

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 August 2016

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

### Decision (including any steps ordered)

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1. The complainant requested information relating to the costs of various court cases. The Crown Prosecution Service explained that it did not hold some of the requested information and in relation to four of the cases, it was neither confirming nor denying whether it held the requested information by virtue of section 40(5) (Personal information) of the FOIA.
2. The Commissioner's decision is that the Crown Prosecution Service has applied section 40(5) of the FOIA appropriately. She also considers that, on the balance of probabilities, the Crown Prosecution Service does not hold any further information and therefore has not breached section 1 of the FOIA.
3. The Commissioner does not require the Crown Prosecution Service to take any further steps as a result of this decision.

### Request and response

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4. On 18 October 2014, the complainant submitted multiple requests to the Crown Prosecution Service (CPS) for the costs of various cases – please see appendix for the requests.
5. On 25 November 2014 the CPS responded. It explained that it does not record time spent by internal lawyers, paralegals and administrative

staff on a case by case basis and therefore could only provide counsel costs. It disclosed counsel costs in relation to 16 cases. The CPS also explained that in relation to one of the cases - Lillian Rayne (Newcastle 2010), it did not hold the information due to its retention criteria.

6. Furthermore, the CPS explained that it did not hold information in relation to the following Maurice Kirk cases: T20127589 Cardiff 2014 and T20120090 Cardiff 2012. In relation to the Maurice Kirk A20110290 case, the CPS explained that as the case had been discontinued, no counsel had been instructed.
7. The CPS explained that in relation to the following four cases: Lillian Rayne (Middlesbrough 2014), Lewis Frank Foley (Stafford 2006), Christopher Hayward (Hasting 2006/07) and Peter Guy Sainsbury and Angelo Silva (2010/11), it was neither confirming nor denying whether it held the information by virtue of section 40(5).
8. In his request for an internal review of 28 December 2014, the complainant asked for a further breakdown of the costs in relation to some of the cases, including the costs of calling witnesses. Following an internal review the CPS wrote to the complainant on 26 August 2015. It explained that it was applying section 12, as to provide a breakdown of costs including witness expenses would exceed the cost limit. It also upheld its original decision regarding whether it held information relating to specific cases and provided the complainant with a link to its Records Management Manual. The CPS also upheld its application of section 40(5).

### **Scope of the case**

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9. The complainant contacted the Commissioner on 1 September 2015 to complain about the way his request for information had been handled.
10. The complainant explained that he did not believe that the CPS did not hold information regarding some of the court cases and that it had not applied sections 12 and 40(5) appropriately. He also explained that he could not find the part of the CPS' retention schedule which dealt with the destruction of records.
11. During the Commissioner's investigation, the CPS found costs information in relation to three cases which it had originally explained it did not hold information on: Maurice Kirk Cardiff 2012 A20110290; Maurice Kirk Cardiff 2014 T20127589; Maurice Kirk Cardiff 2012 T20120090.

12. The CPS provided the complainant with the information, updating it to May 2016. It also provided an update regarding the costs of all the cases it had originally disclosed to him in 2014, up to May 2016. These costs included the calling of witnesses. The CPS also explained that in 2014 the use of time recording systems for the purposes certain staff costs were not widely used.
13. Given that the CPS has disclosed costs information to the complainant, it is no longer relying upon section 12. Therefore the Commissioner will not consider the application of section 12 any further.
14. The Commissioner will consider whether the CPS has applied section 40(5) appropriately and whether, on the balance of probabilities, it is correct to state that it does not hold any information in relation to a court hearing – R v Raine (2010 Newcastle). The Commissioner will also consider the length of time taken to deal with the request.

## Reasons for decision

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### Section 40(5) - personal information

15. Section 40(5)(b)(i) FOIA provides that if a public authority receives a request for information which, if held, would be the personal data of a third party, it can rely on section 40(5)(b)(i) to neither confirm or deny whether or not it holds the requested information.
16. Consideration of section 40(5) involves two steps: first, whether providing the confirmation or denial would involve the disclosure of personal data and secondly, whether disclosure of that personal data would be in breach of any of the data protection principles.

### ***Is the information personal data?***

17. The definition of personal data is set out in section 1 of the DPA:

*“ ...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.”*

18. The two main elements of personal data are that the information must 'relate' to a living individual and the individual must be identifiable.

Information will relate to an individual 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.

19. The Commissioner considers that, given that the requested information is about the costs of court cases and the complainant has named the individuals concerned, it is possible to identify these individuals. Therefore, the Commissioner accepts that confirmation or denial as to whether any information is held would involve a disclosure of personal data.

***Is the requested information sensitive personal information?***

20. Sensitive personal data is defined in section 2 of the DPA. It is personal information which falls into one of the categories set out in section 2 of the DPA. Of relevance in this case is that section 2 relates to personal data consisting of information as to:

*“(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.”*

21. The Commissioner is satisfied that the withheld information in its entirety is sensitive personal data. This is because it relates to court hearings and identifiable individuals.
22. Having accepted that the request is for sensitive personal data of living individuals, the Commissioner will go on to consider whether disclosure of this personal data would breach one of the data protection principles.
23. The Commissioner considers that the first data protection principle is relevant in the circumstances of this case.

***Would confirmation or denial breach the first data protection principle?***

24. The first data protection principle states –

*“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

*(a) at least one of the conditions in Schedule 2 is met, and  
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”*

25. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the disclosure, ie the confirmation or denial in this case can only be given if to do so

would be fair, lawful and would meet one of the DPA Schedule 2 conditions and, in this case, one of the Schedule 3 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure. The Commissioner has first considered whether disclosure would be fair.

26. When considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
  - the individual's reasonable expectations of what would happen to their information;
  - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned);
  - any legitimate interests in the public having access to the information; and,
  - the balance between these and the rights and freedoms of the individuals who are the data subjects.
27. The Commissioner recognises that people have an instinctive expectation that the CPS, in its role as a responsible data controller, will not, if held, disclose certain information about them and that it will respect their confidentiality. Accordingly, the Commissioner considers that the data subjects would not reasonably expect the CPS to place details of the costs of their court hearings into the public domain. As to the consequences of disclosure upon a data subject, the question – in respect of fairness - is whether disclosure would be likely to result in unwarranted damage or distress to that individual.
28. When considering the consequences of disclosure on a data subject, the Commissioner will take into account the nature of the withheld information. She will also take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the public at large, without conditions.
29. Given the nature of the request and the sensitivity of the subject matter, the Commissioner considers that confirming or denying in this case could lead to an intrusion into the private life of the individuals concerned and the consequences of any disclosure could cause them damage and distress.
30. The Commissioner can find no evidence that at the time of the request, there was anything in the public domain which refers to these cases, including costs. It is therefore the Commissioner's view that the data subjects would have little – if any - expectation that such details would be put into the public domain by way of a request under the FOIA.

31. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose information, or in this case confirm or deny if information is held, if there is a more compelling public interest in doing so. Therefore the Commissioner will carry out a balancing exercise, balancing the rights and freedoms of the data subject against the public interest in confirming or denying if the information is held.
32. The Commissioner would stress that this is a different balancing exercise than the normal public interest test carried out in relation to exemptions listed under section 2(3) of the FOIA. Given the importance of protecting an individual's personal data the Commissioner's 'default position' is in favour of protecting the privacy of the individual. The public interest in confirming whether or not information is held must outweigh the public interest in protecting the rights and freedoms of the data subject if providing confirmation or denial is to be considered fair.
33. The interest in disclosure must be a public interest, not the private interest of the individual requester. The requester's interests are only relevant insofar as they reflect a wider public interest. The Commissioner cannot see any particular weighty public interest in disclosure of this confirmation or denial.
34. The complainant does not accept that section 40(5) applies. He argued that given that the CPS had provided information in relation to the costs of the prosecution of other cases, section 40(5) could not apply to the four cases in question.
35. In light of the nature of the information and the reasonable expectations of the data subjects, the Commissioner is satisfied that confirming or denying if the requested information is held would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the data subject. She considers that these arguments outweigh any legitimate interest in disclosure. The Commissioner has concluded that confirmation or denial in this case would breach the first data protection principle. She therefore finds the exemption at section 40(5) is engaged and the duty to confirm or deny does not arise.
36. The Commissioner will go on to consider whether the CPS holds any further relevant information. As the CPS has disclosed further information during her investigation, the Commissioner considers that the outstanding issue is whether it holds any information regarding costs in relation to *R v Raine* (2010 Newcastle).

## Section 1 – general right of access

37. Section 1 of the 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 it communicated to him.
38. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any reasons offered by it to explain why the information is not held. In addition, the Commissioner will consider any reason why it is inherently likely or unlikely that the information is not held.
39. The Commissioner is required to make a judgement on whether, on the balance of probabilities, the requested information is held or not.
40. The Commissioner enquired whether the information had ever been held, and about the scope, quality, thoroughness and results of the searches carried out by the CPS. The Commissioner also enquired whether the information had ever been held but deleted and whether copies of information may have been made and held in other locations.
41. The Commissioner also asked whether there was any legal requirement or business need for the CPS to hold the information.
42. The CPS explained that initially it had contacted various CPS Areas and Units around England and Wales and confirmed that they searched their records based on the information provided by the requester about the case.
43. Furthermore, the CPS explained that it was possible that the North East Area had once held information relating to the 2010 case but there were no details available to verify this; it explained that any records that might have been held on the 2010 case would have been destroyed in line with its file retention policy.
44. The CPS also confirmed that if it had held this information it would have been for business purposes.
45. Taking everything into account, the Commissioner does not consider that there is any evidence that show that the CPS holds any recorded information in relation to the specified court case.
46. Therefore, the Commissioner is satisfied that, on the balance of probabilities, the CPS does not hold any recorded costs information in

relation to the court case of R v Raine (2010, Newcastle). Accordingly, she does not consider that there is a breach of section 1.

47. The Commissioner will go on to consider the length of time taken by the CPS to deal with the complainant's request.

### **Procedural matters**

#### **Section 10 – time for compliance**

48. Section 10(1) of FOIA provides –

*“ ... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”*

49. The complainant submitted his requests on 18 October 2014 and the CPS responded on 25 November 2014. The Commissioner also notes that the CPS provided information which originally it said that it did not hold, during her investigation. As the response was later than 20 working days following the date of receipt of the request, the Commissioner considers that the CPS has breached section 10.

#### **Section 17 - Refusal notice**

50. Section 17(1) provides -

*“A public authority which, in relation to any request for information, is to any extent relying on a claim ... that information is exempt information must, within the time for complying with section 1(1) give the applicant a notice...”*

51. As the CPS applied section 40(5) to some of the information and its response was later than 20 working days following the date of receipt, the Commissioner considers that it has breached section 17.

### **Other matters**

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52. The complainant requested an internal review on 28 December 2014 and the CPS responded on 26 August 2015.

53. 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. She considers that the procedure should encourage a prompt determination of the complaint.



54. 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.
55. The Commissioner is concerned that it took over 20 working days for the internal review to be completed and will be monitoring the time taken by the CPS to deal with future requests for internal reviews.

## Right of appeal

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56. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

57. 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.
58. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## Appendix 1

### Requests for information made on 18 October 2014

*"Dear Sir/Madam*

#### ***R v LEWIS FRANK FOLEY – STAFFORD CROWN COURT 2006 – APPLICATION UNDER THE FREEDOM OF INFORMATION ACT 2000***

*I wish to know the following information regarding the prosecution of R. v. Lewis Frank Foley, in heard at the Stafford Crown Court in 2006.*

- 1. What was the total cost of the trial regarding calling of prosecution witnesses?*
  - 2. What was the total cost of the Crown Prosecution Service in bringing the prosecution?*
  - 3. What was the total cost of Crown counsel's fees?*
- I make this application under section 8(1) of the Freedom of Information Act 2000."*

The complainant also submitted additional requests for the same information in the same format, relation to the following cases. He provided the appropriate Crown Court venues:

William Roache (Preston 2014)

Max Clifford (Southwark 2014)

Rolf Harris (Southwark 2014)

Nigel Evans (Preston 2014)

Tulisa Constostavlos and Michael Coombes (Southwark 2014)

Andrew Lancel (Preston 2014)

Stuart Hall (Preston 2014)

Stuart Hall (Preston 2013)

David Patrick Griffin (Southwark 2014)

Lilian Rayne (Newcastle 2010)

Lilian Rayne (Middlesborough 2014)

Constance Briscoe (Central Criminal Court 2014)

Michael Doherty (Stevenage 2013 / St Albans 2014)

Peter Guy Sainsbury and others (Southwark 2008/10)

Maurice Kirk (T20131144 Cardiff 2014)

Maurice Kirk (A20140005 Cardiff 2014)

Maurice Kirk (T20130801 Cardiff 2013)

Maurice Kirk (A20110290 Cardiff 2012)

Maurice Kirk (T20127589 Cardiff 2014)

Maurice Kirk (T20120090 Cardiff 2012)

Christopher Hayward (Hasting 2006/07)

Rebekah Brookes and others (Central Criminal Court 2013/14)

*"Dear Sir/Madam*

***R v CHRISTOPHER HULNE AND VASILIKI PRICE – SOUTHWARK CROWN COURT 2014 – APPLICATION UNDER THE FREEDOM OF INFORMATION ACT 2000***

*I wish to know the following information regarding the prosecution of R. v. Christopher Hulne, and R. v. Vasiliki Price, heard at the Southwark Crown Court before Mr. Justice Sweeney in 2013.*

- 1. What was the total cost of the trial regarding calling of prosecution witnesses for each defendants?*
- 2. In respect of Vasiliki Price, the cost of calling witnesses at the first trial and the retrial?*
- 3. What was the total cost of the Crown Prosecution Service in bringing each of the prosecutions?*
- 4. In respect of Vasiliki Price, the total cost of the Crown Prosecution Service at the first trial and the retrial?*
- 5. What was the total cost of Crown counsel's fees, both junior and leading for each case?*
- 6. In respect of Vasiliki Price, the total cost of Crown counsel's fees, both junior and leading at the first trial and the retrial?*

*I make this application under section 8(1) of the Freedom of Information Act 2000."*

*"Dear Sir/Madam*

***R v PETER GUY SAINSBURY, KIRKVINE ELLIS, NICOLA CORT, CATHERINE NDUNGU, ANGELA MARI, MICHAEL UZICE, KATE BLAVO, IAIN MACMASTER AND ANGELO SILVER [si] – SOUTHWARK CROWN COURT 2008/10 – T20080303 T20087162 T20087744 AND 2011/12 – APPLICATION UNDER THE FREEDOM OF INFORMATION ACT 2000***

*I wish to know the following information regarding the prosecution of Peter Guy Sainsbury, Kirkvine Ellis, Nicollett Cort, Catherine Ndungu, Angela Mari, Michael Uzice, Kate Blavo, Iain Macmaster and Angelo Silver for fraud charges, heard at the Southwark Crown Court before His Honour Judge Goymer QC (both trials) in 2009/10, 2011/12.*

***1 PROSECUTION OF PETER GUY SAINSBURY, KIRKVINE ELLIS, NICOLA CORT, CATHERINE NDUNGU, ANGELA MARI, MICHAEL UZICE, KATE BLAVO AND IAIN MACMASTER – SOUTHWARK CROWN COURT 2008/10 – T20080303 T20087162 T20087744***

- 1. What was the total cost of the 1 trial of Peter Guy Sainsbury, Kirkvine Ellis, Nicola Cort, Catherine Ndungu, Angela Mari, Michael Uzice, Kate Blavo and Iain Macmaster in the Southwark Crown Court regarding calling of prosecution witnesses?*
- 2. What was the total cost of the Crown Prosecution Service in bringing the 1 prosecution of Peter Guy Sainsbury, Kirkvine Ellis, Nicola Cort, Catherine Ndungu, Angela Mari, Michael Uzice, Kate Blavo and Iain Macmaster by the Metropolitan Police Economic Crime Unit in the Southwark Crown Court?*
- 3. What was the total cost of Crown counsel's fees in the 1 trial of Peter Guy Sainsbury, Kirkvine Ellis, Nicola Cort, Catherine Ndungu, Angela Mari, Michael Uzice, Kate Blavo and Iain Macmaster in the Southwark Crown Court?*
- 4. What were the total costs of each of the Defendant's Legal Aid in the Southwark Crown Court?*
- 5. What were the total costs of each of the Defendant's counsel's fees in the Southwark Crown under Legal Aid?*

***PROCEEDS OF CRIME ACT APPLICATIONS RELATING TO THE 1 PROSECUTION OF PETER GUY SAINSBURY, KIRKVINE ELLIS, NICOLA CORT, CATHERINE NDUNGU, ANGELA MARI, MICHAEL UZICE AND KATE BLAVO – SOUTHWARK CROWN COURT 2010/12 – T20080303 T20087162 20087744***

- 6. What was the total cost of the Proceeds of Crime Act applications relating to the 1 trial of Peter Guy Sainsbury, Kirkvine Ellis, Nicola Cort, Catherine*

*Ndungu, Angela Mari, Michael Uzice, and Kate Blavo in the Southwark Crown Court regarding calling of prosecution witnesses?*

*7. What was the total cost of the Crown Prosecution Service in bringing the Proceeds of Crime Act applications relating to the 1 trial of Peter Guy Sainsbury, Kirkvine Ellis, Nicola Cort, Catherine Ndungu, Angela Mari, Michael Uzice, and Kate Blavo by the Metropolitan Police Economic Crime Unit in the Southwark Crown Court?*

*8. What was the total cost of Crown counsel's fees in the Proceeds of Crime Act applications relating to the 1 trial of Peter Guy Sainsbury, Kirkvine Ellis, Nicola Cort, Catherine Ndungu, Angela Mari, Michael Uzice and Kate Blavo in the Southwark Crown Court?*

***2 PROSECUTION OF PETER GUY SAINSBURY AND ANGELO SILVER [sic] – SOUTHWARK CROWN COURT 2010/11/12***

*9. What was the total cost of the 2 trials of Peter Guy Sainsbury and Angelo Silver [sic] in the Southwark Crown Court regarding calling of prosecution witnesses?*

*10. What was the total cost of the Crown Prosecution Service in bringing the 2 prosecutions of Peter Guy Sainsbury and Angelo Silver [sic] by the City of London Police Economic Crime Unit in the Southwark Crown Court?*

*11. What was the total cost of Crown counsel's fees in the 2 trials of Peter Guy Sainsbury and Angelo Silver [sic] in the Southwark Crown Court?*

***PROCEEDS OF CRIME ACT APPLICATIONS RELATING TO THE 2 PROSECUTION OF PETER GUY SAINSBURY AND ANGELO SILVER [sic] – SOUTHWARK CROWN COURT 2010/11/12***

*12. What was the total cost of the Proceeds of Crime Act applications relating to the 2 trial of Peter Guy Sainsbury in the Southwark Crown Court regarding calling of prosecution witnesses?*

*13. What was the total cost of the Crown Prosecution Service in bringing the Proceeds of Crime Act applications relating to the 2 trial of Peter Guy Sainsbury by the Metropolitan Police Economic Crime Unit in the Southwark Crown Court?*

*14. What was the total cost of Crown counsel's fees in the Proceeds of Crime Act applications relating to the 2 trial of Peter Guy Sainsbury in the Southwark Crown Court?*

*I make this application under section 8(1) of the Freedom of Information Act 2000."*