

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 May 2016

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

#### Decision (including any steps ordered)

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1. The complainant requested information relating to the Mail on Sunday's story about Lord Janner published on 21 June 2015.
2. The Commissioner's decision, on the balance of probabilities, is that the CPS does not hold the requested information. However, as the CPS issued its response more than 20 working days after receiving the request, it breached section 10(1) of the FOIA. The Commissioner does not require the CPS to take any remedial actions to ensure compliance with the legislation.

#### Request and response

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3. On 30 June 2015, the complainant wrote to the CPS and requested information in the following terms:

*"Please note that I am only interested in information which related to the period June 20 2015 to the present day.*

*Please note that the reference to Alison Saunders should also include her private office.*

*Please note that as far as email communication is concerned I am interested in all emails sent from all Ms Saunders' own official CPS accounts. But I am also interested in all emails which SHE personally sent from non CPS email addresses but via CPS equipment including a lap top (s).*

*1...Could you please supply copies of all correspondence and communications (including emails) exchanged between Alison Saunders and any CPS employee which is in any way related to the issues reported in and raised by the Mail on Sunday's page 5 story about Lord Janner which was published on the 21 June 2015. I enclose a copy of the story for your convenience. <http://www.dailymail.co.uk/news/article-3132930/Lord-Janner-secret-visits-Lords-declared-unfit-police-questions-child-abuse-allegations.html> In the interest of clarity I am interested in all correspondence and communication including emails which related to the report, the revelations in the report and the possible implications of those revelations. But I am also interested in all correspondence and communications exchanged by Alison Saunders during the aforementioned period which related to Lord Janner's visits to the House of Lords generally and the fact that he continued to be on parliamentary business in Spring and Summer of 2014. In each case I am interested in receiving both sides of the correspondence and communications."*

4. The CPS responded late to the complainant on the 25 August 2015. The CPS stated in its response that it did not hold any information falling within the scope of the request.
5. Following an internal review the CPS wrote to the complainant on 15 September 2015. It stated that it had considered the request again and examined the conclusion that the CPS does not hold any information falling within the scope of it. The CPS confirmed that the initial response was correct.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 29 September 2015 to complain about the response to his information request. The complainant stated that he was unhappy with the delay in responding to his request and also that he disputed the response that the CPS held no information falling within the scope of his request.
7. Therefore in this case, the Commissioner has considered whether, on the balance of probabilities, the requested information is held by the CPS. The analysis below also records the breach of the FOIA through the delayed response.

## Reasons for decision

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### Section 10

8. Section 10(1) of the FOIA provides that a public authority must comply with section 1(1) promptly and in any event no later than the twentieth working day following the date of receipt.
9. In this case the CPS failed to respond to the request within 20 working days of receipt and, in so doing, breached the requirement of section 10(1).

### Section 1

10. Section 1(1) of the 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 that information communicated to him.
11. In cases where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – in accordance with a number a First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely or unlikely that the public authority holds information relevant to the complainant's request.
12. In such cases, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. The Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
13. The Commissioner asked the CPS about the searches it had undertaken in response to the request. The CPS explained that on receipt of the request it contacted those who would be likely to hold any relevant information, in order to ascertain whether any information within the scope of the request was held. The CPS explained that it contacted Private Office, the Parliamentary and Complaints Unit and the lawyers involved with the case.
14. The CPS stated that after the searches were completed it received an email confirmation that no information was held.

15. The Commissioner asked the CPS to explain whether the searches included electronic data, and whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.
16. The CPS explained that the relevant CPS policy states that staff should not use personal IT equipment for CPS work purposes and the Director does not use a personal account on a CPS device. It stated that it did include electronic searches of email accounts on the CPS network; the CPS explained that it searched the email accounts of the Director of Public Prosecutions, the head of Private Office, Parliamentary Correspondence and the lawyers involved in the case. The CPS stated that it was confirmed that neither of the lawyers in the case had any relevant discussions with the Director at meetings.
17. The Commissioner asked the CPS to explain what search terms it used when it carried out searches for electronic data. The CPS stated that the following search terms were used: "Janner", "Enamel" (the name given to the investigation of Lord Janner) and "Lords". The CPS also stated that the term "Mail on Sunday" was also used to search the CPS email account for Parliamentary Correspondence.
18. The Commissioner also asked the CPS about its formal records management policy and specifically what it says about the retention and deletion of records of this type. The CPS provided a link to its records management manual, however it confirmed that it was aware of the current embargo on deleting any information due to the ongoing Independent Inquiry into Child Sexual Abuse and that therefore the CPS record management manual has been temporarily superseded.
19. Given the explanations provided by the CPS, the conclusion of the Commissioner is that, on the balance of probabilities, the CPS does not hold the requested information and, therefore, it complied with section 1(1)(a) of the FOIA when it stated that the information within the scope of the request was not held.

## **Other matters**

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20. As well as the finding above on section 10(1), the Commissioner has made a record of the delay in this case. This may form evidence in future enforcement action against the CPS should evidence from other cases suggest that there are systemic issues within the CPS that are causing delays.

## Right of appeal

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21. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

22. 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.
23. 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 .....**

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