

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 June 2018

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

### Decision (including any steps ordered)

---

1. The complainants requested information about costs paid to a company employed by the Crown Prosecution Service (CPS) in connection with the recovery of assets from them. The CPS said that the information constituted the complainants' own personal data, and cited the exemption at section 40(1) (personal information) of the FOIA.
2. The Commissioner agreed that the request was for the complainants' own personal data. The Commissioner's decision is that the CPS should have cited section 40(5)(a) to neither confirm nor deny whether it held the requested information.
3. The Commissioner requires no steps.

### Request and response

---

4. On 22 January 2018, the complainants wrote to the CPS and requested information in the following terms:

*"...I once again ask under the freedom of information act the costs up to present date of all [company name redacted] charges to the CPS for the work they have carried out on our case in there [sic] attempt to recover thai property and thai bank account this would not be a*

*difficult task simple just produce all invoices for the 2 years they have been working on this case".*

5. The CPS responded to the request on 14 February 2018. It refused the request, citing the exemptions at section 30(1)(c) (investigations and proceedings) and section 40(1) (personal information) of the FOIA.
6. Following an internal review, the CPS wrote to the complainants on 1 March 2018. It upheld its application of the exemptions cited.

## **Scope of the case**

---

7. The complainants contacted the Commissioner on 22 March 2018 to complain about the way their request for information had been handled. They were unhappy with the CPS's decision to refuse the request.
8. Although the CPS refused the request under section 40(1) of the FOIA, for the reasons set out below, the Commissioner has considered whether it should have neither confirmed nor denied whether it held the requested information, by virtue of section 40(5)(a) of the FOIA.

## **Reasons for decision**

---

### **Section 40 – personal information**

9. Section 1(1) of the FOIA provides two distinct but related rights of access to information, that impose corresponding duties on public authorities:
  - a) the duty to inform the applicant whether or not the information they have requested is held; and, if so
  - b) the duty to communicate the information to the applicant.
10. Section 1(1)(a) is commonly known as "the duty to confirm or deny". However, the duty does not always apply and a public authority may refuse to confirm or deny whether it holds information through reliance on certain exemptions under the FOIA. It follows that where section 1(1)(a) is disapplied, there is no duty on a public authority to go on to comply with section 1(1)(b).
11. Section 40(5)(a) of the FOIA excludes a public authority from complying with the duty to confirm or deny in relation to information which, if held, would be exempt information by virtue of section 40(1) of the FOIA.

12. Section 40(1) of FOIA, which the CPS applied to the request, states:

*"Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject".*

13. Therefore, where the information requested is the requester's own personal data within the meaning of section 40(1) of the FOIA, the effect of section 40(5)(a) is that a public authority is not required to confirm or deny whether it holds the information.

14. The Data Protection Act 1998 (DPA) defines personal data as:

*"...data which relate to a living individual who can be identified*

*a) from those data, or*

*b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."*

15. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

16. Having considered the request in this case, and background information provided by the complainants, the Commissioner is satisfied that the requested information constitutes personal data and that the complainants are, or would be, the subjects of the requested information. This is because the information they have requested relates to ongoing confiscation proceedings against both of them. They are identifiable, both being signatories to the request for information about "our case", and the CPS has confirmed that the proceedings remain live. The requested information is inextricably linked to them, and the request could not be answered without reference to them. The Commissioner is therefore satisfied that the information meets the criteria for "personal data", set out in paragraphs 14 and 15, above, and that the complainants are the data subjects. It is therefore their personal data and falls within the scope of section 40(1) of the FOIA.

17. Furthermore, the Commissioner also considers that the requested information, if held, constitutes "sensitive personal data". Sensitive personal data is personal data which falls into one of the categories set out in section 2 of the DPA. The Commissioner considers the relevant category in this instance to be:

*“(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings”.*

18. The Commissioner considers that the requested information comprises sensitive personal data because it relates to formal confiscation proceedings against the data subjects.
19. In relation to such information, the provisions of section 40(5)(a) mean that the CPS was not required to comply with the duty to confirm or deny whether it held the information, as the duty to confirm or deny does not arise in relation to information which is (or, if it were held by the CPS, would be) exempt information by virtue of section 40(1) of the FOIA. In considering whether the CPS should have applied section 40(5)(a) instead of section 40(1), the Commissioner has taken into account that disclosure under the FOIA should be considered in its widest sense – that is, as being to the world at large. Compliance with section 1(1)(a) would put into the public domain information about the existence, or otherwise, of proceedings linked to the complainants.
20. For the reasons set out above, while the Commissioner agrees that the requested information fell within the scope of section 40(1) of the FOIA, she considers that the CPS should have applied section 40(5)(a) of the FOIA to neither confirm nor deny whether it held it. The Commissioner notes that the complainants submitted a subject access request at the same time as their FOIA request, and that it has been dealt with under the DPA. The Commissioner considers that this is the correct access regime, as she considers that the complainants have asked for their own personal information.
21. In view of her decision, the Commissioner has not gone on to consider the CPS's application of section 30(1)(c) of the FOIA.

## Right of appeal

---

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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.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.

**Signed** .....

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**