

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 January 2024

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

Decision (including any steps ordered)

1. The complainant requested copies of witness statements relating to the trial of Paul Burrell. The Crown Prosecution Service ("CPS") refused the request, citing the exemptions for law enforcement (section 31) and personal information (section 40(2)).
2. The Commissioner's decision is that CPS appropriately applied the exemptions contained in section 31(1)(a)-(c) of the FOIA to withhold the requested information.
3. The Commissioner does not require CPS to take any steps.

Request and response

4. On 30 March 2023 the complainant requested the following information from CPS:

"I am writing to request a copy of two witness statements from a prosecution file under the Freedom of Information Act 2000...It is a matter of public record...that Sir Michael Peat and Mrs Fiona Shackleton gave statements to two Metropolitan Police Officers..."
5. CPS responded on 28 April 2023 and confirmed that it was withholding the information under the exemptions for law enforcement (section 31) and personal information (section 40(2)).
6. On 22 May 2023 the complainant asked CPS to carry out an internal review of its handling of the request.
7. On 10 July 2023 CPS provided the complainant with the outcome of its internal review. The review confirmed that it was maintaining its position.

Scope of the case

8. On 9 October 2023 the complainant complained to the Commissioner about CPS' handling of their request.
9. The Commissioner confirmed that his investigation would consider whether CPS correctly withheld the requested information.

Reasons for decision

Section 31 – law enforcement

10. CPS withheld the witness statements under the exemptions in sections 31(1)(a) – 31(1)(c) of the FOIA.
11. The following analysis sets out why the Commissioner has concluded that CPS was entitled to rely on section 31(1)(a)-(c) of the FOIA in this particular case.
12. Section 31(1) states:

“(1)Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

- (a) the prevention or detection of crime,
 - (b) the apprehension or prosecution of offenders,
 - (c) the administration of justice....”
13. Section 31(1)(a) covers all aspects of the prevention and detection of crime. It could apply to information on general policies and methods adopted by law enforcement agencies, as well as information about specific investigations.
 14. Section 31(1)(b) overlaps with both 31(1)(a) and 31(1)(c). It could potentially cover information on general procedures about apprehending offenders or the process for prosecuting offenders.
 15. Section 31(1)(c) protects authorities from disclosures that could interfere with their efficiency, effectiveness or their ability to conduct proceedings fairly. This includes harm to the administrative arrangements for these bodies, the appointment of magistrates and judges, or arrangements for the care of witnesses. It would also cover any disclosures that could interfere with the execution of process and orders in civil cases.
 16. CPS has argued that disclosing the witness statements into the public domain would create a precedent for future requests and lead to a situation where the CPS would be required to release witness statements for all cases. It has stated that the exemption is, therefore, engaged because of the prejudice or likely prejudice caused by the cumulative effect of disclosing information in response to a series of similar requests. In other words, disclosing the witness statements would set a precedent which would/would be likely to undermine the effectiveness of proceedings.
 17. CPS has explained that it balances the need for transparency with the need to protect its prosecution process, which is its core function. CPS has argued that disclosure would compromise its ability to prosecute criminal cases and would allow criminals to use information regarding witness statements, and the information that they contain, to their advantage. CPS considers that disclosing information considered as part of a criminal prosecution, which identifies individuals who assisted with the investigation, could create a perception among the wider public that sensitive information about criminal prosecutions may be disclosed to the world at large after a trial has been completed. This, CPS maintains, may adversely affect the quality of the evidence obtained during investigations, which would, in turn, prejudice the successful conduct of criminal proceedings by the CPS.

18. CPS has confirmed that the requested information consists of statements from witnesses which were collected and collated by the police, who investigate the report of a crime. The information was then provided to the CPS for the purpose of progressing the case, by way of considering whether or not to initiate criminal proceedings.
19. CPS explained that its lawyers would review this information in order to decide whether to charge the suspect with an offence(s) and, if so, what that offence(s) is/are. It confirmed that, along with the prosecution of the case, further considerations may involve discussions around possible further offenders which the police are investigating and disclosure could, therefore, prejudice the apprehension and prosecution of those further offenders.
20. In relation to the harm that disclosure would cause, CPS confirmed that this would take the form of prejudicing free and frank discussions between the CPS, and external authorities, such as the police and inhibit the prosecution process. CPS has argued that this would impact on the effectiveness of its prosecution function because it would interfere with its ability to communicate efficiently and openly regarding witness accounts and their evidential value to the case.
21. During the course of his investigation the Commissioner referred to a report published in March 2003 (the "Report") which documented an inquiry into matters associated with the, now terminated, Paul Burrell prosecution case¹.
22. The Report was co-authored by Michael Peat, one of the witnesses whose statement has been requested. The Commissioner notes that the Report confirms that Michale Peat and Fiona Shackleton gave statements to the Police on 29 October 2002. The Report also contains details of accounts given by the same individuals regarding the prosecution case.
23. The Commissioner put it to the CPS that the fact that one of the co-authors of the Report had elected to place information about their role in the prosecution case into the public domain potentially undermined CPS' argument that disclosing the requested witness statements would result in harm to its ability to administer justice. In short, the Commissioner questioned whether disclosure would breach any confidences which may damage CPS' ability to effectively utilise future witness statements.

¹ <https://image.guardian.co.uk/sys-files/Guardian/documents/2003/03/13/pow.pdf>

24. The Commissioner also highlighted the age of the case and the fact that some 20 years after the closure of proceedings, further action seemed unlikely and the need for protecting the integrity of the investigation fell away.
25. In responding to the Commissioner, CPS clarified that its argument for applying the exemption rested on the position that disclosing two witness statements made for the purpose of a police investigation/prosecution would undermine the very important principle that all witnesses who give statements solely for the purpose of a criminal investigation/prosecution must have confidence that those statements will not then be used for a purpose totally unconnected with that criminal justice purpose or disclosed to an individual who has no role in that criminal justice process. CPS maintained that this principle is so important that it should not be undermined.
26. CPS acknowledged that the Report specifically references that Fiona Shackleton and Michael Peat provided the police with statements on 29 October 2002. However, it considers that there is no suggestion that the specific content of the witness statements is reflected in the Report, or that the facts referred to come directly from those statements.
27. CPS has argued that it is reasonable to infer that, in addition to giving their statements to the police, the two witnesses gave other accounts for the purposes of the public enquiry and did so in the knowledge that the information would be put into the public arena. In support of this position CPS has noted that, at the time the statements were given to the police, there was no proposal to commission an enquiry or publish a report (CPS confirmed that the Report was apparently only commissioned on 11 November 2002) and hence the witnesses consent to have the information published in the report cannot be said to equate to consent to have police statements disclosed outside the criminal justice system.
28. Having considered CPS' submissions and reflected on the facts of this case, the Commissioner has concluded that disclosure of the information would result in the prejudice described in the exemptions in section 31(1)(a)-(c). He is satisfied that disclosing the witness statements would inhibit CPS' ability to prosecute crime by setting a precedent which would prejudice its ability to secure and utilize meaningful witness statements.
29. Sections 31(1)(a)-(c) are qualified exemptions and are subject to the public interest test set out in section 2 of FOIA. The Commissioner has considered whether, in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

30. In doing so, he has borne in mind that the higher level of 'would' prejudice applies (i.e., that the harm envisaged would be more likely than not, to occur).

Public interest in disclosure of the information

31. The complainant has argued that the details of the witness statements have been put into the public domain already via the Report and in Paul Burrell's biography, both of which cover the same evidence. The complainant considers that there is a strong public interest and relevance to disclosure so that it can be shown exactly which of the details that were later made public were supplied to the prosecution at the time.
32. The complainant also considers that there is a valid public interest in the public knowing why a high profile prosecution, which incurred significant public expenditure, collapsed. In their view, there is a need for disclosure to preserve public trust in the criminal justice system.
33. The complainant has also argued that the witness statements provide evidence of how the Royal Household interacts with public bodies. The complainant considers that the information would provide a practical example of an important constitutional mechanism.
34. CPS has acknowledged that there is a general public interest in promoting transparency and public understanding with regard to decisions made by public authorities and a specific public interest in transparency of the prosecution process.

Public interest in maintaining the exemptions

35. CPS has argued that as the information requested was obtained as criminal offence data provided by the police there is a very strong public interest in safeguarding both the police investigations and the prosecution of criminal cases following those investigations.
36. CPS has acknowledged that the case is high-profile, attracting legitimate concern, and that it continues to receive media attention from the time of the events right up until present day. However, it considers that the specific information and level of detail contained within the witness accounts is not in the public domain.
37. CPS has further argued that complying with one request can make it more difficult to refuse requests for similar information in the future. It considers that it is entitled to consider any harm that could be caused by combining the requested information with the information it could

subsequently be required to provide if the current request was complied with.

38. CPS has also argued that the public interest in transparency in the criminal justice system has been served by the information already in the public domain and that promoting confidence in the system is better served by not disclosing the witness statements.

Balance of the public interest

39. In determining where the balance of the public interest arguments falls in this case the Commissioner has been mindful of the general factors which are relevant to the intention behind the exemption.
40. There is a public interest in disclosing information that holds law enforcement bodies to account and increases transparency about how they perform their functions. Without such information, the public may lack confidence and trust in these bodies.
41. The public interest in protecting the integrity of an investigation is likely to be strongest whilst the investigation is ongoing. This is because that is when disclosure is likely to have the most harmful effects (such as giving a suspect the opportunity to destroy or conceal evidence). The public interest in maintaining the exemption is likely to fall once an investigation has concluded, the results are made public and any proceedings which arise out of the investigation are completed. However, even after an investigation has concluded, there may still be a public interest in preventing the disclosure of information. This applies if that disclosure could make such investigations more difficult to conduct in the future (for example by dissuading witnesses from coming forward).
42. There will be a strong public interest in maintaining the exemption if disclosure would make it harder for an organisation to acquire the information they need, thereby hampering their ability to discharge their functions.
43. In this case, the Commissioner recognises that the high-profile nature of this case, its association with constitutional factors and the fact that the prosecution collapsed constitute legitimate public interest factors in favour of disclosure.
44. He recognises the complainant's argument that, on the one hand, information associated with facts about the case as recalled by the witnesses has been placed in the public domain. However, he acknowledges CPS' point that neither the witness statements themselves have been disclosed nor has it been confirmed that the published information directly reflects the content of the statements. So, whilst there is certainly witness-related information in the public

domain, it cannot be concluded that it can be identified with the statements themselves. In relation to the suggestion that transparency and accountability demands that the statements be disclosed in order to determine whether the publicly available reasons for the collapsed prosecution, the Commissioner considers that this rests on a suspicion that has no evidential basis, namely, that the witness statements have not been properly tested. Whilst, clearly, it is not reasonable to expect a suspicion to be proven in order to justify disclosing information which might provide proof of the suspicion; a suspicion must have a genuine basis and the Commissioner is not convinced one is present here.

45. In concluding, the Commissioner has set these factors against the harm which it is accepted disclosure would cause and against the specific arguments in favour of maintaining the exemptions. He finds that the public interest has been served by the information already in the public domain and that the public benefits of disclosing the witness statements would not outweigh the specific reasons given for non-disclosure in this case.
46. The Commissioner has, therefore, concluded that CPS correctly withheld the requested information under the exemptions in section 31(1)(a)-(c) in this case.
47. As he has concluded that the information has been correctly withheld under section 31(1) the Commissioner has not gone on to consider CPS' application of section 40(2) in this case.

Right of appeal

48. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

49. 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.

50. 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

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF