

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 August 2018

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

Decision (including any steps ordered)

1. The complainant has requested from the Crown Prosecution Service (the "CPS") information about how a decision was reached in a particular case. The CPS would neither confirm nor deny ("NCND") holding any information, citing section 40(5) (personal information) of the FOIA on the basis that, if it was held, it would be the personal data of third parties. The Commissioner's decision is that section 40 is not engaged.
2. The Commissioner requires the CPS to take the following steps to ensure compliance with the legislation:
 - confirm or deny whether any information is held and either disclose it or issue a fresh response which is compliant with section 17 of the FOIA.
3. The CPS 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.

Background

4. The complainant's request centres around decisions which may have been made by the CPS in respect of his sister. His sister died in 1999.
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Request and response

5. On 3 November 2017 the complainant wrote to the CPS and requested information in the following terms:

*"In recent correspondence to your Northwest regional office in relation to the abuse of [name redacted], I have asked on several occasions for the following information; **the evidence base and expertise that was sought and used by the CPS regional office to ascertain the impact on a mentally ill vulnerable young woman of a pregnancy termination resulting from an illegal sexual relationship with a Mental Health Professional whilst she was in their care.** As yet, I have not received an answer and therefore I am now requesting this under FOI".*

6. The CPS responded on 10 November 2017. It would neither confirm nor deny holding any information. It cited section 40(5) (personal information) of the FOIA as its basis for doing so.
7. Following an internal review the CPS wrote to the complainant on 5 February 2018. It maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 7 March 2018 to complain about the way his request for information had been handled.
9. Following some initial confusion, the necessary documents were provided to the Commissioner on 18 April 2018.

Reasons for decision

Section 40 – personal information

10. Under section 1(1)(a) of the FOIA, a public authority is obliged to advise an applicant whether or not it holds the requested information. This is known as the "duty to confirm or deny". However, the duty to confirm or deny does not always apply and authorities may refuse to confirm or deny through reliance on certain exemptions under the FOIA.
11. The analysis below considers section 40(5)(b)(i) FOIA. The consequence of section 40(5)(b)(i) is that if a public authority receives a request for information which, if it were held, would be the personal data of a third party (or parties), then it can rely on section 40(5)(b)(i), to refuse to

confirm or deny whether or not it holds the requested information if doing so would itself breach any of the data protection principles.

12. Consideration of section 40(5) involves two steps: firstly, whether providing the confirmation or denial would involve the disclosure of personal data, and secondly, whether disclosure of that personal data would be in breach of any of the data protection principles.

Is the information personal data?

13. The first step for the Commissioner to determine is whether the requested information, if held, constitutes personal data, as defined by the DPA. If it is not personal data, then section 40 cannot apply.

14. 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."*

15. 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.
16. The Commissioner asked the CPS whose personal data it considered the request to be, as the main subject of the request is deceased. It advised her as follows:

"If the information was held we consider the personal data is of the defendants rather than the complainant's sister".

17. The CPS did not explain who the defendants would be or how they would be identifiable by confirmation or denial that any information is held.
18. The Commissioner accepts that, if any information is held which refers to other cases by the defendants' names, its disclosure could involve the disclosure of third party data which may be in breach of the DPA. However, the issue at point in this decision notice is whether the actual action of confirmation or denial as to the existence of any information would in itself involve the processing of any personal information.
19. Taking into account the response provided by the CPS, and the lack of evidence or further reasoning to explain its position, the Commissioner

does not accept that the confirmation or denial as to the existence of any information in itself would involve the processing of any personal information. The Commissioner therefore concludes that the CPS is not entitled to rely on section 40(5) and she finds it is not engaged.

Right of appeal

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: 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.

Signed

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