

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 April 2015

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

Decision (including any steps ordered)

1. The complainant has requested the name of the Prosecutor at a specified case and date. The Crown Prosecution Service refused to provide the information, citing section 40(2) (personal information) of FOIA.
2. The Commissioner's decision is that the CPS, although correct to withhold the information, should have relied on section 40(5)(a) of FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Background

4. On 2 August 2014 the complainant submitted the same request set out below, to the Ministry of Justice (MoJ). This was withheld by the MoJ under sections 32(1)(a) and 40(2) of the FOIA. The complainant complained about the MoJ's refusal to disclose the information. A decision notice about this has been issued under reference FS50560246.
5. Although FOIA is applicant and purpose blind, the complainant explained that he needed the name of the CPS Prosecutor in order to make a complaint about his court case. However, during his investigation, the

Commissioner determined that a person does not need the name of a Prosecutor in order to make a complaint about a court hearing and informed the complainant of this.

Request and response

6. On 31 July 2014, the complainant wrote to the Crown Prosecution Service (CPS) and requested information in the following terms:

"The name of the CPS Prosecutor attending my case at [court name redacted] 18/03/2014."
7. The CPS responded on 14 August 2014. It refused to provide the requested information, citing section 40(2) (personal information) of FOIA, explaining to the complainant that the information he had requested was personal data.
8. Following an internal review the CPS wrote to the complainant on 7 November 2014. It upheld its original decision.

Scope of the case

9. The complainant contacted the Commissioner on 12 September 2014 to complain about the way his request for information had been handled. However, he had not exhausted the CPS's internal review process. An internal review was carried out on 7 November 2014 and on 27 November 2014 the complainant confirmed that he wished to proceed with his complaint.
10. The complainant explained that he wanted the name of the CPS Prosecutor as he wished to make a complaint about that person. He also explained that the CPS had withdrawn its original reason for non-disclosure and that in its internal review it had stated that the requested information was sensitive personal data
11. The Commissioner notes that in its response of 14 August 2014, the CPS noted that the requested information was personal data. Furthermore, in its internal review, although the CPS said that the sensitivity of personal data should be considered, it accepted that in this case, the requested information did not constitute sensitive personal information for the purposes of FOIA. Therefore, the Commissioner will not be considering this point any further.

12. Although the complainant has requested the Prosecutor's name, which is third party personal information, the Commissioner notes that the requester has asked for this name in relation to his own court case. The Commissioner's view is that the Prosecutor's name cannot be found without confirming and identifying whether or not the complainant has had a court case. For this reason, the Commissioner has considered whether the CPS should have relied on section 40(5)(a) when refusing the request, as it would relate to the complainant personally by confirming to the public at large whether or not he has been to court.

Reasons for decision

13. In considering whether section 40(5)(a) should have been applied to this request, the Commissioner has taken into account that FOIA is applicant and purpose blind and that disclosure should be considered in its widest sense, which is to the public at large. A confirmation or denial in the circumstances of this case would reveal to the public, information which is not in the public domain and is not reasonably accessible to the general public, about whether or not the individual was involved in a court case.

Section 40(5) – personal information

14. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
 - (a) the duty to inform the applicant whether or not requested information is held and, if so,
 - (b) the duty to communicate that information to the applicant.
15. Section 40(5)(a) of FOIA excludes a public authority from complying with the duty imposed by section 1(1)(a) of FOIA in relation to information which, if held by the public authority, would be exempt information by virtue of section 40(1). In other words, if someone requests their own personal data, there is an exemption from the duty to confirm or deny under FOIA.
16. The Commissioner's view is that the CPS should have argued that confirming or denying whether or not it held the requested information would breach the data protection principles rights of the complainant. Section 40(5)(a) states that the duty to confirm or deny does not arise in relation to information which is, if held, the requester's personal data and would be exempt from disclosure under section 40(1) of FOIA.

17. Therefore, if a public authority receives a request for information which, if it were held would be the requester's own personal data, it can rely on section 40(5)(a), to refuse to confirm or deny whether or not it holds the requested information.

18. Sections 40(1) and 40(5)(a) are class-based exemptions. This means that there is no need to demonstrate that disclosure (or confirmation) under the FOIA would breach an individual's rights under the Data Protection Act 1998 (the DPA) when engaging these exemptions.

19. Section 40(1) of FOIA states that:

"Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject".

20. The DPA defines personal data as:

" ... 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, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."

21. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

22. In this case, the Commissioner is satisfied that the requested information, if held by the CPS, would be the complainant's personal data. This is because the complainant would be identifiable by confirming or denying that the requested information is held, as it would involve searching for the Prosecutor by reference to the complainant's own court case; it would not be possible to search for the Prosecutor's details without first looking for the complainant's court case details and confirming or denying that such a court case exists.

23. Although the Commissioner notes that the request is for a third party's name, if the CPS were to respond to this FOIA request by providing the complainant with this information (if any such information was held) then it would, under FOIA, also be confirming that it holds personal data of which he is the data subject, ie it would be confirming that he had been to court.

24. For the reasons set out above, the Commissioner is satisfied that under section 40(5)(a), the CPS has no duty to confirm or deny whether any such information is held.

Other matters

25. The Commissioner notes that the complainant requested an internal review on 1 October 2014 and the CPS responded on 7 November 2014.
26. Part VI of the section 45 Code of Practice makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information. He considers that the procedure should encourage a prompt determination of the complaint.
27. 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 FOIA, 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.
28. The Commissioner also notes that an applicant wishing to access their own personal data can pursue this right under the subject access provisions of the DPA.

Right of appeal

29. 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

30. 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.
31. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF