

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

### **Decision notice**

**Date:** 7 November 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 costs related to a criminal case brought against them.
2. The Crown Prosecution Service ("CPS") refused to confirm or deny that it held the requested information.
3. The Commissioner's decision is that the CPS was entitled to rely on section 40(5A) (personal information) of FOIA when refusing to confirm or deny holding the requested information.
4. The Commissioner does not require further steps to be taken.

#### **Request and response**

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5. On 7 June 2024, the complainant wrote to the CPS and requested information in the following terms:

"I am writing to request information under the Freedom of Information Act 2000 regarding the costs incurred by the Crown Prosecution Service in relation to a case against me.

- Case number XXX
- Date range of case XXX
- Nature of allegation: stalking

Please provide information on the total cost incurred by the CPS during the management of this case. This should include, but not be limited to, costs relating to legal processing, staff time and any external expenses.”

6. The public authority responded on 28 June 2023 refusing to confirm or deny whether the information was held. It upheld its position following an internal review on 16 July 2024.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 25 July 2024 to complain about the way their request for information had been handled.
8. In this case, the Commissioner considers that the scope of his investigation is to consider whether confirming or denying whether the requested information is held would reveal personal data.

## **Reasons for decision**

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### **Section 40 - personal information**

9. Section 1(1)(a) of FOIA provides that where a public authority receives a request for information, it is obliged to tell the applicant whether it holds that information. This is commonly known as the 'duty to confirm or deny'.
10. There are, however, exemptions from the duty to confirm or deny. Section 40(5A) of FOIA provides that the duty to confirm or deny whether information is held does not arise in relation to information which constitutes personal data of which the complainant is the data subject.
11. Therefore, for the public authority to be entitled to rely on section 40(5A) of FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request, confirmation or denial would need to constitute the disclosure of the complainant's own personal data.

### **Would confirmation or denial reveal the complainant's personal data?**

12. Section 3(2) of the Data Protection Act 2018 ("DPA") defines personal data as:

“any information relating to an identified or identifiable living individual”.

13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
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. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
16. In this case, the complainant is seeking information in respect of a criminal case brought against them by the CPS. If held, the requested information would be the complainant's own personal data. This is because, in merely confirming that it held any information within the scope of the request, the CPS would also, by definition, be confirming, to the world at large (which is what FOIA requires) that the complainant has had a criminal case brought against them.
17. This is the reason why the requested information is exempt (by virtue of section 40(5A)) from the CPS's duty to confirm or deny whether requested information is held. Whether the complainant is or is not happy for their personal data to be released in this fashion is irrelevant.
18. The Commissioner is therefore satisfied that the request seeks information of which the complainant is the data subject.
19. The Commissioner notes the arguments made by the complainant that they are seeking costs information and not personal information, but hopes that the explanation in paragraphs 16 and 17 of this Decision Notice makes it clear why section 40(5A) applies. The Commissioner recognises that the CPS did not fully explain to the complainant the nuance of section 40(5A) and its application.
20. It is the Commissioner's view that the CPS is entitled to refuse to confirm or deny whether or not it held the requested information on the basis of section 40(5A) of FOIA.

## **Other matters**

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21. The Commissioner notes that the CPS could have proactively advised the complainant that this matter should more appropriately be dealt with as a subject access request (SAR) under the UK General Data Protection Regulation ("UK GDPR"). The Commissioner recommends that

the complainant considers making a SAR to the CPS for the requested information.

## 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.

**Michael Lea**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**