

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 June 2022

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

#### Decision (including any steps ordered)

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1. The complainant requested a direct email address for the Special Crime Department in York. The Crown Prosecution Service (the 'CPS') refused to provide this information, ultimately citing section 31 of FOIA (the exemption for law enforcement). The complainant disagreed with the CPS' reliance on section 31(1)(c) (administration of justice) and argued on disability and equality grounds that the requested email address should be publicly available. Additionally, he submitted that he had been in receipt of the withheld email address privately via a CPS automated email response, evidence of which he provided.
2. Having considered both parties arguments, the Commissioner's decision is that the CPS has correctly applied section 31 of FOIA to the withheld information for the reasons set out in this notice.
3. The Commissioner does not require the CPS to take any steps as a result of this notice.

#### Request and response

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4. On 30 April 2021, the complainant wrote to the CPS and requested information in the following terms:

"May I [also] please have an email address for your Special Crime department in York"
5. The CPS responded, late on 2 June 2021. It refused to provide the requested information stating:

"The Crown Prosecution Service (CPS) does not hold an email address that is specifically for the Division referred to, that is accessible to members of the public."

6. The complainant requested an internal review on 2 June 2021. He included details of his disabilities (with proof) which he said meant that he could not contact the specified Division by post and argued:

"You have admitted in the response that there is an email address but it is not publicly available. It MUST be publically available under both Freedom of Information Act 2000 law and also under the Public Sector Equality Duty and Equality Act 2010. Electronic contact methods are a legal right of all people with relevant disabilities. Such as myself. Proof of this is available in UK Civil Case Law and via the Equality and Human Rights Commission."

## **Background**

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7. In this case, the complainant has requested a direct email address from the CPS for the Special Crime department ('SCD') in York.
8. The CPS has explained to both the complainant and the Commissioner that this email address is not publicly available, but that there is a general enquiries email address the complainant can use which it has provided. Emails sent to this general enquiries address are sifted and either responded to, or sent onto the relevant departments/areas with a view to ensuring that only emails that are pertinent are received by those departments/areas.
9. It is against this background that the Commissioner has investigated the complainant's complaint, taking into account his specific arguments and evidence submitted, before reaching his decision in this case.
10. The Commissioner understands that the complainant already has the requested email address. However, this was provided to him outside the terms of FOIA.

## **Scope of the case**

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11. The complainant contacted the Commissioner on 30 June 2021 to complain about the then outstanding internal review outcome. He said:  

"I made an internal review request and they replied and said they'd reply by 5pm today. However they never did. Despite me sending them a polite reminder email a few days before."

12. On 14 July 2021, the Commissioner wrote to the CPS asking it to carry out the requested internal review.

13. In response, the CPS provided a copy of its internal review which had been undertaken on 9 July 2021. In this it now advised that it was relying on section 30 of FOIA (the exemption for investigations and proceedings conducted by public authorities). It concluded that the public interest lay in maintaining this exemption. It explained:

"...I believe it is reasonable that agencies which are involved in the investigation and prosecution of criminal offences, such as the police and the Crown Prosecution Service, retain certain e-mail addresses and telephone numbers, solely for professional use and not share them with the public at large".

14. On 14 July 2021, the complainant informed the Commissioner that he remained dissatisfied with the CPS' handling of his request. Specifically, he submitted that:

"A departmental email address would not fulfil the exemption they cite. Particularly not when they have already provided me with the postal address of said department and told me to contact them.

I cannot write to them by post due to my [disabilities redacted] and need to contact the department by email. Their email address should be available to all members of the public, but particularly disabled people as per their obligations in the Public Sector Equality Duty and Equality Act 2010, Sections 13, 15, 19, 20 and 29 etc.

Being able to contact specific departments within the CPS is of huge value to all members of the general public who have circumstances where they need to have direct contact with a specific department for whatever reason.

Upholding Equality all laws, including for disabled people around access, is also a matter that all members of the public benefit from immensely...".

15. During the course of the Commissioner's investigation, the CPS revised its position. It now said it deemed that section 31 (the exemption for law enforcement) applied rather than section 30, and specifically subsection 31(1)(c) (the administration of justice). The CPS also wrote to the complainant on 20 May 2022 to inform him of its changed position. It included the following:

"In order to assist you please find below the CPS general enquiries email address, this is our external CPS email address

for members of the public to contact the CPS. The enquiries team ensures that any correspondence received is either responded to or directed to the relevant department to provide a response.

enquiries@cps.gov.uk”

16. On 20 May 2022, the Commissioner sought the complainant’s view of the CPS’ revised position.
17. The complainant responded both on 20 and 23 May 2022. He advised that he had already been provided with the requested direct email address, outside of FOIA, by the CPS. In support, he submitted a copy of an automated email response from an area within the CPS, dated 10 March 2022. Whilst details of the email address that the original email was sent to (and its source) are not known, and were not provided by the complainant, the automated response’s content includes details of the withheld requested email address as being the address to contact in certain circumstances. The sent email resulted in the following automatically generated reply:

“You have sent an email to an account that is not monitored. Your email has been deleted. If you have a query regarding a SCD York case please contact the Reviewing Lawyer or Paralegal Officer assigned to it. If a Reviewing Lawyer or Paralegal Officer has not been assigned please contact SCD York via: [requested email address redacted].”

18. The email address redacted above marked as ‘requested email address’ is that which the complainant has requested under FOIA. The Commissioner notes that the complainant therefore has the email address he is seeking under FOIA via alternative means, but accepts that the complainant considers it should be publicly available to all under the FOIA.
19. On 23 May 2022, the Commissioner contacted the CPS and enclosed a copy of the automated email response submitted by the complainant (in support of his view that the requested email address should be released under FOIA). The Commissioner asked the CPS to provide some details about the automated email response.
20. The CPS responded on 7 June 2022 as follows:

“I have liaised with our prosecution area regarding your email below and the attached document, the email address contained within the ‘evidence’ document [the ‘not monitored’ email address] is not a defunct email address but is used as an outlook folder that our prosecution lawyers use to file emails relating to individual cases, it is a file structure where there is a folder for each case with saved correspondence, we are not sure how [the

complainant] would have obtained the ['not monitored' email address] email as this is not a public email address and is only used for casework purposes.

In relation to the [requested] email address the prosecution area is not aware of any changes to the email address in the past three years, the email address [which generated the 'not monitored' response] and [the requested email address] are both separate email addresses with separate purposes.

The [requested] email address this is used by our paralegal officers, it is also not publicly available it mostly acts as an avenue for police to correspond with the CPS... and I have also provided [the complainant] with our general enquiries email address as well".

21. The Commissioner has considered whether the CPS was entitled to rely on section 31 of FOIA to withhold the requested email address. Given that the original complaint from the complainant concerned the [then] lack of an internal review, the Commissioner has also referenced the delay in the CPS' handling of the internal review in the 'Other matters' section of this notice.

## Reasons for decision

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### Section 31 – law enforcement

22. Section 31(1)(c) of FOIA provides an exemption where disclosure of the relevant information would, or would be likely to, prejudice the administration of justice.
23. For this exemption to be engaged, disclosure must be at least likely to prejudice the administration of justice. The exemption is qualified by the public interest which means that, if the public interest in maintenance of the exemption does not outweigh the public interest in disclosure, the information must be disclosed.
24. The exemption applies where disclosure "would or would be likely" to cause prejudice. The approach of the Commissioner is that he will accept that prejudice would occur where that outcome is more probable than not. Given that the CPS has argued that disclosure of the requested email address "would" prejudice the administration of justice, that is the test that the Commissioner has applied here.
25. The complainant, in his evidence to the Commissioner, said that it was not apparent to him that disclosure of the requested information would

prejudice the administration of justice. He said that the exemption could not reasonably be engaged.

26. In explaining its position that prejudice would occur, the CPS told the Commissioner:

"ICO guidance<sup>1</sup> outlines that - Section 31(1)(c) The administration of justice is a broad term and it can apply to the justice system as whole [sic] it can protect a wide range of judicial bodies, from disclosures that would in any way interfere with their efficiency and effectiveness, or their ability to conduct proceedings fairly, this will include prejudice to administrative arrangements.

Within each prosecution there will be statutory deadline dates to be met such as judges [sic] orders to serve evidence, reviewing material provided by the police, assessing whether cases should proceed these [sic], deadline dates ensure that the judicial process is met and that trials are conducted within the proposed timescales. CPS staff based on the York Special Crime team will need to respond to legitimate case queries regarding current live (on-going) prosecutions and ensure that they meet those statutory deadlines. To provide an internal email address to the wider public would have a substantial effect of the teams [sic] abilities to meet deadline dates set by judicial bodies as they will be spending valuable time dealing with general queries which the CPS has a bespoke team that deals with these matters."

27. The CPS also referred to an example where it said such prejudice had occurred, explaining that in a similar situation:

"an internal email address was provided to the public on this occasion meant for solicitors, the release of the email address impacted the team greatly so much so that they had to close the email address as they were inundated with queries from all members of the public regarding a wide range of queries, which did not relate to the actual guidance document that the email address was provided for to assist with".

28. In addition, the CPS said:

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

“The prejudice that would occur if the email address was release [sic] to the public under FOI, is that the prosecution area would be not be able to meet there [sic] obligations regarding the prosecution of criminal cases, by disclosing the email address would have an effect on the areas ability to prepare and present cases at court, decide which cases should be prosecuted, determine appropriate charges and also provide assistance and support to victims and prosecution witnesses. Prosecution areas deals [sic] with specific cases for that area, they do not deal with general queries regarding the CPS, if a member of [sic] public is involved in a criminal case then they would be provided with information about how to contact that specific team, this is to ensure that the prosecution area are only dealing with matters relating to the cases that they are preparing for court.”

29. The Commissioner accepts that disclosure of the requested email address would interfere with the administration of justice, and is therefore satisfied that the section 31(1)(c) of FOIA exemption is engaged.

**Public interest test**

30. The section 31 FOIA exemption is qualified and the Commissioner has considered whether or not the balance of the public interest favoured maintaining the exemption.

**Public interest arguments in favour of disclosure**

31. The CPS has recognised the following factors in favour of disclosure of the requested email address:

- Transparency regarding contacts details of CPS area will increase public confidence in the CPS.
- To increase public understanding the types of prosecution areas the CPS deals with.

32. The complainant has argued:

“I believe this email address should be publicly available to everybody and not just myself.

It is necessary for many matters specifically related to that department that all members of the public can contact them directly about Special Crimes work in their region as and when appropriate and if they receive emails that are not in the public interest then they can just ignore them and not spend any work time responding to them. They can also delete any emails to this email address as necessary and at no cost to the tax payer. With

a click of a button. In the event their inbox includes emails of no public interest.

The need for the public to have direct contact with this department completely outweighs any need for them to keep a tidy inbox. Furthermore the burden that making this email address public may cause them from receiving any emails not in the public interest which they can ignore is specious and less than minimal."

### **Public interest arguments in favour of maintaining the exemption**

33. In favour of maintaining the section 31(1)(c) exemption (and thereby withholding the requested email address, the CPS argued that:

- To release an internal email address to the public would undermine the work of the CPS as it would lead to a significant increase in public enquiries that would likely lead to delays in responding to casework queries from CPS prosecuting areas.
- The CPS has a general contact function which is published on our website, all communications provided to the enquiries team are reviewed and forwarded onto the relevant prosecution areas.
- To release this information would interfere with our efficiency and effectiveness to conduct our prosecutorial/administrative duties, it would have an impact on the team who would be dealing with general queries instead of prosecution matters, all general queries should be dealt with by our dedicated team.

### **Balance of the public interest**

34. In balancing the public interest, the CPS said:

"The profound public interest in ensuring the prosecution process is effective and efficient means the overall balance of the public interest falls in favour of withholding the information."

35. The Commissioner notes the CPS' evidence that prejudice to the administration of justice "would" result from disclosure of the requested direct email address. He considers that this strengthens the case for maintaining the exemption.

36. The Commissioner has had regard for the complainant's arguments that the provision of the requested email address under FOIA would not interfere with the administration of justice. He has considered the requirements of the Equality Act 2010 in relation to the disability arguments raised by the complainant and the submission of his



additional automated email response which included the requested withheld email address.

37. Whilst noting the complainant's views, the Commissioner is aware that an applicable email address will be provided to those individuals involved in criminal cases. Therefore, where necessary, individuals will be provided with direct contact details in order to progress their own cases with the CPS. This is done to ensure direct and targeted access to the CPS for those individuals who need it.
38. The Commissioner notes that the CPS has an alternative 'general enquiries' email address which has been provided to the complainant. This means the complainant, and any others who need to do so, can contact the CPS by email and no-one is disadvantaged by not being able to contact the CPS by any other method.
39. The Commissioner cannot identify an overriding reason for the world at large, the majority of which will not be involved in criminal cases, to require knowledge of the requested direct email address.
40. It is of further note that the complainant has already secured the email address he is seeking, albeit outside of the FOIA regime, and is therefore able to access the appropriate staff for his own purposes.
41. The Commissioner recognises that there is a very strong public interest in ensuring that the CPS is able to administer justice without being hampered by having to review and administer additional non-relevant emails which would be generated if the requested email address was to be disclosed under FOIA. General enquiries can be made using the available 'enquiries@cps.gov.uk' address.
42. The Commissioner has also noted the CPS' concerns that release of the requested email address would impact the York SCD's ability to meet statutory judicial deadlines because of the extra workload that would be generated by receipt of non-relevant emails.
43. The Commissioner has decided on balance that, since disclosure would compromise the CPS' ability to effectively administer justice, it would not be in the public interest. He is therefore satisfied that on balance, the public interest in maintaining the section 31(1)(c) exemption outweighs that in disclosing the information.

## **Other matters**

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44. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather they are

matters of good practice which are addressed in the code of practice issued under section 45 of FOIA.

45. Part 5 of the section 45 Code of Practice<sup>2</sup> (the Code) states that it is best practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Code states 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 take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
46. The Commissioner notes that it took 26 working days for the internal review to be completed in this case.
47. The Commissioner has also noted that the CPS apologised for the delay in providing its internal review outcome. Despite having asked the CPS to elaborate on why it took longer than the recommended 20 working days, no further explanation has been provided.
48. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. This will align with the goal in his draft "Openness by Design strategy"<sup>3</sup> to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"<sup>4</sup>.

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<sup>2</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

<sup>3</sup> <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

<sup>4</sup> <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

## Right of appeal

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49. 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](mailto:grc@justice.gov.uk)

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

50. 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.

51. 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 .....**

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**