

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

### **Decision notice**

**Date:** 4 June 2024

**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 requested information about a prosecution case in which he is named as the defendant. The Crown Prosecution Service (CPS) would neither confirm nor deny that it holds the requested information, citing section 40(5A) (Personal information) of FOIA.
2. The Commissioner's decision is that the CPS was entitled to rely on section 40(5A) of FOIA to neither confirm nor deny whether it holds the requested information. However, it breached section 17(1) of FOIA by failing to issue a valid refusal notice within twenty working days of receipt of the request.
3. The Commissioner does not require further steps as a result of this decision.

#### **Request and response**

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4. On 30 October 2023, the complainant wrote to the CPS about a specific prosecution case and requested information in the following terms:  
  
"Given you now appear to be the CPS conducting lawyer handling the case and that you have replaced [name redacted] of the CPS in that capacity then could you please confirm that is correct and if so the reason for you having replaced him."

5. On 12 December 2023, the CPS replied to the complainant in private, course of business correspondence, outside of FOIA.
6. The CPS then provided a formal response under FOIA, on 28 December 2023. It would neither confirm nor deny whether it held the requested information, citing "Section 40(5) of the FOIA - Personal Data Relating to Third Parties".
7. Following an internal review, on 8 February 2024, the CPS stated that it would neither confirm nor deny whether it held the requested information, by virtue of section 40(5A) of FOIA. This exemption applies where the requested information is the personal data of the requester.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 10 February 2024 to complain about the way his request for information had been handled. He disagreed with the basis of the refusal of the request. He was also concerned about the delay in responding to the request.
9. The analysis below considers the CPS' reliance on section 40(5A) of FOIA to issue a neither confirm nor deny response. The Commissioner has considered the procedural elements of the response under section 17(1) of FOIA.

### **Reasons for decision**

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#### **Section 40 – Personal information**

10. Section 40(5A) allows a public authority to refuse to confirm or deny that it holds information if that information would (if held) be exempt information under section 40(1) of FOIA.
11. Section 40(1) of FOIA states:

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."
12. Section 40(1) is an absolute exemption. If the requested information is the requester's own personal data, it is exempt information. There is no requirement to consider the public interest in disclosure, or the requester's views.

13. 'Personal data' is defined in section 3(2) of the Data Protection Act 2018 as:  
  
    "any information relating to an identified or identifiable living individual".
14. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
15. In this case, the full text of the complainant's letter of 30 October 2023 makes it clear that he is enquiring about a criminal prosecution case for which he is the defendant. He is clearly identified in the request, as is the case number, and any information, if held, would, by definition, relate specifically to decisions taken about him, and have him as its focus. Such information would therefore be his personal data.
16. Given the nature and context of the request, the Commissioner is satisfied that the requested information, should it exist, would be the personal data of the complainant and that section 40(1) of FOIA is engaged. Therefore, under section 40(5A), the CPS is not required to confirm or deny whether it holds the requested information.
17. The Commissioner's decision is, therefore, that the CPS was entitled to apply section 40(5A) of FOIA to issue the neither confirm nor deny response.

## **Procedural matters**

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### **Section 17 – Refusal of request**

18. Section 17(1) of FOIA requires a public authority to communicate its reasons for refusing to confirm or deny that information is held, within 20 working days of receipt of a request.
19. In this case, the CPS took 41 working days to communicate its neither confirm nor deny response to the complainant. This was a procedural breach of section 17(1) of FOIA.

## **Right of appeal**

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20. 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)

21. 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.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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