

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 June 2017

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

Decision (including any steps ordered)

1. The complainant requested information about autistic individuals in relation to crimes committed and charges dropped. The Crown Prosecution Service (the 'CPS') refused to disclose this information under section 12(1) of FOIA as it estimated that the cost of compliance with the request would exceed the appropriate limit.
2. The Commissioner's decision is that the CPS applied section 12(1) of FOIA correctly and so it was not obliged to comply with the complainant's information request. No steps are required.

Request and response

3. On 18 May 2016, the complainant wrote to the CPS and requested information in the following terms:

"- The total number of autistic individuals (by autistic individual; any person the CPS is aware are diagnosed with an Autism Spectrum Disorder e.g Asperger's Syndrome or PDD NOS, Pervasive Developmental Disorder-Not Otherwise Specified) who the CPS have charged.

- The number of autistic individuals who the CPS has dropped the charges against or has been acquitted of their crime.

- The number of autistic individuals who the CPS has;

- 1) *Dropped the charges against the autistic person, due to the autistic person not having criminal intent behind their actions*
- 2) *The autistic person has been acquitted as the autistic person did not have criminal intent behind their actions.*
- *The number of cases when an autistic person has defended their actions by being deemed "insane".*
- *The above information is broken into types of crimes committed.*
- *For the calendar month of December 2015.*

If you cannot complete this FOI request within the 3.5 working days limit, please can you let me know at which point in the case files for December 2015 have been manually checked after the 3.5 days limit has elapsed. I am sure CPS staff can manage their own work load out for 3.5 days to complete the FOI request."

4. The CPS responded on 16 June 2016 and refused to provide the requested information citing section 12(1), cost of compliance. The CPS also provided advice and assistance in accordance with section 16 of FOIA.
5. The complainant requested an internal review on 8 August 2016. The CPS provided its internal review on 26 August 2016 in which it maintained its original position.

Scope of the case

6. The complainant contacted the Commissioner on 17 January 2017 to complain about the way his request for information had been handled.
7. The complainant submitted his complaint to the Commissioner after her usual three month deadline. Having considered his supporting evidence for the delay, the Commissioner used her discretion in this case and accepted the complaint for investigation.
8. The Commissioner has considered whether the CPS is entitled to rely on section 12(1), the cost exclusion, in relation to this request.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
10. The appropriate limit in this case is £600, as laid out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). This must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours' work.
11. When estimating whether disclosing the requested information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in disclosing the information. The estimate must be reasonable in the circumstances of the case. It is not necessary to provide a precise calculation.
12. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
 - determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
13. The CPS told the Commissioner that it does not centrally collate data to highlight any information on defendants diagnosed with an Autism Spectrum Disorder ('ASD').
14. The CPS confirmed that it records prosecution proceedings against defendants on its Case Management System ('CMS') and subsequently reports completed prosecution outcomes via its Management Information System ('MIS').
15. It said defendants are individually registered on the CMS and, at finalisation, the outcome of the prosecution is extracted as anonymised data into the MIS database. The records held within the MIS may be reported by volume and outcome type but cannot be further disaggregated by individual characteristics such as whether defendants were diagnosed with an 'ASD' at the time of offending. With this in mind, it said the computer systems the CPS operates cannot produce

reports on the detailed data contained in the hundreds of thousands of cases the CPS deals with annually.

16. In addition, the CPS advised that details of defendants' medical conditions, if given, may be found within the case file held on the system; however this would require a manual search of each document within the individual case file.
17. Below is CPS' detailed estimate of the time and cost that would be taken to provide the information falling within the scope of the request:

"During December 2015, the CPS finalised 47,242 defendant prosecutions. Of the 47,242 finalised prosecutions, the CPS authorised 17,897 charging decisions against these defendants, the remainder cases were charged by the investigatory authorities such as the police. Each case file associated with the 17,897 defendants would need to be manually reviewed to establish if any of these defendants had been diagnosed with the condition ASD (if such detail is being recorded on the case file).

The manual review would involve checking a number of documents which comprise a case file, including but not limited to the case summary, bail conditions, custody records and/or the interview records. This applies to both electronic and paper case files. Based on our experience, in order to identify an individual characteristic such as the defendant's medical condition, it would require a case worker or a lawyer to spend an average of 30 minutes to review each case file."

18. In order to answer part 1 of the complainant's request, the CPS told the Commissioner:

- (a) *The estimated time to manually review the 17,897 charging decisions:*

17,897 charging decisions x 0.5 hour per case file

= 8,948.5 hours

*= 1,193 working days**

** 1 working day = 7 hours and 12 minutes*

- (b) *The estimated cost to manually review the 17,897 charging decisions:*

= 8,948.5 hours x £25 flat rate per hour

= £223,712.50

19. Therefore, the CPS would only be able to look through 48 files of the 17,897 files before triggering the section 12 exclusion. Based on the above, it follows that in order to extract the information requested for such a large number of cases, it would require one person spending more than 3.5 days, and would exceed the cost limit of £600 to look for the requested information.
20. The CPS added that there are a number of documents in a case file that would need to be checked (as mentioned above) as there is not one single document where a medical condition must be stipulated. It said that even if these documents on a case file were located and reviewed, the medical condition of the defendant may still not be recorded. The CPS may therefore not be able to ascertain if the defendant had been diagnosed with ASD. The calculation above should therefore include this caveat.
21. In response to the Commissioner's question as to whether the CPS had undertaken a sampling exercise to establish the estimate, it said:

"The CPS regularly undertakes extensive evidence-based exercise to assess our casework quality. This involves review of individual case files which includes checking the case papers (case summary, custody records, interview records, witness statements etc) submitted by the investigatory authorities to the CPS. Based on this exercise, we have established that a review of an individual case file would require at least 30 minutes to complete, depending on the complexity of cases."
22. Given the explanations above, the CPS advised that the only way to extract the required information is to manually review all 17,897 cases individually, before it could attempt to answer the further questions raised by the complainant in his request.
23. In addition, the CPS explained there is nothing in legislation that requires a defendant to reveal to officers that they have been diagnosed with ASD. Therefore even if a search of such information was conducted, it would only reveal those that had told the officers they were diagnosed or those about whom the police were concerned may require an appropriate adult and had been diagnosed in this way.
24. The Commissioner has considered the arguments submitted by the CPS and is satisfied that its estimate is reasonable. Even at five minutes per file the cost limit would be significantly exceeded.

Conclusion

25. From the information provided, the Commissioner has concluded that the CPS was correct to rely on section 12 in relation to this request.

Section 16 – advice and assistance

26. If a public authority estimates that the cost of determining whether or not information is held would be above the appropriate limit, it is not required to conduct searches but should consider providing advice and assistance with a view to helping the requester bring his/her request under the cost limit.
27. Under section 16 of FOIA, therefore, public authorities have an obligation to advise what, if any, information may assist requestors with their requests.
28. The CPS highlighted that the complainant had made a similar FOI request on 14 April 2016, to which the CPS responded on 13 May 2016. In its response, the CPS advised the complainant that in order to establish how many defendants had been diagnosed as being on ASD in the year 2014/2015, it would require a manual review of over 660,000 case files which would consequently engage the cost limit set out in section 12 of FOIA.
29. In the case under consideration in this notice, for the reasons set out earlier, the CPS said it was unable to provide specific assistance to the complainant to refine his request so that it could be answered within the appropriate cost limit.
30. However, the CPS provided the complainant with a weblink to the published Code for Crown Prosecutors¹. It explained that the Code requires a prosecutor to consider the level of culpability of the suspect and stipulates a consideration as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health, as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether it is likely to be repeated and the need to safeguard the public or those providing care to such persons.
31. In providing this weblink the CPS said that, even though it could not provide the data, it wanted to ensure that the complainant knew that if the CPS was aware of a defendant's medical condition, it would ensure the issues were addressed in its application of the Code.

¹ https://www.cps.gov.uk/publications/code_for_crown_prosecutors/

32. The CPS also provided a weblink to a Prosecution checklist on Autism, which it considered may be of interest to the complainant².
33. The Commissioner is satisfied that the CPS has fulfilled its section 16 FOIA obligations.

² http://www.cps.gov.uk/Publications/prosecution/autism_-_checklist_for_prosecutors_v2.pdf

Right of appeal

34. 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

35. 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.
36. 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