

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 June 2015

Public Authority: Crown Prosecution Service
Address: Rose Court
2 Southwark Bridge Road
London
SE1 9HS

Decision (including any steps ordered)

1. The complainant requested information about conspiracy to cheat public revenue.
2. The Commissioner's decision is that the Crown Prosecution Service is correct to state that it does not hold some of the requested information.
3. The Commissioner does not require the Crown Prosecution Service to take any steps.

Request and response

4. On 6 May 2014 the complainant wrote to the Crown Prosecution Service (CPS) and requested information in the following terms:

"1. Confirm if Conspiracy to Cheat Public revenue is a common law or statutory conspiracy.

2. If it is a statutory conspiracy, provide the statute specifying the offence allowing it to be charged that way.

3. If it is possible to charge common law offences as statutory conspiracies without a statute specifying the offence, is there a reason for having two types of conspiracies (common law & statutory)?

4. If a common law offence is charged as a statutory conspiracy without a statute specifying the offence, how is the maximum sentence decided?

Please confirm above and provide any supporting documents such as practice directions."

5. The CPS responded on 11 June 2014. It stated that it considered the request to be for legal advice and explained that it did not provide such advice to members of the public. It advised the complainant to seek independent legal advice. The CPS also provided the complainant with a copy of its published legal guidance on the topic of conspiracy, including conspiracy to cheat.
6. Following an internal review the CPS wrote to the complainant on 19 August 2014. It upheld its original position but did explain that it had been wrong to suggest that conspiracy to cheat was included in the guidance it sent him.

Scope of the case

7. The complainant contacted the Commissioner on 10 September 2014 to complain about the way his request for information had been handled. Initially, he complained about the CPS's claim that his request was a request for legal advice.
8. During the Commissioner's investigation, the CPS accepted that the request was not a request for legal advice. It disclosed more information to the complainant entitled 'Cheating the public revenue'. The complainant was not satisfied with the disclosure.
9. Therefore the Commissioner will consider whether the CPS holds any recorded information in relation to the complainant's request.

Reasons for decision

10. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have the information communicated to him.
11. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether the information is held and any reasons offered by it to explain why the information is not held. In addition, the Commissioner will consider any reason why it is inherently likely or unlikely that the information is not held.
12. The Commissioner is required to make a judgement on whether, on the balance of probabilities, the requested information is held or not.

13. Initially the complainant argued that the CPS was saying, in effect, that with regard to question 1, it does not know if conspiracy to cheat is a common law or statutory conspiracy despite charging hundreds of people annually. With regard to question 2, the CPS does not know which legislation allows the common law offence of 'cheat' to be charged as a statutory conspiracy; with regard to question 4, the CPS does not know which legislation specifies the maximum sentence for statutory conspiracy of 'cheat.'
14. The CPS explained that in relation to question 1 of the request, its guidance shows that conspiracy to cheat the public revenue can either be a statutory conspiracy or common law offence; on that basis, the CPS confirmed that it did not hold information in relation to question 1 as the offence is not either one type of offence or the other.
15. The CPS also explained that in response to question 2, all of the relevant legislation is available online at: <http://www.legislation.gov.uk/>. With regard to question 4, the CPS explained that as it played no role in the setting of sentences, it was very unlikely that it held any information in relation to this question.
16. The Commissioner enquired whether the information had ever been held, and about the scope, quality, thoroughness and results of the searches carried out by the CPS. The Commissioner also enquired whether the information had ever been held but deleted and whether copies of information may have been made and held in other locations.
17. The CPS explained that it had searched its legal guidance and guidance issued by the Specialist Fraud Division, as these two sets of guidance would have been where information on legal questions would be held. It also explained that its legal guidance is held on its intranet and that there was a public facing version of its guidance on its website: http://www.cps.gov.uk/prosecution_policy_and_guidance.html.
18. With regard to whether the information had ever been held and subsequently destroyed, the CPS explained that if held the requested information would have been in its Legal Guidance, which was not the case. It explained that it was not possible to say whether it had once held the information in question but had since deleted it.
19. Furthermore, the CPS explained that the updating of its legal guidance was a continuous process, which was done in line with any changes to legislation. It confirmed that there was no retention policy for out-of-date guidance.
20. The Commissioner also asked whether there was any legal requirement or business need for the CPS to hold the information. The CPS explained

that there was no reason for it to hold the requested information as lawyers could look up relevant case law at <http://www.legislation.gov.uk> if necessary. The CPS also confirmed that it had no role in the setting of sentences.

21. Furthermore, the Commissioner considered whether the CPS had any reason or motive to conceal the requested information, but he has not seen any evidence of this.
22. The Commissioner contacted the CPS regarding questions 1 and 2, as he considered that it would hold information in relation to these two questions. The CPS confirmed that it was able to provide the complainant with information in relation to questions 1 and 2, explaining that there had been some initial confusion as conspiracy to cheat is a statutory conspiracy whereas cheating the public revenue is a common law offence.
23. In relation to question 1, the CPS confirmed to the complainant that conspiracy to cheat public revenue is a statutory conspiracy. In relation to question 2 the CPS explained that the relevant statute is section 1(1) of the Criminal law Act 1977. The CPS also provided the complainant with a copy of this.
24. In relation to question 3, the CPS explained that it did not have any involvement in the drafting of legislation. It also explained that common law is the result of judicial precedent and that the judiciary is independent of the CPS.
25. In relation to question 4, the CPS explained that it did not hold any information, as it does not play any part in sentencing. The CPS advised the complainant to contact the Sentencing Council for England and Wales and provided the contact details.
26. The complainant explained to the Commissioner that he was dissatisfied with this. He explained that if he were to accept the answer to question 1, then the answer to question 2 was incorrect and in summary, he considered that questions 2, 3 and 4 would remain unanswered.
27. The Commissioner considers that it is not within his remit to ascertain whether disclosed information is accurate or not.
28. Taking everything into account, the Commissioner does not consider that there is any evidence that show that the CPS holds any additional recorded information in relation to questions 1 and 2, or any recorded information in relation to questions 3 and 4.
29. Therefore, the Commissioner is satisfied that, on the balance of probabilities, the CPS does not hold any further recorded information in

relation to questions 1 and 2, or any recorded information in relation to questions 3 and 4. Accordingly, he does not consider that there is a breach of section 1 of the FOIA.

Section 16 – Duty to provide advice and assistance

30. Section 16 of the FOIA places a duty on a public authority to provide advice and assistance to someone making a request for information.
31. The Commissioner notes that question 4: "*If a common law offence is charged as a statutory conspiracy without a statute specifying the offence, how is the maximum sentence decided?*" is about sentencing. He considers that the CPS should have initially informed the complainant where the information might be held. The Commissioner therefore considers that the CPS did breach section 16.
32. However, the Commissioner notes that during his investigation the CPS informed the complainant that although it did not hold information in relation to question 4, he could obtain it from the Sentencing Council for England and Wales. The CPS also provided the contact details.

Section 10

33. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have it communicated to them.
34. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "no later than the twentieth working day following the date of receipt".
35. In this case the CPS has breached section 10(1) by failing to respond within 20 working days.

Other matters

36. The Commissioner notes that the complainant requested an internal review on 15 June 2014 and the CPS responded on 19 August 2014.
37. Part VI of the section 45 Code of Practice makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information. The Commissioner considers that the procedure should encourage a prompt determination of the complaint.

38. As he has made clear in his '*Good Practice Guidance No 5*', the Commissioner considers that these internal reviews should be completed as promptly as possible. While no timescale is laid down by the FOIA, the Commissioner has decided 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 be reasonable to take longer but in no case should the time taken exceed 40 working days.
39. The Commissioner is concerned that it took over 20 working days for the internal review to be completed.

Right of appeal

40. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

41. 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.
42. 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
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