

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 February 2019

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

Decision (including any steps ordered)

1. The complainant requested information from the Crown Prosecution Service (CPS) relating to payments made to a named individual.
2. The Commissioner's decision is that the CPS has breached section 17(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. As a response has been issued, the Commissioner does not require the CPS to take any further steps.

Request and response

4. On 3 November 2018, the complainant wrote to the CPS and requested information in the following terms:

"BACKGROUND:

<https://www.theguardian.com/uk-news/2018...>

A CPS spokeswoman said: "We have reached an agreement without admission of liability".

So, another disaster for the taxpayer-funded CPS.

REQUEST:

*1.How much did you pay the victim, [name redacted] in: -
a)legal costs?*

b) compensation?

2. How much did it cost the taxpayer in external legal fees?

3. Name the CPS worker or other person who authorised the agreement.

4. Provide all external legal advice given to the CPS on the compensation case (not the criminal case)."

5. On 29 November 2018, the CPS wrote to the complainant to confirm that it held information within the scope of the request but it considered this to be exempt from disclosure on the basis of Section 36 (prejudice to the effective conduct of public affairs). The CPS explained that it needed more time to consider the balance of the public interest in respect of that exemption.
6. On 31 December 2018, the complainant wrote to the CPS chasing a response.
7. On 31 December 2018, the CPS wrote to the complainant and further extended the time limit to consider the public interest test.
8. The CPS provided a response on 8 February 2019.

Scope of the case

9. The complainant contacted the Commissioner on 31 December 2018 to complain about the failure by the CPS to respond to his request.
10. The Commissioner has considered whether the CPS has complied with its obligations in relation to the time for compliance with the FOIA.
11. In line with her usual practice, the Commissioner contacted the CPS on 21 January 2019 to highlight the outstanding response. She requested that the FCO issue a substantive response to the request within 10 working days.
12. The CPS replied to the Commissioner on 1 February 2019. It stated that a "submission has now been sent to the qualified person to seek their opinion", and that "the CPS does aim to respond to all FOI requests within the statutory time limit and as soon as the opinion of a qualified person has been obtained", the complainant would get a response.
13. Subsequently, on 8 February 2019, the CPS wrote again to the Commissioner and confirmed that it had on that date issued a response to the complainant's request. This response was in the form of a refusal notice citing sections 36(2)(c) (prejudice to the effective conduct of public affairs) and 42(1) (legal professional privilege) of the FOIA.

Following this, the complainant contacted the Commissioner and confirmed that he wished for a decision notice recording the delay in responding to his request to be issued.

14. This decision notice deals only with the timeliness of the response to the request submitted to the CPS on 3 November 2018.

Reasons for decision

15. Section 1(1) of the FOIA states that:

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.

16. Section 17(1) of the FOIA requires that a response refusing a request must be sent within 20 working days of receipt of the request. In this case the CPS failed to issue response within 20 working days and in so doing breached section 17(1) of the FOIA.
17. As the CPS has now issued a response, no further action is required in relation to this breach.

Other matters

18. As well as the finding above on section 17, the Commissioner also wishes to clarify when it is permissible for a public authority to extend the time to respond to a request.
19. In a holding response sent to the complainant on 29 November 2018, the CPS indicated that it required further time to consider the balance of the public interests. It was evident, however, from its correspondence to the Commissioner of 1 February 2019 that the CPS had not, even by that time, reached a conclusion on whether section 36 was engaged.
20. Section 17(3) provides the possibility of an extension to the time to respond *only* in relation to consideration of the balance of the public interests. There is no extension of time available in relation to the formation of the qualified person's opinion on the engagement of section 36.
21. In future the CPS must ensure that it always reaches a conclusion on whether an exemption is engaged within 20 working days of receipt of a

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request, including where that involves the giving of an opinion by the qualified person.

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
Website: 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

Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF