

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 November 2019

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

Decision (including any steps ordered)

1. The complainant requested information about the numbers of parents prosecuted for child abuse in the Family Court over a specified one year period. The CPS told him that the request could not be answered on cost grounds and refused it citing section 12(1) of FOIA – the cost of compliance.
2. The Commissioner's decision is that the CPS was entitled to rely on section 12(1) of FOIA in relation to this request. However, by failing to demonstrate that it had considered its advice and assistance obligations, the CPS has breached section 16 of FOIA. In the circumstances of this case, the Commissioner has not ordered any steps as there does not appear to be any obvious way of refining the request to bring it under the cost limit.

Request and response

3. On 8 June 2019 the complainant wrote to the CPS and requested information in the following terms:

"To ensure compliance with national and international legislation concerning children-

How many parents have been prosecuted for child abuse by deliberately manipulating a child against another parent in the Family Court arena.

The time scale is June 1st 2018 too [sic] June 1st 2019."

4. The CPS responded on 18 June 2019. It stated that to respond to the request would exceed the cost limit explaining that:

"The CPS does not centrally record the number of defendants prosecuted for child abuse involving the circumstances described.

In order to establish the number of cases of child abuse that involve the circumstances described, within the timescale requested, a manual exercise would be required.

To assist, and as an indication of the work this would involve, our records indicate that in the most recent financial year 2018/19, the CPS completed an equivalent of 8,254 cases involving offences flagged as 'child abuse'."

5. On 22 June 2019 the complainant wrote to the CPS as follows:

"I note your reply refers to "child abuse" which would include a variety of physical abuse.

I seek specifically psychological or emotional child abuse in line with my request which refers to the offence of "Child cruelty" and the change to that specific legislation in 2014.

Would you please, therefore, reconsider my request taking into account the above factors."

6. On 25 June 2019 the CPS replied as follows:

"In order to determine the nature of the abuse within cases flagged as 'child abuse' a manual search would be required as outlined in our response ..."

7. Following further exchanges referencing the public interest test (see 'Other Matters' section of this notice), the complainant requested an internal review on 10 July 2019.
8. The CPS provided its internal review on 6 August 2019 in which it maintained its original position.

Scope of the case

9. The complainant contacted the Commissioner on 9 August 2019 to complain about the way his request for information had been handled. He asked the Commissioner to consider the "overwhelming" public interest in the subject matter of his request, together with the CPS' refusal to carry out a public interest test (see 'Other Matters' section).

10. Under the FOIA, the Commissioner will consider whether the CPS was entitled to rely on section 12(1) in relation to the request.
11. She has also considered whether the CPS has fulfilled its obligations under section 16 of FOIA.

Reasons for decision

Section 12(1) – cost of compliance exceeds the appropriate limit

12. Section 1(1) of FOIA states that:

"(1) Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him."*

13. Section 12(1) of FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

14. The Fees Regulations set the appropriate limit at £600 for the CPS; they also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that the appropriate limit for the force equates to 24 hours.
15. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - a. determining whether it holds the information;
 - b. locating the information, or a document containing it;
 - c. retrieving the information, or a document containing it; and
 - d. extracting the information from a document containing it.
16. The complainant has requested numbers of parents prosecuted for *"deliberately manipulating a child against another parent"*, followed by a further qualification which specifies *"psychological or emotional child abuse"* whereby he refers to a change in legislation in 2014.

17. The CPS told the Commissioner that its case management system ('CMS') allows it to search its database in relation to offences. It explained that CMS does not have a standard searching facility; the system only allows it to search by defendants' names, dates of birth, and areas along with a unique reference number ('URN') search. It said that there is no specific offence in respect of what the complainant is requesting and it would therefore be necessary to carry out a manual exercise to identify any cases that may fall into this category.
18. It explained that within CMS there are identifiers (flags) which are checked when a case commences; these flags are not the offence that the defendant has been charged with but are monitoring flags that are used to identify particular aspects of the case. Examples of these monitoring flags include Rape, Child Abuse, Homophobic Hate Crime and Disability Hate Crime.
19. As the complainant's request relates to how many parents have been prosecuted for child abuse, the Performance Management Unit at the CPS conducted a search using the term 'child abuse' (which is a monitoring flag). This identified that between 2018/2019, the CPS had completed prosecutions in respect of 8839 defendants which were finalised with the 'Child Abuse' flag applied. The CPS said that a single defendant can be charged with a number of offences and, as a result, the 8839 defendants translated to 8254 cases that the CPS prosecuted.
20. The Information Management Unit (the 'IMU') within the CPS was provided with a random selection of 20 unique reference numbers from the 8254 cases identified (this is the reference number allocated to each case prosecuted). This sample contained a variety of offences including sexual and assault offences.
21. The CPS advised that the average time taken to review each of those 20 cases was 3.5 minutes. It said this time was only to confirm whether there was a 'parent child' relationship within the case, without looking into the specific reasons which would be needed in order to comply with the complainant's request.
22. The CPS advised that once the case was identified, it checked to see whether the defendant was a parent to the victim (first element of the request), explaining that this would be located within the case summary (this is a document which outlines the offence details and is provided by the police this case, it can be anything from five pages up to 50 or more depending on the offence and the actions taken by the police).
23. Of the 20 cases checked, the CPS identified three cases that were within the scope of the first element of the request, ie where the defendant was identified as a parent.

24. To complete the second element of his request, the CPS said that the IMU would have to review all material held on CMS to see whether it contains information as to whether any psychological or emotional child abuse had taken place. It said that this information could possibly be contained within the case summary or could be held in another type of document such as a report.
25. The CPS said that as CMS is the central database for the CPS, the above review process outlines the only way that the CPS would be able to identify if any information is held.
26. The CPS' calculations show that the time it would take to review all 8254 cases to only initially identify whether the case has a 'parent child' element to it would be 481 hours and the total cost to the CPS to do so would be around £12,025. This significantly exceeds the cost threshold of 24 hours / £600, without taking the psychological or emotional child abuse element of the request into consideration.
27. From the information provided, the Commissioner has concluded that the CPS' explanation is reasonable and that it was entitled to rely on section 12(1) for this request.

Section 16 – duty to provide advice and assistance

28. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In order to comply with this duty, a public authority should advise the requester as to how their request could be refined to bring it within the cost limit. However, the Commissioner accepts that where a request is far in excess of the cost limit, it may not be possible to provide any useful advice.
29. The Commissioner's guidance states that where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:
 - either indicate if it is not able to provide any information at all within the appropriate limit; or
 - provide an indication of what information could be provided within the appropriate limit; and
 - provide advice and assistance to enable the requestor to make a refined request.
30. From the evidence available in this case, it is apparent that the CPS did not provide any advice or assistance to the complainant. In failing to

provide any advice and assistance, or any evidence that this had been considered, the CPS has breached its section 16 obligations.

31. In response to the Commissioner's investigation the CPS said:

"...as there is no offence type which cover [sic] [the complainant's] request we were unable to provide advice and assistance".

32. Having considered the wording of the request and the way in which the CPS records such data, the Commissioner cannot see any easy way in which the complainant's request could be responded to within the cost limit.
33. As there is now sufficient detail about how the cost limit is exceeded in this case the Commissioner has not ordered any steps.

Other matters

34. The complainant's request for an internal review asked the CPS to conduct a public interest test. He also raised this point as part of his grounds of complaint to the Commissioner.
35. As the Commissioner has explained to the complainant, there is no requirement for the CPS to do so as the drafting of section 12 of FOIA does not contain provision for a public interest test.

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: 0300 1234504

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.

Signed

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