS explained that when a prosecutor identified the need for a receiver to be appointed (either a management receiver to manage assets and businesses in a case where the Confiscation Order has not yet been made, or an enforcement receiver to realise assets towards satisfying a Confiscation Order that has been made), the prosecutor completes a form, setting out the case and sends it to the CPS Procurement Unit.
16. In addition, the CPS explained that, together with other government bodies and prosecutors, it maintains a panel of receivers. These receivers are usually partners in firms of chartered accountants and/or insolvency practitioners. The case is put out to tender to the panel and interested members will bid for it. The CPS procurement team vet the bids and recommend one receiver to the prosecutor for appointment. The prosecutor sends a letter of appointment to the receiver, which includes brief details of the case, confirms that any formal appointment as a receiver will be by court order, that the receiver must provide regular reports and open his books for inspection. The letter also asks the receiver to confirm whether he will accept the case.

17. If the receiver accepts the case, the prosecutor then formally applies to court with a witness statement and a court order, asking the court to appoint the receiver. Sometimes a defendant, when asked, will confirm that he has no objection to the making of the order. However, usually the defendant or third parties (those who hold assets jointly with the defendant or claim that some assets belong to them in reality and not the defendant at all) will object and the application has to be listed for a hearing. The defendant and third parties are entitled to appear at court and give their reasons for objecting to the making of the order. The court will then make the order if it is convinced of the Crown's case.
18. In this particular case, the receiver was first appointed as a management receiver by Mr Justice Stanley Burnton on 19 September 2007. This was converted into an Enforcement Receivership Order by Mr Justice Owen on 28 October 2008.
19. In his guidance on section 32,¹ the Commissioner considers who is a member of the administrative staff of the court and states the following:
"For these purposes, any person engaged to assist the proceedings of a court by carrying out administrative duties is a member of the administrative staff of the court. The individual does not have to be employed by the public authority providing administrative support for the court or tribunal. It extends to anyone employed, contracted or otherwise engaged for these purposes."
20. From the evidence provided, the Commissioner is satisfied that the enforcement receiver was a member of the administrative staff.

Is the information contained in a relevant document created for the purposes of proceedings in a particular cause or matter?

21. The Commissioner notes that the appointment of an enforcement receiver is by a court order. During his investigation, the CPS confirmed that any quarterly reports produced by an enforcement receiver would be produced in line with the receiver's letter of appointment.

¹ https://ico.org.uk/media/for-organisations/documents/1190/court_transcripts_v1.pdf

22. The Commissioner is satisfied that the documentation produced by the enforcement officer in this case was for a particular cause or matter for the purposes of section 32.

Is the information held only by virtue of being contained in such a document?

23. In order for section 32 to be engaged, the information must be held 'only by virtue of ...'.
24. The Commissioner considers that the phrase 'only by virtue of' implies that if a public authority also holds the information elsewhere, it may not rely upon the exemption. During his investigation, the Commissioner asked the CPS whether it held the quarterly reports in question anywhere else. The CPS confirmed that it did not hold the reports elsewhere, as they were only produced for the purposes of court proceedings.
25. The CPS explained that all of the requested documents were filed with the court for the purposes of the proceedings in question and therefore fall within the scope of section 32(1)(c).

Is the exemption engaged?

26. From the evidence provided, the Commissioner is satisfied that the CPS is entitled to apply section 32(1)(c) to all of the requested information.

Other matters

27. The Commissioner notes the complainant's point about the CPS initially applying more than one exemption to the withheld information, but in the internal review, it confirmed that it was applying section 32(1)(c) to all of the withheld information.
28. The Commissioner notes the comments of the Information Tribunal in the case [of McIntyre v the Information Commissioner and the Ministry of Defence \(EA/2007/0068\)](#), which was considered under FOIA.
- "...the Act encourages or rather requires that an internal review must be requested before the Commissioner investigates a complaint under s50. Parliament clearly intended that a public authority should have the opportunity to review its refusal notice and if it got it wrong to be able to correct that decision before a complaint is made..."*
29. The Commissioner is therefore satisfied that the CPS could use its internal review to reconsider the exemptions it had applied initially.

Right of appeal

30. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

31. 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.
32. 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

Rachael Cragg
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