

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 29 July 2009

**Public Authority:** Crown Prosecution Service  
**Address:** CPS HQ  
2<sup>nd</sup> Floor  
50 Ludgate Hill  
London  
EC4M 7EX

### Summary

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The complainant requested the number of prosecutions against members of the police force and the members of the legal profession over a ten year period and how many of those individuals had been able to retire on a full pension. The public authority informed the complainant that section 12 applied to this information as it would be required to check through all its manual files. The Commissioner has investigated the issue and has determined that the public authority was correct to rely on section 12 in this instance. However the Commissioner has found a breach of section 16(1) as his view is that the public authority failed to provide reasonable advice and assistance in relation to narrowing down the request. He has also found a breach of section 10(1) for failing to confirm that relevant information was held within the time for statutory compliance and a breach of section 17(5) for the public authority failing to issue a section 12 notice within the statutory timescales. The Commissioner requires no further action to be taken in this case.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On 17 May 2008 the complainant requested the following information in accordance with section 1 of the Act:

*'Could you forward me a statement explaining how many Police have Broken the law and how many hav (sic) you prosecuted. Also how many Barristers and Solicitors have broke the law, and how many have you prosecuted?'*

3. On 22 May 2008 the public authority asked for the complainant to clarify the period of her request.

4. On 13 June 2008 the complainant provided clarification and also slightly expanded her request:

*'The period of time you requested is from 1998 to the present day. How many prosecutions have been brought against the Police, Barristers, Solicitors and how many have been allowed to retire on full pension.'*

5. On 19 June 2008 the public authority responded to the request for information. It informed the complainant that it did not hold the information requested. It said that this was the case because the CPS does not routinely record the profession of defendants and in any event the information would not be held in a consolidated format.

6. On 19 July 2008 the complainant requested for the public authority to conduct an internal review into the handling of its request. She also asked the public authority to inform her who held the information if it did not.

7. On 21 August 2008 the public authority provided the response to the request for an internal review. It said that the CPS does not routinely record the occupations of the defendants and that there was no requirement for the CPS to do so. It said that there was a possibility that the defendant's occupation was recorded within the case file, but this may not always be the case. To check it would be required to go through every CPS case file since 1998 that is still held. It informed the complainant that it had more than a million such files a year and it would cost more than the appropriate limit to deal with this request. It said that the limit was £600 which equated to one person doing three and a half working days in seeing if it holds the information and locating, retrieving and extracting this information. In relation to the enquiry it informed the complainant that it had made enquiries with the Ministry of Justice, the Home Office and Office of Criminal Justice Reform and that they had confirmed that they also do not routinely record the occupation of a defendant.

## **The Investigation**

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### **Scope of the case**

8. On 28 August 2008 the complainant contacted the Commissioner to complain about the way her request for information had been handled.

9. On 11 May 2009 the Commissioner wrote to the complainant to set the scope of this case. He said he would consider the request as it was clarified on 13 June

2008. The request therefore was for the number of police, barristers and solicitors that have been prosecuted by the CPS between 1998 and 13 June 2008 and of those how many have been allowed to retire on full pension. On 15 May 2009 the complainant confirmed that she was satisfied with the scope of the case.

## Chronology

10. On 21 January 2009 the Commissioner wrote to the complainant and asked for her to consider the parameters of her request and whether it would be possible to abridge it in any way in order for some information to be provided as part of an informal resolution. On 31 January 2009 the complainant replied and stated that she would not narrow the request. She also said that in her view the public interest was a very important consideration in this case.
11. On 11 May 2009 the Commissioner spoke to the public authority on the telephone. He asked to be provided with the clarified request for information that had not been provided previously. This was forwarded to him on the same day.
12. Also on 11 May 2009 the Commissioner wrote to the complainant. He explained the Commissioner's remit and how the costs limit works and confirmed the scope of the case.
13. On 12 May 2009 the Commissioner wrote detailed questions to the public authority to set the scope of his investigation, to establish how it holds information and to ask questions about its application of section 12(1) in this instance.
14. On 10 June 2009 the public authority provided answers to all of the Commissioner's detailed enquiries. It also provided detailed information and screen shots of its case management system to assist the Commissioner's understanding of the situation. It was also clear that the public authority considered that it would exceed the cost limit to confirm or deny the pension details requested, therefore, by implication invoking section 12(2).
15. On 11 June 2009 the Commissioner provided a detailed preliminary view and sought a view on whether the complainant wished to proceed.
16. On 15 June 2009 the complainant replied to the Commissioner's letter. She wished to proceed to a Decision Notice in this case.
17. On 22 June 2009 the Commissioner asked the public authority to provide the incomplete information from its electronic casework system as a potential informal resolution to this complaint. This was done on 10 July 2009.

## Analysis

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18. Section 12(1) indicates that the public authority is not required to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

19. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") provide that the cost limit for central government departments is £600. This must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours. If a public authority estimates that complying with a request would exceed 24 hours, or £600, section 12(1) provides that the request may be refused.
20. Section 12(2) provides that a public authority can refuse to confirm or deny if information is held if the cost of complying with section 1(1)(a) alone, that is the cost of confirming or denying whether the information requested is held, would exceed the cost limit.
21. In this case, in relation to the number of prosecutions against police, solicitors and barristers, the public authority is not able to confirm precisely what is held but does not dispute that information of relevance is held. The Commissioner's considerations in this respect are therefore on whether the cost limit would be exceeded through compliance with the requirement of section 1(1)(b). In relation to the number of retirements on full pension, as per paragraph 14, the public authority's position is that it is unable to confirm or deny whether it holds this information within the costs limit. Therefore the Commissioner's considerations for this information relate to compliance with the section 1(1)(a) duty.
22. Regulation 4(3) provides that the following factors can be taken into account when formulating a cost estimate:
  - "(a) determining whether it holds the information,*
  - (b) locating the information, or a document which may contain the information,*
  - (c) retrieving the information, or a document which may contain the information, and*
  - (d) extracting the information from a document containing it."*
23. The issue of what constitutes a reasonable estimate was also considered in the case of *Alasdair Roberts v The Information Commissioner* (EA/2008/0042). The Commissioner endorses the following points made by the Tribunal at paragraphs 9 -13 of the decision:
  - *"Only an estimate is required"* (i.e. not a precise calculation)
  - The costs estimate must be reasonable and only based on those activities described in Regulation 4(3)
  - Time spent considering exemptions or redactions cannot be taken into account.
  - Estimates cannot take into account the costs relating to data validation or communication
  - The determination of a reasonable estimate can only be considered on a case-by-case basis and

- Any estimate should be “*sensible, realistic and supported by cogent evidence*”

24. In the *Alasdair Roberts* case, the complainant offered a number of suggestions as to how the requested information could be extracted from a database. The Tribunal concluded that none of the ways suggested would have brought the request under the costs limit. However the Tribunal also made the following more general comments on alternative methods of extraction:

*“(a)...the complainant set the test at too high a level in requiring the public authority to consider all reasonable methods of extracting data;*

*(b) that circumstances might exist where a failure to consider a less expensive method would have the effect of preventing a public authority from relying on its estimate...”* (para 15).

Those circumstances were set out at paragraph 13 where it was said:

*“...it is only if an alternative exists that is so obvious to consider that disregarding it renders the estimate unreasonable that it might be open to attack. And in those circumstances it would not matter whether the public authority already knew of the alternative or had it drawn to its attention by the requestor or any other third party...”*

25. In order to ensure that it was reasonable to base its estimate on extraction of information about the profession of defendants from the manual records the Commissioner has considered whether the public authority held the information in another format.
26. The Commissioner also asked whether the public authority had any operational interest to record the profession of defendants. For example it may be required to manage conflicts of interests. The Commissioner was informed that there was no such operational interest.
27. The Commissioner asked the public authority to explain to him how its electronic case management system works and whether it would be possible to provide the requested information through it.
28. The public authority informed the Commissioner that it has a casework management system called ‘CPS Case Management Release’ that runs through ExISS (Exchange Integration Service Stream).
29. The casework management system does have a defendant screen that does have a field for ‘occupation’. However it is a free text field and is not a mandatory field. Therefore it would not be possible to generate figures that would be a complete response to the complainant’s request. The Commissioner is satisfied that all of the requested information could not be derived from the electronic case management system.
30. The Commissioner asked whether there was any recorded other information outside the manual records and the case management system that could be used

- to work out the profession of defendants. He was informed that there was no further information.
31. The Commissioner has therefore concluded that it was reasonable for the public authority to base its estimate on looking through the manual records. There is no absolutely obvious alternative means of extracting all the requested information in this case. Indeed the only way to extract all the information would be to go to the manual records.
  32. As noted above, the public authority has told the Commissioner that to obtain the requested information it would need to go through all of the manual records that it holds and that this would be a costs issue.
  33. The Commissioner asked the public authority how many manual records it held for cases between 1 January 1998 and the date of the request 13 June 2008. The public authority replied that it held the following:
    - Magistrates' Court prosecutions. There is a retention period on these case files of one year. For the year 2007-8 there were 966,626 prosecutions and therefore 966,626 files to be checked.
    - Crown Court prosecutions. There is a retention file on these case files of three years or length of sentence whichever is longer. For the period between 2005-8 there were 276,370 prosecutions at Crown Courts and therefore 276,370 files to be checked.
    - In addition the public authority holds about 300,000 Crown Court files that are more than 3 years old.
  34. The total number of files that would need to be checked was therefore approximately 1.54 million files.
  35. The Commissioner asked the public authority to estimate how long it would take to look through a single file. The public authority indicated that this would be very difficult to answer as all the files are of different sizes and there may be up to 400 witnesses in some cases. It said that a very generous estimate would be 5 minutes. The Commissioner has taken 5 minutes as the estimate for one file.
  36. The overall estimate would therefore be 5 minutes x 1,540,000 = 128,333 hours. This gives a total estimate of over £3 million. 128, 333 hours is considerably above the 24 hours allowed in the fees limit.
  37. The Commissioner has also considered whether the public authority could have extracted some information from the electronic database in order to reduce the number of manual files that it would need to check. The Commissioner is aware that the ones that had any profession in the field would have been possible to eliminate and this would lead to fewer files needing to be checked. However he is satisfied that the majority of files would still need to be checked and that the full use of the electronic database would not reduce the number of files sufficiently to



bring the costs under the appropriate limit. In addition even the process of eliminating such a large number of files would also exceed the costs limit

38. The public authority does not have any obligation to provide any information in the event that complying with the full request exceeds the costs limit of the Act. The Commissioner considers that it was reasonable to conclude that it would exceed the cost limit to comply with the request. Therefore the Commissioner upholds the application of section 12(1) in this instance.
39. In light of these findings, the Commissioner also accepts that section 12(2) applies to the provision of the pension information requested as the same processes described above would be applicable to even confirm or deny that the information is held for the categories requested.

## **Procedural Requirements**

### *Section 16(1)*

40. Section 16(1) (full copy in the legal annex) provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
41. Whenever the cost limit has been applied correctly, the Commissioner must consider whether it would be possible for the public authority to provide advice and assistance to enable the complainant to submit a new information request without attracting the costs limit in accordance with paragraph 14 of the Code
42. In this case the Commissioner considers that it would have been reasonable for the public authority to specify the time it estimated would be needed to undertake a manual file search and to have advised the complainant that information about occupations could have been derived from the electronic case management system without exceeding the costs limit. Therefore the Commissioner has found that the public authority has breached section 16(1) of the Act. The Commissioner does not require any further remedial steps in relation to this breach as he has asked the public authority to disclose this subset of the information to the complainant as a potential informal resolution and it has subsequently done so.

### *Section 10(1)*

43. Section 10(1) (full wording in the attached legal annex) requires that a public authority confirms or denies whether or not it has relevant recorded information in accordance with section 1(1)(a) within twenty working days.
44. The public authority at first instance informed the complainant that it did not hold any relevant recorded information. It failed to confirm that it held relevant recorded information for the refined request dated 13 June 2008 until 21 August

2008. It therefore took considerably more than twenty working days. The Commissioner therefore finds a breach of section 10(1) in this case.

### *Section 17(5)*

45. Section 17(5) (full wording in the legal annex) requires that if a public authority is to rely on section 12(1) that it issues a notice within twenty working days. In this case the public authority took considerably more than twenty working days and the Commissioner therefore finds a breach of section 17(5) of the Act in this case.

## **The Decision**

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46. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- The application of section 12(1) with regard to the information about the number of prosecutions of police, solicitors and barristers
- The application of section 12(2) with regard to the pension information

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- Section 16(1) in relation to not providing reasonable advice and assistance to assist the applicant in submitting a new request.
- Section 17(5) with regard to the provision of the section 12 Refusal Notice outside the statutory time limit of 20 working days.
- Section 10(1) for not confirming that the information about the number of prosecutions of police, solicitors and barristers was held within the statutory time limit of 20 working days.

## **Steps Required**

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47. The Commissioner requires no steps to be taken.

## **Other matters**

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48. Although section 17(5) only requires that a public authority relying on section 12 should provide a notice stating this fact, the Commissioner considers that it would have been good practice for the public authority to specify that in relation to the pensions information it would exceed the costs limit for it to confirm or deny



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Information Commissioner's Office

whether this information was held, and that therefore section 12(2) was applicable in this case.

## Right of Appeal

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49. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 29<sup>th</sup> day of July 2009**

**Signed .....**

**Lisa Adshead  
Senior FOI Policy Manager**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### The Freedom of Information Act 2000

#### Section 1 - General right of access to information held by public authorities

- (1) Any person making a request for information to a public authority is entitled—
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
  - (b) if that is the case, to have that information communicated to him.
- (2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.
- (3) Where a public authority—
- (a) reasonably requires further information in order to identify and locate the information requested, and
  - (b) has informed the applicant of that requirement,
- the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

...

#### Section 10 - Time for compliance with request

- (1) Subject to subsections (2) and (3), 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.
- (2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.
- (3) If, and to the extent that—
- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
  - (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,
- the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.
- (4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with, the regulations.
- (5) Regulations under subsection (4) may—
- (a) prescribe different days in relation to different cases, and

(b) confer a discretion on the Commissioner.

(6) In this section—

- “the date of receipt” means—
  - (a) the day on which the public authority receives the request for information, or
  - (b) if later, the day on which it receives the information referred to in section 1(3);
- “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the [1971 c. 80.] Banking and Financial Dealings Act 1971 in any part of the United Kingdom

...

### **Section 12 – Exemption where cost for compliance exceeds the appropriate limit**

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

### **Section 16 – Duty to provide advice and assistance**

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

## Section 17 - Refusal of request

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.