

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 31 January 2023

**Public Authority:** Crown Prosecution Service  
**Address:** 102 Petty France  
London  
SW1H 9EA

#### **Decision (including any steps ordered)**

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1. The complainant has made a series of requests for information connected to previous allegations he had made. The above public authority ("the public authority") refused to confirm or deny that it held the requested information.
2. The Commissioner's decision is that the public authority was entitled to rely on section 40(5A) to refuse to confirm or deny if it held any information within the scope of elements [1], [2], [3], [10], [11], [12], [14], [15] and [16] because the information, if it were held, would be the complainant's own personal data. It was entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny that it held information within the scope of elements [4], [5] and [6] as doing so would reveal the personal data of one or more third parties. It was not entitled to rely on either exemption to refuse to confirm or deny that it held any information within the scope of elements [7], [8], [9], [13], [17] or [18].
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Confirm individually whether or not it holds any information within the scope of elements [7], [8], [9], [13], [17] or [18] and, if it does, provide that information or issue a refusal notice that complies with section 17 of FOIA.

4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

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5. On 16 December 2021, the complainant wrote to the public authority and requested information in the following terms:

"Two undercover police officers from Cheshire police on site at [Company 1] warehouse Warrington between November 2019 and February 2020 regarding threats being made against [the complainant] on and off site by [Company 1] management. Which the police connected to [Company 2].

"[1] Why didn't The Crown Prosecution service along with Cheshire police prosecute [Company 1]?"

"[2] Why didn't The Crown Prosecution service prosecute [Company 2]?"

"[3] Why did the CPS and Cheshire police cover up the detestable and hideous threats being made against [the complainant] by a deranged management team at [Company 1] and [Company 2]? A guaranteed conviction and you covered it up.

"[4] When the CPS became aware of the involvement of [redacted] why didn't they prosecute him?"

"[5] Why wasn't [redacted] higher court advocate reported to the SRA?"

"[6] Why did the CPS cover up the nefarious acts of [redacted] higher court advocate, which date back to 2008?.

"[7] What is the relationship between the CPS and [redacted] higher court advocate?"

"[8] Do the CPS employ [redacted] higher court advocate?"

"[9] Who paid for the services of [barrister] deputy high court judge?"

"[10] What is the agenda that the CPS have against [the complainant] which you have openly discussed with [redacted] higher court advocate.?"

- “[11] All emails between the CPS and Cheshire police regarding [the complainant] between Nov 2019 and December 2021
- “[12] All emails between the CPS and [Company 1] regarding [the complainant] between Nov 2019 and December 2021
- “[13] All emails between the CPS and [Company 2] between Nov 2019 and December 2021
- “[14] All emails between the CPS and Kirwans solicitors regarding [the complainant] between Nov 2019 and December 2021
- “[15] All emails between the CPS and [redacted] solicitor regarding [the complainant] between Nov 2019 and December 2021
- “[16] All emails between the CPS and The employment tribunal appeals court regarding [the complainant] between May 2021 and December 2021
- “[17] All emails between the CPS and Manchester employment tribunal between Nov 2019 and December 2021
- “[18] All emails between the CPS and [barrister] between Nov 2019 and December 2021”
6. The public authority responded on 17 January 2022. It stated that it was relying on “section 40(5) of FOIA”<sup>1</sup> to refuse to confirm or deny whether any information was held. It upheld this position at internal review

## **Reasons for decision**

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7. Section 40(5A) of FOIA allows a public authority to refuse to confirm or deny holding information that, if it existed, would be the requester’s own personal data. This is an absolute exemption and there is no requirement to consider the public interest or the requester’s wishes.
8. Section 40(5B) of FOIA allows a public authority to refuse to confirm or deny holding information if the mere act of confirming or denying that the information was held would, in itself, disclose the personal data of a third party in breach of data protection legislation.
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<sup>1</sup> the Data Protection Act 2018 modified section 40(5) of FOIA which is now split into two parts.

9. Any information the public authority held within the scope of elements [1], [2], [3], [10], [11], [12], [14], [15] and [16] would be the complainant's own personal data as he is either named in that element of the request or the element is clearly tied to a situation involving him. There is thus no possibility of anonymising the information sufficiently to break its link to the complainant.
10. The public authority was therefore entitled to rely on section 40(5A) of FOIA to refuse to confirm or deny holding any of this information.
11. Elements [4] to [6] concern allegations of a criminal nature against a named higher court advocate. As the individual concerned is named in these elements, merely revealing whether or not that information was held would disclose whether or not the individual had had some form of involvement with the criminal justice system.
12. The individual does not have to have committed a criminal offence – they only need to be accused of one for related information to be criminal offence personal data.
13. Criminal offence personal data can only be processed under FOIA if the data subject has either made the information public themselves or has consented to the public authority confirming that it holds the information. The Commissioner has seen no evidence that either condition is satisfied and thus there is no lawful basis on which this personal data could be processed.
14. As there would be no lawful basis under data protection legislation for issuing a confirmation or a denial, it follows that the public authority is entitled to rely on section 40(5B) of FOIA to refuse these elements.

**Elements [7], [8], [9], [13], [17] and [18]**

15. None of these elements mentions the complainant. Given the way the remainder of the request is structured, it is possible that this is an oversight on his part, but the Commissioner can only deal with the request as it is written.
16. Elements [13] and [17] do not mention any individual. Element [18] does refer to an individual, but it can be inferred from the request that correspondence would have been with the individual in their professional capacity as a barrister and there are many reasons why the public authority might wish to correspond with a barrister. Given the broad time parameters, the public authority could well have corresponded with all these third parties concerned on any number of topics and the Commissioner is not persuaded that any information that was held could only relate to the complainant.

17. In respect of elements [7], [8] and [9], the Commissioner recognises that both a barrister and a higher court advocate are identified in the request.
18. However, the information that has been requested about each individual relates to their professional relationship (if indeed one exists) with the public authority. Given that the individuals have a degree of seniority, the Commissioner considers that it would be both lawful and fair to the individuals concerned for the public authority to confirm or deny that it has some form of professional relationship with them.
19. The Commissioner is therefore satisfied that none of these elements engages either section 40(5A) or Section 40(5B) and thus the public authority must now confirm or deny whether it holds any relevant information.

### **Other matters**

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20. The Commissioner recognises that some of the information the public authority holds within the scope of [7], [8], [9], [13], [17] and [18] may well be personal data or fall under one or more of the other exemptions in Part II of FOIA. This decision notice does not require the public authority to disclose any information – only confirm whether the information is held. If information is held, the public authority must then consider whether it can be disclosed and, if it cannot, an appropriate refusal notice must be issued.
21. Whilst he has no power to require it to do so as part of a decision notice issued under FOIA, the Commissioner would strongly advise the public authority to re-consider the entire request under the subject access provisions of data protection legislation and respond accordingly – if it has not already done so.

## 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.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 .....**

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