

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 6 October 2010**

**Public Authority:** Crown Prosecution Service  
**Address:** 50 Ludgate Hill  
London  
EC4M 7EX

### Summary

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The complainant submitted a request for information relating to a report made by the Crown Prosecution Service (the "public authority") to Staffordshire Police. The public authority failed to provide an adequate response to the request within the terms of the Act.

The Commissioner's decision is that the public authority failed to comply with sections 17(1)(b) and 17(7)(a) and (b) of the Act and must now do so within 35 calendar days of the date of this Notice.

### 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.

### Background

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2. The complainant's son was killed whilst working on the construction of a road in the 1990s. The complainant believes that some of the evidence gathered included forged statements and he has tried to have the case reopened. As part of this process he has sought access to information created by the public authority.

## The request

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3. On 6 December 2009, the complainant wrote to the public authority and asked:

*"I write with regard to our last correspondence ... for sight of your report you provided to the police regarding no further action to be taken".*

4. On 21 December 2009 the public authority sent out the following response:

*"In your letter you ask for a copy of the report which the CPS provided to the police, which was mentioned in [name removed]'s letter dated 24 January 2005. This report is confidential between the CPS and the police and I am therefore unable to disclose it".*

## The investigation

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### Scope of the case

5. On 18 January 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He advised that, on the advice of Staffordshire Police, he had written for sight of a report which he described as: *"... the report on their [Staffordshire Police] investigations into forged statements regarding the death of [his son]"*. He further said:

*"I am asking for authorisation from the FOI to claim a copy of their report".*

6. On 25 January 2010 the Commissioner confirmed receipt of the complainant's letter.
7. On 2 February 2010 the Commissioner wrote to the public authority. He advised that it had not provided the complainant with an adequate refusal notice in accordance with section 17 of the Act and asked that it did so within 10 working days. The Commissioner advised the complainant accordingly.

8. On 5 February 2010 the public authority sought a time extension until 26 February 2010 for providing its response. The Commissioner agreed to this but asked that it informed the complainant of its intentions.
9. On 19 February 2010 the complainant wrote to the Commissioner advising that he had received no response from the public authority.
10. On 23 March 2010 the Commissioner wrote to the complainant to notify him that he would consider his complaint as he had still not received a proper response from the public authority. He advised the public authority accordingly and sought some initial information from it.
11. On 8 April 2010 the public authority wrote to the Commissioner. It stated that it had responded to all of the complainant's correspondence and that it had all been processed through its third tier complaints procedure. It provided a list of relevant correspondence; however, the Commissioner notes that there was no correspondence to the complainant further to its letter of 21 December 2009.

## **Chronology**

12. On 21 June 2010 the Commissioner commenced his investigation. He wrote to both parties to advise them accordingly.
13. The Commissioner also sought to ascertain whether or not there had been any further correspondence between the parties. He was informed that there had not.

## **Analysis**

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### **Procedural matters**

14. Although the Commissioner understands that the public authority did write to the complainant on receipt of his request, he does not consider that this response was written within the terms of the Act. The Commissioner's view is based on the facts that the public authority did not cite any exemptions and did not either offer any internal review or refer the complainant to the Commissioner. As a public authority which regularly processes requests under the Act the Commissioner would expect it to recognise a request for information.
15. When the complainant first contacted the Commissioner, the Commissioner wrote to the public authority and advised it that its refusal notice was inadequate. He asked it to make a proper response

to the complainant under the terms of the Act. It undertook to do this but failed to do so.

## Section 17

16. Section 17(1) provides that –

*“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.”*

17. Although the public authority did provide a response within the time limit, it failed to explain why it was withholding the information within the terms of the Act by only citing that it was 'confidential'. By failing to state that the information was exempt, specify the exemption(s) in question, and state why they applied, the public authority breached section 17(1)(a), (b) and (c).

18. Section 17(7) provides that -

*“A notice under subsection (1) ... 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.”*

19. The refusal notice did not include details of the public authority's complaints procedure nor did it inform the complainant of his rights to approach the Commissioner. It therefore breached sections 17(7)(a) and (b).

## **The Decision**

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20. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with section 17(1)(a), (b) and (c) of the Act as it did not state that the information was exempt, or specify and explain the exemption(s) by reference to which the information was being withheld.
21. The public authority has also breached section 17(7)(a) and (b) of the Act in both failing to include details of its complaints procedure and failing to inform the complainant of his rights to approach the Commissioner.

## **Steps required**

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22. The Commissioner requires the public authority to respond to the complainant's request by either disclosing the requested information or by issuing a valid refusal notice. Any refusal notice issued should comply with the requirements of section 17.
23. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## **Failure to comply**

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24. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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25. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

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 sent.

**Dated the 6<sup>th</sup> day of October 2010**

**Signed .....**

**Jon Manners  
Group Manager**

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