

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 July 2013

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

Decision (including any steps ordered)

1. The complainant has requested information from the Crown Prosecution Service ("CPS") about guidance given by that organisation to the police regarding the investigation of allegations of fraud made against members of the House of Commons and the House of Lords. The CPS provided links to information available online and, following a delayed internal review, disclosed other information. However, it withheld certain information citing section 31 (law enforcement exemption) as its basis for doing so.
2. The Commissioner's decision is that the CPS is entitled to rely on section 31(1)(a) as its basis for withholding the requested information.
3. No steps are required.

Request and response

4. On 14 July 2012, the complainant requested information of the following description from the CPS:

"Members of Parliament and House of Lords Expenses claims

In dealing with allegations of fraud relating the MPs and House of Lords' expenses claims there must have been a meeting between the Director of Prosecutions and the police on how complaints and allegations of such crimes were to be investigated and how decisions were made on whether to investigate and then prosecute. The D of PP/CPS must have given some general guidance or instruction on these particular matters I

would like to see a copy of any instruction/guidance/memorandum given to the police on how to deal with such allegations and of CPS involvement.

I am not interested in individual cases or any personal data.”

5. On 13 August 2012, the CPS responded. It provided him with links to information that it had published online which it believed to be relevant to his request.
6. The complainant requested an internal review on 20 September 2012. After considerable delay and following the Commissioner’s intervention, the CPS sent him the outcome of its internal review on 19 March 2013. It revised its position and made a further disclosure to him. However, it also explained that it was withholding information within the scope of the request under section 31(1)(a). It described this information as being from the meeting record of the joint Metropolitan Police Service (“MPS”)/CPS assessment panel held on 22 May 2009, part of which it had disclosed to him.

Scope of the case

7. The complainant first contacted the Commissioner on 23 January 2013 to complain about the way his request for information had been handled. The Commissioner contacted the CPS about this on 6 March 2013. As noted above, the CPS provided the complainant with the outcome of its internal review on 19 March 2013. The complainant contacted the Commissioner again on 22 March 2013 to complain about the CPS’ use of section 31(1)(a). He argued that section 31(1)(a) was not engaged and, where it was, the public interest favoured disclosure.
8. The Commissioner has therefore considered whether section 31(1)(a) is engaged. Where he is satisfied that it is engaged, he has looked at whether the public interest in maintaining that exemption outweighs the public interest in disclosure.

Reasons for decision

Section 31(1)(a)

9. Information which is not exempt from disclosure by virtue of section 30 is exempt on the basis of section 31(1)(a) if its disclosure would, or would be likely to, prejudice the prevention or detection of crime.
10. Section 31(1)(a) is a prejudice based exemption. This means that in order to engage the exemption, there must be likelihood that disclosure

would cause prejudice to the interest that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption:

- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the disputed information was disclosed must relate to the applicable interests within the relevant exemption;
 - secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the disputed information and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold (would be likely), the Commissioner believes that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. The Commissioner considers that the higher threshold places a stronger evidential burden on a public authority to discharge. The chances of the prejudice occurring should be more probable than not.
11. The CPS explained that "the withheld information relates to the tactics and methodology to be used in the investigation; disclosure of this information would enable individuals to evade detection thereby prejudicing both the prevention and detection of crime".
 12. The complainant disputed this assertion and stated: "I find it highly unlikely that disclosure of the material the CPS is withholding would in any way compromise police tactics in the investigation or the prevention of crime". He also argued: "The expenses matters that were the subject of these discussions are in the past, there is little now that any MP can do to cover their tracks. The offences all involve documentary (expenses claims) records which can be accessed by rudimentary police processes followed by interview if the initial evidence merits".
 13. The Commissioner notes the complainant's assertions and considered the three criteria set above with this in mind when examining the withheld information.
 14. Regarding the first criterion, the Commissioner is satisfied that the harm envisaged by the CPS is one which section 31(1)(a) is designed to avoid. It relates to the applicable interest in the relevant exemption.

15. Regarding the second criterion, the Commissioner considered the withheld information. He is unable to set out the detail of that information on the face of this Notice without revealing what has been withheld. However, he is satisfied that there is a clear link between disclosure of the information and the harm envisaged by the CPS. It would reveal tactical detail that could be useful to those seeking to evade detection of their criminal activity. He agrees that this is a prejudicial outcome which is of substance. He notes the complainant's argument that this matter is in the past. However, he thinks that the information is still sufficiently recent and detailed for it to be of use to anyone who would seek to defraud the public purse via expense claims.
16. Regarding the third criterion, the CPS did not specify which level of prejudice it was seeking to argue. The Commissioner has therefore considered the lower level of "likely" prejudice. He has considered the information and has concluded that the prejudicial outcome described in the exemption would be likely where the information were to be disclosed. The Commissioner can see how those in public office who would defraud the public purse via expense claims could use the tactical detail set out in the withheld information to avoid detection.
17. The Commissioner is therefore satisfied the withheld information is exempt information under section 31(1)(a). He agrees that disclosure would be likely to prejudice the prevention or detection of crime.
18. By virtue of the effect of section 2(2)(b), exempt information must be disclosed if, in all the circumstances of the case, the public interest in maintaining the applicable exemption does not outweigh the public interest in disclosure.

Public interest factors favouring disclosure

19. The complainant argued "I feel that the CPS is withholding the material because the minutes/guidelines may indicate a reluctance to pursue the majority of fraudulent expenses claims. And, that is of the highest public interest."
20. The CPS acknowledged: "There are clear public interest factors in favour of disclosure in this case. The political expenses allegations are a matter of great public interest; there is therefore a strong public interest in disclosing information setting out how the investigation should be approached as this would inform the public debate regarding the way the allegations are being investigated. Furthermore it would give the public the opportunity to challenge the CPS and the MPS on the way the allegations are being investigated".

Public interest factors against disclosure

21. The CPS set out the following arguments against disclosure: “[T]here are also strong public interest factors in favour of withholding the information. There is a very strong public interest in avoiding likely prejudice to the prevention and detection of crime. Disclosure of information that reveals investigatory tactics would enable individuals to commit offences in a way that avoids the focus of the investigation; this is contrary to the public interest.
22. Furthermore there is a clear public interest in records of such discussions between the CPS and the MPS being withheld as if people fear that there will be disclosure they may be less likely to have full and frank exchanges. It is very important that exchanges are full and frank so that these meetings are effective and well informed decisions are made”.

Balance of the public interest

23. As noted above, the Commissioner must consider the circumstances of each case when reaching a view as to the balance of public interest. He recognises that routine disclosure of investigation tactics would clearly have a negative impact on the conduct of criminal investigations to the obvious detriment of the public interest. However, the subject matter in this case, fraudulent expense claims by elected representatives in Parliament, not only attracts considerable public attention but also gives rise to intense public anger and a loss of trust in the probity of elected representatives. The long process of rebuilding trust would, in the Commissioner’s view, be aided by greater transparency to show whether special treatment has been given to members of parliament by virtue of their status.
24. The Commissioner agrees that considerable weight must be given to disclosure in the circumstances of this case for this reason. As both parties acknowledged there is a strong public interest in learning more about the way these particular allegations of fraud were investigated which would be served by disclosure in this case. Given the gravity of the allegations and the public position of those accused, he considers that there was a strong public interest in disclosing the information requested in this case.
25. The Commissioner also considers that the second of the CPS’ arguments do not address the prejudicial outcome inherent in the exemption. He is sceptical about the extent to which officers of the CPS and the MPS would retreat from carrying out their duties in future where the public interest favours disclosure in the circumstances of this case.

26. That said, the Commissioner considers that there is a compelling public interest in maintaining the exemption in this case. This public interest would be served by ensuring that recently created information about specific investigation tactics are not disclosed. The Commissioner recognises that safeguards have been developed to avoid similar abuses of the parliamentary expenses claim system. However, the Commissioner does not agree that this is sufficient to diminish the public interest in maintaining the exemption in this case. While the public is entitled to expect the highest standards of probity in public office, the public is also entitled to expect that allegations of wrong doing by those in public office are fully investigated and that those investigations are not hampered by the efforts of alleged offenders to avoid detection. Disclosure, in this case, would provide tactical information about relatively recent investigations that could be used by individuals to evade detection.
27. In light of the above, the Commissioner is therefore satisfied that on balance, the public interest in maintain the exemption outweighs the public interest in disclosing the requested information. In reaching this view, he has given particular weight to the age of the information – it was created relatively recently – and the seriousness of the allegations that were under investigation.

Other matters

Internal Review

28. Whilst there is no explicit timescale laid down by the FOIA for completion of internal reviews, the Commissioner considers that they should be completed as promptly as possible. The Commissioner believes that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
29. The Commissioner is concerned that in this case, it took 126 working days for an internal review to be completed. The Commissioner does not believe that any exceptional circumstances existed to justify that delay, and he therefore wishes to register his view that the CPS fell short of the standards of good practice by failing to complete its internal review within a reasonable timescale. He would like to take this opportunity to remind the CPS of the expected standards in this regard and recommends that it aims to complete its future reviews within the Commissioner's standard timescale of 20 working days.

Right of appeal

30. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

31. 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.
32. 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

Alexander Ganotis
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