

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 February 2024

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

Decision (including any steps ordered)

1. The complainant has requested information about a deleted email account from the Crown Prosecution Service (the "CPS"). In compliance with an earlier decision notice, the CPS disclosed some information but the complainant remained dissatisfied with the format of that disclosure and the lack of other information to substantiate the CPS' position that all relevant recorded information had been disclosed.
2. The Commissioner's decision is that, in line with the wording of the original request, the CPS complied with its duties under section 1(1) of FOIA. He also finds that no further information was held.
3. No steps are required as a result of this decision.

Request and response

4. On 12 December 2019, the complainant made the following request for information:

"Please provide a copy of:

- 1) THE FULL correspondence on Julian Assange between the Crown Prosecution Service and the Swedish Prosecution Service between the 1st of November 2010 and the 8th of September 2015 which has NOT been released to me in my previous FOIA.

- 2) THE FULL correspondence on Julian Assange between the Crown Prosecution Service and the Swedish Prosecution Service between September 2017 and the 1st of December 2019.
- 3) THE FULL correspondence on Julian Assange between the Crown Prosecution Service and the Ecuadorian authorities between the 19th of June 2012 and the 11th of April 2019.
- 4) THE FULL correspondence on Julian Assange between the Crown Prosecution Service and the US Department of Justice between the 1st of November 2010 and the 1st December 2019.
- 5) THE FULL correspondence on Julian Assange between the Crown Prosecution Service and the US State Department between the 1st of November 2010 and the 1st of December 2019.

Finally, please explain when, how and why the emails of the CPS lawyer, [name redacted], were deleted. Given what the Swedish prosecutor said in deciding not to take the charges forward and given what emerged about the CPS advising the SPA [Swedish Prosecution Authority] not to question JA [Julian Assange] in the embassy, there is a clear public interest in knowing why the e-mails of the key person liaising with the SPA were deleted during an ongoing investigation, apparently against the CPS's retention policy".

5. The CPS responded to the request on 10 February 2020. A subsequent complaint to the Commissioner about that response was dealt with by way of Decision Notice IC-47745-L6Q0¹, which was followed by First-tier Tribunal ("FTT") appeal EA/2022/0088.
6. Following on from the FTT appeal, the CPS was required to provide a response to the final (unnumbered) part of the request, regarding the deletion of emails. Its response to that is the subject matter of this investigation.
7. On 23 June 2023, the CPS wrote to the complainant. It said the lawyer in question had left the service and it disclosed an email and a Leavers Process document from 2012, with personal information redacted, and provided an explanation about the procedures for account deletion that were in place at the time the emails were deleted.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4019935/ic-47745-l6q0.pdf>

8. The complainant responded on 28 June 2023. She raised the following points:
 - (1) In relation to the disclosed email, the recipient in the "To" field had been redacted on the premise of section 40 (Personal information) of FOIA. She considered that the recipient was a distribution group rather than an individual so section 40 did not apply.
 - (2) She asked for the email to be provided in its original format rather than a PDF.
 - (3) She asked for the Leavers Process document to be provided in its original format rather than a PDF.
 - (4) She commented that the CPS' position had consistently been that its practice in 2014 was for email accounts to be suspended when someone left and permanently deleted after three months. However, this practice was not reflected in the disclosed Leavers Process document. Instead, the document indicated that user accounts would automatically be deleted 30 days after suspension of the email account. She required an explanation or recorded information to support this discrepancy.
9. The CPS treated this as a request for an internal review and provided a response on 29 August 2023. It confirmed that it had provided all of the recorded documentation which confirmed the process in operation at the relevant time. It also disclosed a further email, redacted to withhold personal information, to support its rationale.
10. Regarding the request for the items to be disclosed in their original format, the CPS refused this as format had not been stipulated in the original request. Furthermore, it considered that such a disclosure would disclose "metadata" from which personal information could be gleaned.
11. The CPS did not comment on point (1).

Scope of the case

12. The complainant contacted the Commissioner on 9 October 2023 to complain about the way her request for information had been handled. Her grounds were similar to her request for an internal review.
13. The complainant was dissatisfied with the CPS' lack of response to point (1), as she did not accept that the redaction was the name of an individual.

14. Whilst it is unfortunate that this point was not specifically responded to by the CPS, the Commissioner has viewed the original email and can confirm that it is a named individual. As the complainant's concern rested on a belief that it was **not** a named individual, he will not further consider this point.
15. In respect of points (2) and (3), the complainant was dissatisfied that the disclosed documents had not been provided in their 'original' format.
16. Regarding the format of the disclosed documents, it was only **after** the CPS had disclosed these, in compliance with the steps ordered by the FTT, that the complainant asked for them to be provided in their original format, ie including the metadata which sits behind the documents. She had not previously specified that they needed to be in any particular format and the CPS therefore complied with the FTT's step in the way it deemed most appropriate. The Commissioner agrees that it was reasonable for it to do so, therefore he will not further consider this part of the complaint here. (If the complainant wishes to make a further request for the documents with this specification then it is open for her to do so.)
17. Regarding point (4), the complainant said:

"The final part of [the request] was: 'please explain when, how and why the e-mails of the CPS lawyer...were deleted'... this entails a request for disclosure of all documents which explain when, how and why the emails were deleted. The CPS relied on there being a settled and 'agreed practice' which answered the question; however, its position on what that settled and agreed process was changed significantly...

A key aspect of [the request] was for disclosure of all information held which explains the CPS's significant change in position... The CPS consistently stated to the Commissioner and to the Tribunal that the agreed practice in 2014 was for accounts to be suspended upon the departure of the staff member and then permanently deleted after three months. This was stated in the CPS's amended response [to the FTT], in correspondence with the ICO during his investigation of the complaint...and in response to a previous FOIA request, made in 2018... There must have been a basis or bases on which the CPS made these unequivocal and confident statements, verified by a number of statements of truth. In order to comply with the FTT's order, the CPS should disclose all information held which provides that basis or bases.

There must also have been a basis or bases on which the CPS changed its position to stating during oral evidence to the FTT that the agreed process was for deletion to occur after 30 days. Indeed,

the e-mail disclosed from 24 January 2023 suggests that the CPS holds further information relating to this matter. In order to comply with the FTT's order, the CPS should disclose all information held which provides that basis or bases.

It is perturbing that a public body stated something to the Commissioner, from 2018 - 2022, in the strongest and clearest terms, but which it now claims was entirely wrong, with no explanation".

18. The Commissioner will consider this part of the complaint below, ie whether the CPS holds any recorded information to support its change of position regarding the destruction parameters for email accounts of staff who left in 2014.
19. It is, however, noted that, were the retention period for email accounts of staff leaving in 2014 either 30 days or three months, the email account concerned would have already been deleted some considerable time before the first information request was made.
20. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA. FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 1 – General right of access

21. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to them.
22. In this case, the complainant suspects that the CPS holds further information from which it could explain its change in position when relating the correct time frames for the deletion of email accounts in 2014. The CPS's position is that it does not.
23. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil

standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.

24. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
25. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the CPS holds any recorded information to support its revised position regarding the retention period for email accounts in 2014. Accordingly, he asked the CPS to explain what enquiries it had made in order to reach the view that it did not hold any further information.
26. The CPS advised the Commissioner that:

"The Information Access Team [IAT] was told that the CPS practice in 2014 (when the lawyer concerned retired from the service) was that email accounts would be suspended and then deleted after three months. This position was then communicated to [the complainant] in a previous FOI request response. In preparation for the Tribunal hearing in 2023 the position was checked with a manager in the Digital and Information Directorate (DID) who confirmed to the IAT that the practice in 2014 was actually to delete email accounts after 30 days.

The response provided by the CPS to [complainant's name, redacted]'s Internal Review request dated 29/8/2023 included a disclosure containing an email from the DID manager concerned. This email is dated 24/1/2023. Within that email the manager said:

'I have asked a range of people in my team to check if they had anything that confirms that in 2014 deletions of email accounts occurred after 3 months.

My research has shown that the documented timeframe was 30 days, i.e. deletions occurred after 30 days.

I can only assume [name redacted] stated 3 months to cover off an exceptional circumstances?'

This is the explanation for why the CPS position changed from originally saying that email accounts were suspended/deleted after 3 months to stating later on that email accounts were deleted after 30 days. We considered at the time of the disclosure that the contents of that manager's email provided a reasonable account of the change in position.

...It may assist if I mention that the CPS witness at the First Tier Tribunal in 2023 did also refer briefly in evidence to that hearing that there is a document which describes the deletion of accounts within 30 days. This refers to the documents the CPS has since disclosed. The reference from the witness is mentioned at para 22 of the Tribunal's open decision provided on 25/5/2023".

27. In respect of the response above, the Commissioner enquired about the party who's name has been redacted. He asked whether they had been contacted for further comment and was advised:

"The reference to [name redacted] in that sentence concerns a former CPS employee called [name redacted]. This colleague retired from the CPS on [date redacted] 2021. [Name redacted] had retired from the service long before the time when further enquiry was made about the email account deletion policy, which was during January 2023 in preparation for the First Tier Tribunal hearing that happened on 27 Jan 2023. It was not therefore possible to contact [name redacted] to ask why he thought the policy was 3 months rather than 30 days".

The Commissioner's conclusion

28. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs, above, the Commissioner is required to make a finding on the balance of probabilities.
29. When dealing with a complaint to him under FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the decisions it makes to hold some, but not other, information. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not, on the balance of probabilities, the public authority holds the requested information.
30. The Commissioner considers that the CPS contacted the relevant party to consider whether or not any further information was held in respect of

the request. He is also satisfied that the source of the 'three month' comment was not available for further consultation.

31. While appreciating the complainant's frustration that the CPS does not hold information to explain why it changed its position regarding the length of time email accounts were retained, the Commissioner is mindful of the comments made by the Information Tribunal in the case of **Johnson / MoJ (EA2006/0085)**² which explained that FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".

32. Based on the information provided, the Commissioner is satisfied that, on the balance of probabilities, no further recorded information within the scope of the request is held. He is therefore satisfied that the CPS has complied with the requirements of section 1 of FOIA in this case.

Other matters

33. Although they do not form part of this notice the Commissioner wishes to highlight the following matter.

34. In its response to the Commissioner's enquiries, the CPS advised that it had:

"...reconsidered a redaction that was made in the Leavers Process document disclosed to [the complainant] on 23/6/23. The redaction concerned appears at the end of that document, under the sub-heading entitled 'Non CPS Staff'. I believe this redaction may have been applied under S40 of the FOI Act. However, on reconsideration, the CPS is now prepared to disclose that information as the email account is a CPS IT Service Desk address from the time rather than a personal email account".

35. As she was unaware of this matter, the complainant did not refer to this redaction and there were no grounds of complaint for the Commissioner to consider in his investigation. However, for expediency, the CPS has

²<http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

Reference: IC-262968-J4R3

agreed that the Commissioner can confirm here that the partially redacted sentence should read as follows:

“In the meantime please request the disablement of these accounts by emailing details direct to the ServiceDesk@cps.gsi.gov.uk”.

Right of appeal

36. 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

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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