

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 21 July 2022

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

#### **Decision (including any steps ordered)**

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1. The complainant made a six part request for information collated in the investigation into an explosion and the subsequent charge and conviction of Contract Natural Gas Limited. The Crown Prosecution Service (CPS) refused to provide this, citing section 30(1)(c), section 32, and section 40(2) of FOIA.
2. The Commissioner's decision is that the CPS was entitled to rely on section 30(1)(c) of FOIA to withhold the information in its entirety. He has not therefore considered the application of section 32 and section 40(2). No steps are required.

#### **Request and response**

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3. On 24 June 2020, the complainant wrote to the CPS and requested information in the following terms:

"Re: Gas explosion that occurred at 43 Bebington Road, New Ferry, CH62 5BE on 25th March 2017 HSE ref: 4513660

Please accept this as a request for information made pursuant to the Freedom of Information Act 2000 ("FOI") and the Environmental Information Regulations 2004 ("EIR").

I am seeking information collated in the investigation into the above explosion and subsequent charge and conviction of Contract Natural Gas Limited. This request includes, but is not limited to:

1. Witness statements
  2. Expert reports
  3. Documents and photographs
  4. Any correspondence with Contract Natural Gas Limited
  5. Any documents sent to, or received from Contract Natural Gas Limited
  6. Any evidence collated as part of the criminal proceedings, Case No. T20187207 heard before the Liverpool Crown Court, The Queen Elizabeth II Law Courts, Derby Square, Liverpool, L2 1XA, trial commencing 7<sup>th</sup> January 2019."
4. The CPS responded on 6 August 2020 and refused to provide the requested information citing section 30(1)(c) and section 40(2) of FOIA.
  5. The CPS provided an internal review of its decision on 9 September 2020 maintaining its original position as well as citing section 32 of FOIA to withhold the requested information.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 14 October 2020 to complain about the way her request for information had been handled.
7. The Commissioner set out whether the CPS was entitled to rely on section 30(1)(c), section 32 and section 40(2) of the FOIA to withhold the requested information.

### **Reasons for decision**

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#### **Section 30 - investigations and proceedings**

8. Section 30(1)(c) of FOIA states that:

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of –

(c) any criminal proceedings which the authority has power to conduct.”

9. The phrase “at any time” means that information can be exempt under section 30(1)(c) if it relates to an ongoing, closed or abandoned investigation.
10. Section 30(1) is a class-based exemption, which means that there is no need to demonstrate harm or prejudice in order for the exemption to be engaged. However, information must be held for a specific or particular investigation and not for investigations in general.
11. The CPS explained to the Commissioner that is aware section 30 of FOIA can only be claimed by public authorities that have particular powers or duties. It referred the Commissioner to his own guidance<sup>1</sup> which outlines that the CPS would be considered as a public authority which does not have the investigative function but does have the power to conduct criminal proceedings.
12. As the Commissioner’s own guidance clarifies, he is satisfied that the CPS has the power to conduct criminal proceedings.
13. The Commissioner now needs to consider whether the information in this case is held by the CPS for the purpose of specific criminal proceedings which it has the power to conduct.
14. The CPS explained that section 30(1)(c) of FOIA can protect information generated by the CPS following the conclusion of an investigation and start of criminal proceedings. It explained that section 30 of FOIA exists to ensure the effective investigation and prosecution of offences and the protection of confidential sources. It also explained that it would need to prevent any disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution process generally, including any prejudice to future investigations and proceedings.

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<sup>1</sup> [investigations-and-proceedings-foi-section-30.pdf \(ico.org.uk\)](https://ico.org.uk/investigations-and-proceedings-foi-section-30.pdf)

15. The Commissioner has reviewed a sample of the withheld information and is satisfied from this that the information relates to proceeding against Contract Natural Gas Limited and is therefore satisfied that the information held is for a specific investigation.
16. The Commissioner has consequently decided that the exemption is engaged in respect of the information requested.

### **The public interest test**

17. Section 30(1)(c) of FOIA s a qualified exemption and is subject to the public interest test. The Commissioner must consider whether, in all of the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Public interest arguments in favour of disclosure**

18. The CPS explained that if it was to release the information requested this would increase public understanding of the CPS decision making and prosecuting process.
19. The CPS also explained that disclosing the requested information and being transparent may increase public confidence in the CPS.
20. The Complainant argued in her internal review request that given the nature of this case, there is wide ranging public interest in disclosure.
21. The complainant argued that the information should be disclosed to further the public debate and add to the limited information that is already available and importantly allow for scrutiny of the decision to be had.
22. The complainant also argued that given the case has now concluded, the argument that such disclosure may prejudice the investigation and/or individuals involved (and may cause them distress) does not apply and will not apply to all of the information requested. She went on to explain that some of what has been requested will have been shared in open court and where there is a risk the information would likely cause harm and/or prejudice it should be redacted.

### **Public interest arguments in favour of maintaining the exemption**

23. In its submission to the Commissioner the CPS argued there is a strong public interest in safeguarding the prosecution process. It explained that maintaining the confidentiality of communications between the Police and the CPS, as well as other public bodies is an essential part of this

process. It stated that it is important for officials to be able to freely justify and maintain their thought process when making decisions on criminal cases, without fear of the routes leading to those decisions later being disclosed into the public domain. It added that it is important to remember that to release case information may dissuade witnesses from assisting in future investigations.

24. The CPS argued that witnesses are a vital part of the prosecution process and it is crucial that they are able to approach the investigative body and provide statements without fear that they may one day be placed into the public domain. It stated that releasing this sort of information would be likely to prejudice future investigations.
25. The CPS believe there is a strong public interest in safeguarding the prosecution process and that it considers disclosure of the withheld information likely to damage the function that the CPS carries out.
26. The CPS argued that to disclose the specific details of the incidents outside of the disclosure provisions associated with a criminal case would be entirely unfair to those witnesses, victims and complainant's and could potentially deter them from showing such courage to make an allegation in the future. It stated that the fear that one day this information could be disclosed by the CPS into the public domain would damage confidence in its ability to hold sensitive information confidentially, and therefore prejudice the prosecution process as people would be less likely to report future crimes.
27. The CPS stated the following:

"As is true with a lot of criminal case files considered by the CPS, allegations made by the victims and witnesses are relied upon to meet the evidential stage of the Code of Crown Prosecutors – the CPS guidance for prosecutors to make charging decisions. Victims and witnesses need to show courage when they come forward and make an allegation, although all efforts are made to make this experience as stress free as possible it is likely that being involved in a criminal case is not an everyday experience and may cause damage to those individuals the CPS relies upon to supply evidence."
28. The CPS explained that there is a key difference between information that may appear in a speculative news report compared to official information held by the CPS, which is held for the purpose of conducting criminal proceedings that the CPS can conduct. It stated that it is not in the public interest to jeopardise the ability of the CPS to effectively carry out its prosecution function.

## **Balance of the public interest**

29. The Commissioner recognises the public interest in promoting transparency and public understanding with regard to decisions made by public authorities.
30. However, the Commissioner understands that there is a strong public interest in supporting the protection of the CPS's prosecution processes which includes its dealings with witnesses and victims. Such discussions must remain full and frank and without fear of being routinely available to the public. Were these parties concerned that any content of their detailed statements could find their way into the public domain, it seems likely that it may act as a deterrent as witnesses and victims may be 'put off' from making allegations or reporting a crime. The Commissioner believes this argument to be particularly weighty in favour of maintaining the exemption, as it could ultimately undermine the course of the investigation if such evidence is not sought and given in a full expectation of confidence.
31. The Commissioner agrees with the CPS that there is a strong public interest in favour of maintaining the exemption to safeguard the prosecution process. The CPS explained that maintaining the confidentiality of communications between the Police and the CPS, as well as other public bodies is an essential part of the process. The Commissioner agrees that it is important for officials to be able to freely justify and maintain their thoughts and process when making decisions on criminal cases, without fear of the routes leading to those decisions later being disclosed into the public domain.
32. The Commissioner does have concerns that disclosing information considered as part of a criminal investigation, which identifies individuals who assisted with the investigation could create perception among the wider public that sensitive information about criminal investigations may be disclosed to the world at large. He considers that there is a real chance this may deter people (including witnesses, complainants and suspects) from coming forward and cooperating with prosecution authorities. There is a very significant public interest in avoiding that outcome and with this the Commissioner finds the public interest arguments in favour of maintaining the exemption to be more compelling.
33. The Commissioner therefore concludes that the public interest in maintaining the exemption outweighs that in disclosure and that the CPS is entitled to rely on section 30(1)(c) to withhold the requested information.

34. As the exemption has been applied to the information in its entirety the Commissioner has not found it necessary to consider the other exemptions cited.

## Right of appeal

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35. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

36. 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.
37. 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 .....**

**Laura Tomkinson  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**