

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 3 April 2018

**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 the criminal case file held by the Crown Prosecution Service (CPS) in respect of a crime for which he was the alleged victim. The CPS said that the information was exempt from disclosure under section 30(1)(c) (investigations and proceedings) and section 40(2) (personal information) of the FOIA.
2. The Commissioner considered whether the request was primarily for the complainant's own personal data, and found that it was. The Commissioner has therefore decided that the requested information was exempt from disclosure under section 40(1) of the FOIA and that the CPS should have cited section 40(5)(a) to neither confirm nor deny whether it holds the requested information.
3. The Commissioner does not require the CPS to take any steps.

#### Request and response

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4. On 23 November 2016, the complainant wrote to the CPS and requested information in the following terms:

*"Please inform me whether or not you hold the information specified below.*

*If you do hold the requested information please send me a copy.*

*I am requesting a copy of all the information you hold in respect of a case handled by your North West Area to which you gave the reference number: [redacted].*

*As I understand it, in respect of case ref: [redacted]:-*

*\* The Police submitted the matter to you in November 2015.*

*\* Your decision, as to whether or not to prosecute, was sent to the alleged victim in September 2016”.*

5. The CPS responded on 20 December 2016. It stated that the requested information was exempt from disclosure under section 30(1)(c) and section 40(2) of the FOIA.
6. Following an internal review the CPS wrote to the complainant on 24 January 2017. It upheld its application of the two exemptions.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 5 April 2017 to complain about the way his request for information had been handled. He disagreed with the application of section 30(1) and section 40(2) of the FOIA. The Commissioner commenced an investigation in July 2017, which she paused at the request of the complainant. The complainant contacted her in February 2018, stating that he was ready for the investigation of his complaint to recommence.
8. During the course of the Commissioner’s investigation, the CPS confirmed that section 40(2) and section 30(1) of the FOIA remained engaged.
9. Having considered the request, and in view of information provided by the CPS, the Commissioner has instead considered whether the complainant requested his own personal data, and therefore whether the CPS’s response should have been to cite section 40(5)(a) to neither confirm nor deny whether it held the information.

## **Reasons for decision**

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### **Section 40 – personal information**

10. Section 1(1) of the FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities:

- a) the duty to inform the applicant whether or not requested information is held; and, if so
  - b) the duty to communicate the information to the applicant.
11. Section 40(2) of the FOIA, which the CPS applied to the request, provides that information is exempt from disclosure if it is the personal data of a third party (i.e. someone other than the requester) and if one of the conditions under section 40(3) or section 40(4) are met.
  12. However, where the information requested is primarily the personal data of the requester, there is an exemption from disclosure at section 40(1) of the FOIA and section 1(1)(a) of the FOIA (the duty to confirm or deny whether the information is held) does not apply.
  13. Section 40(1) of FOIA states:

*"Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject"*.
  14. Section 40(5)(a) of the FOIA excludes a public authority from complying with the duty to confirm or deny in relation to information which, if held, would be exempt information by virtue of section 40(1) of the FOIA.
  15. It is important to note that sections 40(1) and 40(5)(a) of the FOIA are class based exemptions. This means there is no need to demonstrate that disclosure (or confirmation/denial) under the FOIA would breach an individual's rights under the Data Protection Act 1998 (DPA) when engaging these exemptions.
  16. The DPA defines personal data as:

*"...data which relate to a living individual who can be identified*

    - a) *from those data, or*
    - b) *from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."*
  17. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

18. Having considered the request in this case, and background information provided by the CPS, the Commissioner is satisfied that the complainant is the data subject of all of the requested information. This is because the information he has requested is a criminal case file about an incident where he was the alleged victim. The CPS has confirmed that shortly before he made the FOIA request, the complainant had submitted a subject access request for the same case file, which it responded to. The information the complainant has requested is therefore inextricably linked to him and meets the criteria for personal data, set out in paragraphs 16 and 17, above.
19. In this case, the Commissioner is therefore satisfied that the requested information is the complainant's personal data. It follows that the Commissioner considers that the complainant is the data subject within the meaning of the exemption at section 40(1) of the FOIA.
20. In relation to such information, the provisions of section 40(5)(a) mean that the CPS was not required to comply with the duty to confirm or deny whether it held the information, as the duty to confirm or deny does not arise in relation to information which is (or, if it were held by the CPS, would be) exempt information by virtue of section 40(1) of the FOIA.
21. For the reasons set out above, the Commissioner is satisfied that under section 40(5)(a), the CPS was under no duty to confirm or deny whether it held the requested information. In view of her decision, the Commissioner has not gone on to consider the CPS's application of section 30(1) and section 40(2) of the FOIA.

## Right of appeal

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22. 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: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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** .....

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