

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 July 2013

**Public Authority:** The Crown Prosecution Service

**Address:** 5<sup>th</sup> Floor Rose Court  
2 Southwark Bridge  
London SE1 9HS

#### Decision (including any steps ordered)

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1. The complainant requested information from the Crown Prosecution Service (CPS) about the authority on which the CPS made a decision not to prosecute.
2. The Commissioner's decision is that CPS responded in accordance with section 1 of the FOIA.
3. He requires no steps to be taken.

#### Request and response

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4. On 13 October 2012 the complainant requested information of the following description from the Crown Prosecution Service:

*"I HAVE RECENTLY BEEN INFORMED BY THE INFORMATION COMMISSIONER: South Wales Police: FS50454594. THAT THE CPS ADVISED THE SOUTH WALES POLICE FORCE NOT TO PROSECUTE THE DOCTORS WHO COMMITTED PERJURY AT THE INQUEST INTO THE DEATH OF MY CHILD.*

*Under the Freedom of Information Act 2000 (FOIA) I want to know upon what authority the CPS made this decision not to prosecute for the most serious crime of perjury.*

*When you consider your answer please bear in mind the openly published comments of Gaon Hart, Crown Prosecution Service reviewing lawyer in the Lynette White murder case:*

*While it is clear that the defendants were harassed into lying initially, the consequences of their perjury were devastating.*

*"Perjury strikes at the heart of the criminal justice system and impacts upon the integrity of the court process. The Crown Prosecution Service considers perjury to be extremely serious whether the falsehoods were told two or 20 years ago"*

*Read More*

*<http://www.walesonline.co.uk/news/wales-...>*

*It appears to me that the CPS have double standards and I request a full explanation under the FOIA".*

5. The request was made through the 'whatdotheyknow' website.
6. The CPS sought clarification of the request on 9 November 2012.
7. Following further correspondence, the CPS responded on 12 December 2012. It told the complainant:

*"The authority the CPS makes decisions on whether to prosecute is the Prosecution of Offences Act 1985 and the Code for Crown Prosecutors which is published in accordance with it".*

8. In its response, the CPS provided him with links to both of those - the legislation and the Code.
9. The complainant requested an internal review on 13 December 2012. He repeated his request, using the same wording:

*"My original request was this:*

*Under the Freedom of Information Act 2000 (FOIA) I want to know upon what authority the CPS made this decision not to prosecute for the most serious crime of perjury".*

10. The CPS sent him the outcome of its internal review on 11 February 2013. It upheld its original position with regard to the authority on which the CPS makes charging decisions, telling the complainant:

*"Your request under FOIA asked upon what authority the CPS made the decision not to prosecute particular doctors for perjury. [Name redacted]'s reply explained that the authority upon which the CPS makes decisions on whether to prosecute is the Prosecution of Offences Act 1985 and the Code for Crown Prosecutors, which is published in accordance with it. [Name redacted] also provided links to the legislation and the Code for Crown Prosecutors. This*

*accurately sets out the authority on which the CPS makes charging decisions and I have nothing to add to this part of the CPS response”.*

11. However, the CPS also told the complainant that it had gone on to consider disclosure of the information which explains the charging decision. In that respect the CPS told the complainant that it considers that sections 30 (investigations and proceedings) and 40 (personal information) of FOIA apply.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 18 February 2013 to complain about the way his request for information had been handled.

13. He told the Commissioner:

*“I find their reply to be grossly inadequate and therefore totally unacceptable. Would you would please kindly review the accuracy of the CPS' application of the law and subsequent reply under the Freedom of Information Act”.*

14. As is his practice, in order to progress his investigation the Commissioner wrote to the public authority asking it to reconsider the way it handled the request. He asked the CPS to provide him with its arguments for applying sections 30 and 40 to the information it considers falls within the scope of the request in this case.

15. In response, the CPS told the Commissioner:

*“We have considered this request further and although we considered the charging decision when responding to the internal review, we do not believe it was necessary to do so given the nature of the request ie the specific reference to the authority on which the CPS decision was made. Our view is that the charging decision is out of scope of the request consequently there is no withheld information”.*

16. The Commissioner considers the scope of his investigation to be the CPS's interpretation of the request and whether the charging decision falls within the scope of the request.

## Reasons for decision

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

17. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
18. The Commissioner notes that, having been asked to clarify his request, the complainant told the CPS:

*"I specifically requested information under the FOIA thus forth:*

*Under the Freedom of Information Act 2000 (FOIA) I want to know upon what authority the CPS made this decision not to prosecute for the most serious crime of perjury.*

*I am not interested in any "red herring" diversion, so simply answer the question as put.*

*Equally with regard to section 1(3) of the FOI Act, Surely when you arrived at your decision not to prosecute for the heinous crime of perjury, The CPS had all the evidential files to hand in order to arrive at your decision.*

*THIS WOULD OBVIOUSLY INCLUDE THE NAME OF ALL THE DOCTORS INVOLVED!*

*Certainly, the CPS representative who visited me, together with two senior South Wales Polices offerers, was more that adequately versed with the case and all the doctors and administrative staff involved in the deception!*

*Therefore, I would be grateful if you stop wasting taxpayers' resources and simply answer the question as put with no further subterfuge.*

*This matter does not require any personal details of the doctors, nor indeed anyone else involved in this care...why should it?"*

19. In the Commissioner's view, a public authority is required to read a request impartially. Where the request clearly specifies the information required, the authority's background knowledge of the requester or their interests should not affect the information they receive.

20. The Commissioner has considered the CPS's interpretation of the request in this case and looked at whether there could be considered to be more than one objective reading of the request. In that respect, he has considered whether the request could be interpreted, for example, to mean upon *whose* authority the CPS took the decision not to prosecute.
21. The Commissioner has considered the wording of the request and the way in which the complainant responded when the CPS sought clarification of his request.
22. Having considered the matter, the Commissioner is satisfied that the terms in which the request was framed were clear. In providing the complainant with details of the authority on which the CPS decision was made, he considers that the CPS responded in accordance with section 1 of the FOIA.
23. In these circumstances, the CPS is not required to take any further steps.

*The charging decision*

24. The Commissioner understands that the request for information in this case relates to a decision whether or not to prosecute.
25. The Commissioner notes that, in conducting the internal review of its handling of the request, the CPS considered disclosure of the information that explains that charging decision. However, having considered the matter further, as a result of the Commissioner's intervention, the CPS confirmed that it considers that the charging decision is out of scope of the request.
26. Having regard to the wording of the request, the Commissioner takes the view that, objectively, the charging decision does not fall within the scope of the request.
27. In these circumstances, the CPS is not required to take any further steps.
28. It remains open to the complainant to make a new request for information relating to the charging decision if he wishes to do so.

## Right of appeal

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29. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

30. 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.
31. 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**