

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 November 2022

Public Authority: Crown Prosecution Service
Address: 102 Petty France
London
SW1H 9EA

Decision (including any steps ordered)

1. The complainant has requested copies of correspondents regarding a legal proceedings case.
2. The Commissioner's decision is that Crown Prosecution Service ('the CPS') was entitled to rely on section 40(1) to withhold the requested information.
3. The Commissioner does not require any further steps.

Request and response

4. On 7 February 2022, the complainant wrote to the CPS and requested information in the following terms:

"In the course of acting as an independent prosecutor employing the services of barrister [name redacted] of St Albans Chambers you had conduct of the following referenced case;

R V [name redacted]

URN: [case reference redacted] (I believe dealt with from your HUNTINGDON division)

Please provide copies of all communications between the following parties;

[name redacted] and St Albans Chambers
Cambridgeshire Constabulary including but not limited to PC (Name

Redacted) HMCTS
Ministry of Justice

Please include MITIE in the request as stated in the FOI Header”

5. The CPS responded on 11 February 2022. It advised it could neither confirm nor deny holding the requested information under section 40(5) of the FOIA.
6. Following an internal review, the CPS wrote to the complainant on 6 April 2022. It stated that it was upholding its original decision.

Scope of the case

7. The complainant contacted the Commissioner 14 April 2022 to complain about the way his request for information had been handled.
8. In its submission to the Commissioner the CPS advised that it no longer wanted to rely on section 40(5B)(a)(i) FOIA and instead now wished to rely on section 40(1).
9. The Commissioner considers the scope of his investigation is to determine the extent to which the requested information would be the complainant’s own personal data and therefore whether CPS is entitled to withhold the requested information under section 40(1) of FOIA.

Reasons for decision

Section 40 personal information

10. Section 40(1) of FOIA provides that any information to which a request for information relates is exempt information if it constitutes personal data of which the requester is the data subject.

Is the information personal data?

11. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual.”

12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
13. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or

more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of the individual.

14. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
15. In this case the complainant has requested correspondences relating to a prosecution case which relates to the requester directly, the complainant confirmed that the requested information does contain their personal information.
16. Therefore, the Commissioner considers that every part of the request in some way or another links back to the complainant. As such, any information the CPS held, within the scope of the request, could only have been created in relation to the legal proceedings case.
17. The Commissioner is aware that the complainant states that "any personal data may be redacted from copies of documents supplied in response to this request," however this is not applicable here, for the exemption applied concerns the requestor's own personal data, not third-party data.
18. As there is no route to a requester's own personal data under FOIA, if the complainant is unhappy with the information received, they should challenge any exemption from disclosure under Subject Access Request.
19. Section 40(1) is an absolute exemption and there is no requirement for the Commissioner to consider the balance of public interest. Nor is he required to consider whether or not the complainant would be happy to have his personal data published to the world at large. If the exemption applies, the information is not available via FOIA.

The Commissioner's Conclusion

20. The Commissioner therefore finds that section 40(1) of FOIA is engaged in respect of the withheld information.

Right of appeal

21. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

22. 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.
23. 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

Catherine Fletcher
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