

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 08 March 2022

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

Decision (including any steps ordered)

1. The complainant requested information about the requests by the Swedish and US authorities to extradite Mr Julian Assange from the UK. Also about his extended stay seeking asylum within the London Embassy of Ecuador and correspondence with the Ecuadorian authorities. She asked the Information Commissioner, in his investigation, to address two issues 'seriously': Crown Prosecution Service reliance on the exemptions cited; and, the destruction of emails to and from a named former Crown Prosecution Service officer.
2. The Commissioner decided that the Crown Prosecution Service had complied with FOIA in its reliance on the section 30(1) and 30(3) FOIA (Investigations and Proceedings) exemptions and had correctly redacted personal data from information it had disclosed.
3. The Commissioner did not require the Crown Prosecution Service to take any steps to comply with the legislation.

Request and response

Background

4. Mr Julian Assange was founder and publisher of WikiLeaks. He became the subject of extradition proceedings brought in the United Kingdom by

the Swedish Prosecution Authority ("SPA"). The proceedings were conducted by the Crown Prosecution Service ("CPS") on behalf of SPA in accordance with its international obligations. In June 2012, in an attempt to avoid extradition, Mr Assange sought asylum within the Ecuadorian Embassy in London. He remained there until April 2019. On leaving the Ecuadorian Embassy, Mr Assange was arrested by police on suspicion of having committed bail offences. He has been held in UK custody since that time.

5. The SPA and US justice authorities had both sought to extradite Mr Assange to face criminal matters within their respective jurisdictions. At the time of the complainant's 2019 renewal of her information request, SPA were no longer seeking to extradite Mr Assange. However the proceedings regarding the US extradition request matter were 'live' at the time of the information request and are still in progress.
6. CPS added that on 10 December 2021, the High Court quashed the order discharging Julian Assange and instructed the case be remitted back to the District Judge for her to send to the Secretary of State. CPS has now received an application on behalf of Mr Assange for permission to Certify a Point of Law. The extradition appeal matter remains live.
7. On 8 September 2015 the complainant requested information from CPS but was refused. She appealed the CPS refusal to the First-tier Tribunal which dismissed her appeal on 11 December 2017 (EA/2017/0041). The decision was upheld by the Upper Tribunal in 2019 following an appeal ([2019]UKUT 262 (AAC)). Following the changes in Mr Assange's status, the complainant renewed her information request to CPS in 2019.
8. On 12 December 2019, the complainant made a fresh, but very similar, request to CPS. The 2019 request was for:
 - "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 a named CPS lawyer, [Mr X, a retired CPS officer, 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 not to question JA 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."

9. CPS responded on 10 February 2020 with a section 17(1) FOIA refusal notice and:

- for parts 1 and 2 of the request, CPS refused it relying on the section 40(2) (Personal information) and section 30(1) (Investigations and proceedings) FOIA exemptions.
- For part 3 CPS relied on the section 30(3) FOIA exemption to neither confirm nor deny (NCND) holding the requested information
- For parts 4 and 5 CPS relied on the section 30(1) and section 42(1) (Legal professional privilege) FOIA exemptions to refuse the request.
- For the final part, CPS said that Mr X had retired in 2014; his email account had been deleted in line with CPS general practice.

10. On 28 April 2020 CPS told the complainant that the reasoning set out in its refusal notice had been confirmed following an internal review.

Scope of the case

11. The complainant contacted the Commissioner on 24 July 2020 to complain about the way her request for information had been handled.

12. On 11 January 2021 the complainant appealed to the Information Commissioner and said that she wanted two issues to be addressed 'seriously' in his investigation:

- CPS reliance on the exemptions cited; and
- the destruction of emails to and from Mr X.

13. In his investigation, the Commissioner considered carefully representations from CPS as well as those received from the complainant and from legal advisers on her behalf. He also had regard

for the information that is in the public domain about Mr Assange and his changing situation. The Commissioner's staff visited CPS offices and were given access to the relevant CPS records.

14. During the Commissioner's investigation in 2021 CPS disclosed some 330 pages of information, this was in addition to disclosures that it had made in 2017, some of which CPS now reissued with fewer redactions.
15. The complainant accepted the application of the section 40(2) FOIA exemption to redact relevant personal information so the Commissioner has not considered further CPS reliance on the section 40(2) exemption.
16. The Commissioner considered the CPS reliance on the sections 30 and 42 FOIA exemptions to withhold the relevant parts of the information. He also considered the deletion of Mr X's email account. He has also considered the impact of the passage of time and changing circumstances on the balance of the public interest.

Reasons for decision

Requests 1 and 2 – the Swedish (SPA) extradition matter

17. CPS disclosed some information but relied on the section 30(1)(c) and section 40(2) FOIA exemptions to refuse much of the request.
18. The section 30(1)(c) FOIA exemption applies to information held by a public authority if it has at any time been held for the purposes of any criminal proceedings which the authority has power to conduct. The Commissioner confirmed that CPS has the power to conduct relevant extradition and other criminal proceedings.
19. CPS told the Commissioner that the requested information related to extradition proceedings concerning Mr Assange and was therefore held for the purpose of criminal proceedings. Accordingly the Commissioner decided that the section 30(1) FOIA exemption was engaged.
20. In her representations, the complainant only cited public interest factors in favour of disclosure.

Public interest factors for disclosure

21. CPS recognised and gave weight to the fact that this is a high-profile matter and disclosure would further public understanding of CPS decision making in relation to extradition processes.
22. CPS acknowledged that some information had already been disclosed to the applicant by SPA. Also that greater transparency might increase public confidence in CPS.

23. The complainant said that SPA had issued an arrest warrant in 2010 but this had since been withdrawn and the SPA criminal investigation discontinued. Timing of a request was critical and the case for withholding information was likely to be lessened once - as here - relevant criminal investigations had been closed. Any chilling effect arising from disclosure now could not inhibit or obstruct live SPA proceedings since there were none.
24. The complainant opined that the conduct and relationship between CPS and SPA had been seen to be subverted in this matter. She said that in May 2019 a UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had criticised the "collective persecution" and "ganging up" against Mr Assange by the US, UK, Swedish and Ecuadorian authorities; these had been complacent at best and complicit at worst. The complainant said that there was now a heightened public interest in shedding light on the inter-governmental relationship whose propriety had, she alleged, been cast into doubt. She added that there was a significant public interest in making available information about criminal and extradition proceedings which raised issues about human rights and press freedoms.
25. The complainant said without further explanation that after closure of a criminal investigation, there might be a heightened public interest in disclosure if the investigation was perceived in some way to have gone wrong. She added that in her view, journalists had an important role to play in UK democracy as a public watchdog but needed access to information to perform that role effectively and be able to provide accurate and reliable information and commentary.

Public interest factors for maintaining the exemption

26. CPS said that extradition was concerned with the prosecution of suspected offenders (or the imposition of a sentence or serving of a custodial sentence if an offender has already been convicted in the territory of the Requesting States). CPS believed that extradition was an increasingly important tool in the administration of justice.
27. CPS added that the relationship of trust and confidence underlying information sharing between prosecuting authorities was vital. If sensitive parts of the content of such discussions were to be made public it would damage confidence and reduce cross-border cooperation in criminal proceedings.
28. In CPS experience extradition proceedings involved correspondence and effective information sharing over a wide range of issues. If the requested information were to be disclosed in full it would have a definite and deep chilling effect on the willingness of requesting states to engage with the UK authorities. This would inhibit the ability of the CPS to conduct extradition proceedings. The chilling effect would impede the UK's ability to fulfil its international obligations under various extradition

treaties and prejudice the ability of CPS and the UK to assist in prosecuting offenders and the administering of justice across borders.

29. The complainant only cited public interest factors in favour of disclosure.

Balance of the public interest

30. The Commissioner considered the balance of the public interest and had regard for all of the evidence provided to him by the parties and their representations.
31. In his consideration of factors favouring disclosure, the Commissioner had particular regard for the change in the position of SPA who no longer seek the extradition of Mr Assange and had ceased to do so at the time of the complainant's 12 December 2019 request. He noted the complainant's evidence that SPA had already made significant further disclosures of related information.
32. The Commissioner has had regard for representations from a firm of barristers on behalf of the complainant commenting on what they saw as the significance of her evidence.
33. In his investigation the Commissioner reviewed the relevant CPS records of correspondence with SPA and had regard for CPS representations.
34. The Commissioner noted that significant reasons in favour of disclosure to increase public understanding of Mr Assange's matter and confidence in the handling of it by CPS and SPA. He also noted the involvement by, and comments of 31 May 2019 by a UN Special Rapporteur about the US authorities' then approach to the matter and the concerns being expressed. These particularly related to the mental and physical health of Mr Assange which were alleged to have deteriorated during his years of asylum within the Ecuadorian Embassy, then followed by his being held in UK prisons once his asylum ended.
35. The Commissioner noted the concerns voiced by the complainant for journalists and other commentators, including those alleging possible abuse of the human rights of Mr Assange, within the context of the unfolding of events. He weighed those concerns in the balance when determining the overall public interest balance. However he also recalled that FOIA is blind as to a requester's identity and that their motives in seeking information are not normally relevant to the public interest test.
36. In considering factors favouring the public interest maintaining the exemption the Commissioner saw as persuasive the CPS evidence that extradition was an increasingly important tool in the administration of justice.
37. The Commissioner also saw as persuasive the evidence from CPS that fostering the relationship of trust and confidence underlying information

sharing between prosecuting authorities was vital and strongly in the UK national public interest. If content from the CPS discussions with SPA, and that SPA regarded as sensitive, were to be made public it would severely damage SPA's confidence in CPS and reduce cross-border co-operation in criminal proceedings with SPA and with their counterparts in other jurisdictions. This would prejudice the UK national interest.

38. The Commissioner further noted CPS evidence that inappropriate disclosures by it would impede the UK's ability to fulfil its international obligations under extradition treaties, impeding the ability of CPS and the UK to assist in prosecuting offenders and administering justice across borders. The Commissioner accepted CPS evidence that none of which would be in the UK national interest.
39. CPS argued that disclosure of discussions with SPA would inhibit free and frank discussions with it and other prosecuting authorities in the future; this is known as the 'chilling effect'. The Commissioner does not consider that chilling effect arguments automatically carry significant weight but he accepted that he should have regard for them here. He accepted CPS evidence that, if the requested information was to be disclosed in full, it would have a serious chilling effect on the willingness of overseas authorities to engage with those of the UK.
40. The Commissioner has noted the CPS evidence that the negative consequences foreseen arising from any inappropriate disclosures "would" be likely to occur and would damage to the interests of CPS and, by extension, of the UK.
41. In assessing other evidence, the Commissioner also had regard for the age of information requested. He noted too that he had seen no evidence of wrongdoing, a so-called 'smoking gun', on the part of CPS.
42. The Commissioner has seen from extensive media reporting of the progress of events concerning Mr Assange that he had been strongly associated with Wikileaks publication of classified US information and certain events in Sweden. Reporting had included the period of his asylum in the Ecuadorian Embassy and the principal events and proceedings up until the time of the 2019 information request.
43. The Commissioner found that the balance of the public interest had changed with the passage of time between the closely connected 2015 and 2019 requests. Accordingly he decided that some but not all of the SPA related records, ie those within the scope of parts 1 and 2 of the request, could now be disclosed. In the light of his findings CPS reviewed its relevant records in detail during his investigation and made further disclosures to the complainant. These comprised much of the procedural and some other information redacted in the CPS disclosures that had followed her 2015 information request. However there

remained some procedural and other undisclosed information which still engaged the section 30(1) FOIA exemption; the public interest balance strongly favoured maintaining the section 30(1) FOIA exemption in relation to the information.

Request 3 – the Ecuadorian correspondence matter

44. The complainant's request 3 was for correspondence between CPS and the Ecuadorian authorities between 19 June 2012 and 11 April 2019. CPS relied on the section 30(3) FOIA exemption to neither confirm nor deny (NCND) holding the requested information.
45. Section 30(3) FOIA states that the duty to confirm or deny holding requested information does not arise in respect of information which is (or if held by the public authority would be) exempt information by virtue of subsections (1) or (2).
46. CPS told the Commissioner that its ability to deliver effective criminal justice and maintain public confidence in the extradition process was of paramount importance. Confirmation or denial of whether or not information is held would compromise many of its criminal proceedings. Therefore, as a matter of policy and practice, CPS would neither confirm nor deny that an extradition request has been received until a person has been arrested in relation to it. The purpose of section 30(3) FOIA was to prevent the subject of an extradition request learning about it in advance and giving them the opportunity to evade justice by leaving the jurisdiction - as Mr Assange was alleged to have done when seeking asylum in the Ecuadorian embassy in 2012 - or otherwise seeking to avoid arrest. CPS's power to bring extradition proceedings would be undermined if there were not a consistent NCND policy to prevent express or implied tip offs.
47. The complainant said that CPS were applying a blanket NCND policy. She said that Mr Assange had been arrested in the UK in April 2019, initially in connection with bail act offences, but CPS were still relying on its policy of applying NCND after the subject's subsequent 2019 arrest in extradition proceedings brought by CPS at the behest of the US authorities.
48. The Commissioner has considered what information is in the public domain. CPS said, and the Commissioner accepted following his own researches, that there was no official information in the public domain to suggest that Mr Assange was of interest to the Ecuadorian prosecution authorities, or otherwise, to cast doubt on the CPS reliance on NCND. The US interest in Mr Assange is not relevant to this NCND position, so that the Commissioner decided that CPS had been correct to rely on NCND for information about any relationship it might, or might not, have had with the Ecuadorian authorities.

49. For the avoidance of doubt, the Commissioner makes clear that CPS have not told him whether or not any relevant information is held and he would not expect them to do so.

Public interest test

50. Section 30(3) FOIA is a qualified exemption and the Commissioner must consider the balance of the public interest in confirmation or denial.
51. The complainant said that CPS had failed properly to assess the balance of the public interest. The legal landscape had changed with the arrest of Mr Assange. She said that there had been significant public criticism of the UK, US and Ecuadorian authorities' conduct of the matter, including by a UN Special Rapporteur. She opined, without supporting evidence, that there was significant concern about the protection of journalists and freedom of speech in the UK.
52. The complainant added that one of the main motivating factors for her request had been with: *"the singular lack of transparency and dearth of information in the public domain, particularly concerning the role played by the CPS"*.
53. As regards the public interest balance, CPS said that it was important to enable it to protect the integrity of the extradition process. Confirming or denying would not just affect Mr Assange's matter, but would reveal information about the extradition process, and requirements that the CPS needed to fulfil its duties more widely.
54. Once information has been placed into the public domain, the CPS would no longer have control of the information disclosed; this would not be in the public interest.
55. CPS added that the purpose of the section 30 FOIA exemption was to preserve the ability of relevant public authorities to carry out effective criminal proceedings. Key to the balance of the public interest was whether confirmation or denial could harm its ability to carry out effective prosecutions. It was not in the public interest to jeopardise its ability to prosecute crime effectively which confirmation or denial would do.
56. CPS added that its arguments were supported by the conclusions of the First-tier Tribunal in relation to previous FOIA appeals that the purpose of the exemption would be undermined if the CPS NCND policy and responses were not applied consistently. CPS said that it had not seen any official information in the public domain about the Ecuador matter.
57. CPS considered that on balance, therefore, it is not in the public interest to confirm nor deny whether or not any information was held in relation

to Mr Assange and any correspondence between the CPS and the Ecuadorian authorities.

58. The Commissioner considered the representations of the parties and has conducted his own researches for any information that would cast doubt on the CPS reliance on NCND but he found none.
59. The Commissioner has noted the strong CPS concerns that departing from NCND would disclose the current status of an extradition request or otherwise undermine the extradition process. He accepted the CPS evidence that confirmation or denial would hinder the prevention or detection of crime and apprehension and prosecution of offenders. Also that unilateral confirmation or denial would damage the trust in CPS of authorities in other jurisdictions. He has noted and given weight to the complainant's evidence of concerns of the UN Special Rapporteur but found less persuasive the complainant's unsupported assertions that press and journalistic freedoms were under duress in the UK.
60. The Commissioner found substantially more persuasive the public interest in CPS maintaining the NCND exemption rather than not and therefore decided that the section 30(3) FOIA NCND exemption had been maintained correctly.

Requests 4 and 5 – the US extradition matter

61. For parts 4 and 5 of the request CPS relied on the section 30(1) and section 42(1) (Legal professional privilege) FOIA exemptions to refuse the request in full.
62. The Commissioner noted that Mr Assange remained a person of interest to the US authorities. During his investigation, the Commissioner reviewed the US sections of the CPS records. He saw that well before the 2019 information request, and during CPS consideration of it, there were relevant live proceedings in progress.
63. The information requested related to extradition proceedings concerning Mr Assange and was therefore held for the purpose of criminal proceedings. Accordingly the engagement of the section 30 FOIA exemption was appropriate.
64. CPS told the Commissioner that extradition is the formal process for requesting the surrender of requested persons from one territory to another for the following purposes: to be prosecuted, to be sentenced for an offence for which the person has already been convicted, or to carry out a sentence that has already been imposed.
65. CPS said that the extradition process was a sensitive matter which often included disclosure of complex material and evidence between countries.

It would also involve disclosure of how each country conducts this process and possibly the investigation of criminal activities.

66. CPS said that the CPS role in extradition proceedings was outlined in the Extradition Act 2003 and was to represent the foreign authority seeking the return of the requested person. CPS also advised foreign authorities on the content and validity of extradition requests received. The information CPS held comprised correspondence and advice between CPS and overseas authorities, such as the US, regarding extradition proceedings that have taken place so far, along with current on-going matters, regarding Mr Assange.
67. The complainant did not question the CPS engagement of the section 30(1) FOIA exemption but did challenge the CPS assessment of the public interest balance.
68. The Commissioner therefore decided that the section 30(1) FOIA exemption was engaged and proceeded to consider the balance of the public interest.

Public interest test

69. The section 30(1) FOIA exemption is qualified and the Commissioner must conduct a public interest balancing test.
70. The complainant said that the conduct of the US and UK authorities in the US proceedings had been the subject of "*considerable criticism*", including by a UN Special Rapporteur. She added that, in her view, the extradition proceedings gave rise to significant concerns around human rights and press freedom.
71. CPS recognised, and gave weight to, the fact that this was a high-profile matter. Disclosure would further public understanding and discussion of it and of CPS decision making. CPS acknowledged a possible precedent in that some information had already been disclosed to the complainant by SPA and accepted that transparency might increase public confidence in CPS.
72. CPS said that extradition was concerned with the prosecution of suspected offenders, the imposition of a sentence or serving of a custodial sentence if an offender has already been convicted. As such it was increasingly important as a tool in the administration of justice.
73. CPS added that the relationship of trust and confidence underlying information sharing between prosecuting authorities was vital. If the content of such discussions were to be made public inadvertently it would damage confidence and reduce cross-border cooperation in criminal proceedings. Extradition involved correspondence and effective information sharing over a wide range of issues. Disclosing the

requested information would have a definite and deep chilling effect on the willingness of other authorities' to engage with CPS, thereby inhibiting the conduct of extradition. This would impede the UK's ability to fulfil its international extradition treaty obligations and the ability of CPS and the UK to assist in prosecuting offenders and administering justice across borders.

74. CPS drew the attention of the complainant and the Commissioner to the 2017 conclusions of the First-tier Tribunal in the earlier and closely related appeal (EA/2017/0041). CPS said that there had been no significant change in the public interest balance since then sufficient to justify reaching a different conclusion on the information requested now. Given the live proceedings in the US extradition matter, there was a strong public interest in maintaining those exemptions.
75. The Commissioner had regard for the complainant's concerns and noted the intervention of a UN Special Rapporteur. He noted that SPA had made some further disclosures after Mr Assange ceased to be of interest to SPA. He weighed those concerns in the balance with the CPS concerns about the damage that disclosure would cause to international relationships from which the UK benefitted considerably. He also noted the live proceedings in the US extradition matter and therefore, on balance, decided that the public interest strongly favoured maintaining the section 30(1) FOIA exemption.
76. In the light of his decision regarding the section 30(1) FOIA exemption, the Commissioner did not consider the further CPS reliance on the section 42(1) FOIA exemption.

Deleted email account

77. CPS said that a named former CPS officer, whose email account was of interest to the complainant, had retired from CPS, and his email account had been deleted in line with CPS general practice of the day. At the time of his retirement in 2014, his relevant network account had been disabled to prevent its use on the CPS network. After three months, the data associated with the officer's email account had been deleted.
78. CPS added that deletion of the officer's email account had been carried out in accordance with the then CPS records management policy. This had been in line with CPS general practice and was undertaken before the complainant's 2015 first FOIA request had been received. CPS said that CPS had previously disclosed such relevant information as it held in relation to the deletion of the officer's email account.
79. The Commissioner accepted the CPS evidence and decided he therefore had no concerns in respect of the deletion of the officer's email account.

Right of appeal

80. 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

81. 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.
82. 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

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