

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

### **Decision notice**

**Date:** 10 January 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 requested information about a specified Court of Appeal case. The Crown Prosecution Service (the 'CPS') refused to provide the requested information. It initially cited section 40(2) (personal information), but ultimately relied on section 32(1)(c) (court records, etc) of FOIA.
2. The Commissioner's decision is that the CPS has properly relied on section 32(1)(c) to refuse this request.
3. No steps are required as a result of this notice.

#### **Background**

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4. The CPS has explained that it conducts monthly meetings regarding offences and regularly decides whether those issues discussed should be added to its external website by updating its guidance documents. The information request under consideration here refers to a Court of Appeal judgment which is referenced in this guidance.

5. The CPS said it had obtained a copy of the related Court of Appeal judgment in 2019 to assist with the review and update of the CPS guidance on its external website 'Road Traffic Summary Offences guidance'<sup>1</sup>.
6. The CPS also advised that it uses Court of Appeal judgments as part of its day to day work and therefore has copies so that it can refer to them. The CPS said it does not author or own Court of Appeal judgments but advised that they are widely accessible by contacting the Court of Appeal or the Criminal Appeals Office.

## Request and response

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7. On 26 January 2021, the complainant wrote to the CPS and requested information in the following terms:

*"Your website at <https://www.cps.gov.uk/legal-guidance/road-traffic-summary-offences> makes reference to a Court of Appeal case, R v R [2012] EWCA Crim 2887. Assuming the CPS has a copy of the relevant judgment, please could you supply a copy. Could you also please confirm the full names of the parties to that case."*

8. The CPS responded on 23 February 2021. It refused to provide the requested information, citing section 40(2) (personal information) of FOIA. Specifically, the CPS said:

*"The Crown Prosecution Service (CPS) holds a copy of the judgement as described in your request, however this information is exempt under section 40-Personal Information. Please refer to the attached section 17 refusal notice which explains this exemption in further detail.*

*Based on the information provided in the judgement we are unable to identify whether we hold full names of the parties to the case referred in this document. Alternatively, you may wish to contact the Criminal Appeals Office, using the email address below as they may have further information on the parties to the case. [criminalappealoffice.generaloffice@hmcts.x.gsi.gov.uk](mailto:criminalappealoffice.generaloffice@hmcts.x.gsi.gov.uk)"*

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<sup>1</sup> <https://www.cps.gov.uk/>

9. The complainant requested an internal review on 23 February 2021. He argued that section 40 did not apply, and said that even if it did, a redacted version of the judgment could be provided.
10. Following its internal review the CPS wrote to the complainant on 23 March 2021. It partly revised its position in that it now said that section 32(1)(c) (court records) of FOIA applied. However, in relation to the complainant's request for the "full names of the parties" to the case, the CPS maintained:

*"As noted in our previous response, based on the information provided in the judgement we are unable to identify whether we hold full names of the parties to the case referred in this document. If we did hold this information, it would be exempt from disclosure under section 40-Personal Information."*
11. The CPS reiterated that the complainant may wish to contact the Criminal Appeal Office and again provided him with the relevant email address.

## Scope of the case

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12. The complainant contacted the Commissioner on 23 March 2021 to complain about the way his request for information had been handled. The complainant submitted the following grounds of complaint, which the Commissioner asked the CPS to take into account when responding to his investigation:

*"The CPS relies on section 32, I note the ICO's guidance<sup>2</sup> on this exemption explains that:*

*46. Where information was originally only held for the purposes of proceedings but the authority subsequently acquires the same information from another source, that information won't be covered by section 32 any more because it will no longer be held 'only by virtue'.*

*As is standard practice, it appears likely the CPS would hold a large number of legal texts and legal commentary on reported cases, as well as copies of law reports. Any copies of the judgment contained within any such texts or reports would not*

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<sup>2</sup><https://ico.org.uk/media/for-organisations/documents/2021/2619028/s32-court-inquiry-and-arbitration-records.pdf>

*be documents held 'only by virtue' of the court proceedings, such that the exemption would no longer be available to the CPS.*

*The CPS can only rely on section 32 if it has only ever acquired a copy of the judgment from the court proceedings, and not via any other route, which appears intrinsically unlikely. The CPS has not stated that the only copies of the judgment held were obtained only by virtue of the court proceedings."*

13. The complainant also confirmed that was he no longer concerned with trying to secure any personal data within the scope of his request. For this reason, the Commissioner has not considered the CPS' reference to section 40 of FOIA any further.
14. In this case, the Commissioner has considered whether the CPS was entitled to refuse the request under section 32(1)(c) of FOIA.

## **Reasons for decision**

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### **Section 32 - court records**

15. Section 32(1) of FOIA states:

*"Information held by a public authority is exempt information if it is held only by virtue of being contained in—*

*(a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter*

*(b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or*

*(c) any document created by—*

*(i) a court, or*

*(ii) a member of the administrative staff of a court,*

*for the purposes of proceedings in a particular cause or matter."*

16. Section 32(1) is a class based exemption. This means that any information falling within the category described is automatically exempt from disclosure regardless of whether or not there is a likelihood of harm or prejudice if it is disclosed. It is therefore conceivable that the exemption could apply to information which may otherwise be available to an applicant via other means, or to information which is already widely available.

17. There are two main tests in considering whether information falls within this exemption:

- Is the requested information contained within a relevant document (for example one filed with, or otherwise placed in the custody of a court, or one created by a court or a member of the court's administrative staff) for the purposes of proceedings in a particular cause or matter?
- Is this information held by the public authority only by virtue of being held in such a document?

*Is the information contained in a relevant document for the purposes of proceedings in a particular cause or matter?*

18. The CPS told the complainant:

*"Section 32(1)(c) of the FOI Act provides an exemption for documents created by a court. This scope of this provision extends to unpublished judgments. ICO guidance [see link at footnote 2 above] outlines that they believe section 32 was drafted to allow the courts to maintain judicial control over access to information about court proceedings."*

19. The CPS also said:

*"The ICO guidance states that even if the information was at one time revealed in open court, this does not mean it is still available in practice at the time of the request. For example, information disclosed in open court may briefly enter the public domain but is short-lived unless it passes to more permanently available sources.*

*The Court and Tribunals Judiciary website outlines that '[t]here is no right of access under the Freedom of Information Act to information contained in court records, which is an absolute exemption under Section 32 (Court Records) of the Act.' More information is available here<sup>3</sup>."*

20. In correspondence with the Commissioner, the CPS said the information withheld by section 32(1)(c) was created by the court for the purposes or proceedings, namely the appeals process.

*Is the information held only by virtue of being contained in such a document?*

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<sup>3</sup> <https://www.judiciary.uk/foi/>

21. In order for the exemption at section 32 to be engaged, the second test is that the information is held '*only by virtue of...*'.
22. In the Commissioner's view, that phrase implies that if the public authority also holds the information elsewhere it may not rely upon the exemption.
23. In this case, having considered the CPS's submissions, and in the absence of any evidence that the CPS held the information for any other purpose, the Commissioner is satisfied that the requested information withheld by virtue of section 32(1)(c) is only held by virtue of being contained in a document created by a court, or a member of the administrative staff of a court, for the purpose of proceedings.

*Is the exemption engaged?*

24. In a case such as this, what is important is whether the information fits the description in section 32(1)(c). As the wording of the exemption implies, it is not only the reason for holding the information itself which is relevant, but also the type of document the information is contained in.
25. The requested information in this case relates to a legal process, namely appeal proceedings.
26. From the evidence he has seen, the Commissioner is satisfied that the information withheld by virtue of section 32(1)(c) is contained in a document created by a member of the administrative staff of a court, for the purposes of proceedings, and that there is no reason for the CPS to hold it other than for the purposes of those proceedings.
27. As section 32 of FOIA is an absolute exemption, there is no requirement to consider whether there is a public interest in disclosure.

*Conclusion*

28. The Commissioner's decision is that the requested information falls within the scope of section 32(1) of FOIA and the CPS was entitled to rely on section 32(1)(c) of FOIA to withhold it.

*Section 16 advice and assistance*

29. From the evidence he has seen, the Commissioner is satisfied that the complainant has been provided with advice and assistance as to how he may be able to access the requested information via the appropriate channels.

## Right of appeal

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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: 0203 936 8963

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)

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 .....**

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