

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

### **Decision notice**

**Date:** 1 March 2023

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

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

---

1. The complainant requested information from the Crown Prosecution Service (the public authority). The Commissioner's decision is that the public authority was entitled to refuse to confirm or deny whether it held information within the scope of the request, in accordance with section 12(2) (cost limit) of FOIA. The Commissioner also finds that the public authority complied with its obligations under section 16 of FOIA to offer advice and assistance.
2. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

---

3. On 17 November 2022, the complainant made the following request for information to the public authority:

"I received the FOIA response [reference redacted] which confirmed that the CPS has some or all of the transcript of the trial of [name redacted] and [name redacted]. Please now confirm if it holds the section of the transcript which includes the evidence of [name redacted] (now deceased so no section 40 issues). Please also confirm the day or days that [name redacted] gave evidence during the trial."

4. The public authority refused to provide the requested information citing section 12 (cost limit) of FOIA as its basis for doing so.
5. The public authority has confirmed to the Commissioner that it is relying on section 12(2) of FOIA to refuse the request.

## Reasons for decision

---

### Section 12(2)

6. This reasoning covers whether the public authority is correct to apply section 12(2) (cost limit) of FOIA to refuse to confirm or deny whether it holds information within scope of the request.<sup>1</sup> The appropriate limit<sup>2</sup> for the public authority in this case is £600 (calculated as 24 hours at £25 per hour).
7. The public authority considers that the cost of confirming or denying whether it holds information within the scope of this request would exceed the appropriate limit under FOIA. The public authority explained that the trial took place some 24 years ago and it does not hold a digital record nor a digital index of the case. It has advised that its case records are held in paper format across 125 boxes and that there is no index of contents, nor a list of the days on which the court sat, nor a running order of the trial. The public authority has further confirmed that:

“The CPS does not hold a record of the days on which the court sat for this trial, nor of what activity took place on each of these days. If such a document had existed it could have been used to cross-reference all transcripts found (if a search of all the boxes was conducted) to determine if (a) the full transcript was held and (b) all transcripts of [name redacted] evidence were held. Therefore, even if all the boxes were manually reviewed, and all instances of transcripts identified, the CPS cannot be certain that this would constitute the “full transcript” and therefore may not be all the evidence provided by [name redacted] in the trial, nor could it be considered an accurate record of all the days that [name redacted] gave evidence.”

---

<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2000/36/section/12>

<sup>2</sup> <https://www.legislation.gov.uk/uksi/2004/3244/regulation/4/made>

8. The public authority further explained that, given the above, in order to respond to the information request:

“a manual review of the entire case file would be required to determine whether the information requested was held at all, namely the transcript of the evidence given by [name redacted] and a list of the days on which he gave this evidence. This would be the same amount of work as would be required to respond to the earlier request [reference redacted]”.

9. The public authority explained to the Commissioner that as it considered that it would take the same amount of time to deal with this request as it would have taken to deal with the complainant's earlier request, it had not conducted a sampling exercise in respect of this particular request as the sampling exercise conducted for the previous request was still relevant and that sampling exercise took 6.5 hours to manually review 23 boxes and therefore it was estimated that conducting a search of all 125 boxes would exceed the cost limit.
10. The Commissioner is satisfied that the public authority's arguments above are justified because of the lengthy manual searches that would be needed to determine whether a full transcript was held. This is often the case for historic documentation.
11. The Commissioner's decision is that the public authority has estimated reasonably that to confirm or deny whether it holds any information within the scope of the complainant's request would exceed the appropriate cost limit significantly. The public authority is therefore correct to apply section 12(2) of FOIA to the complainant's request.

### **Section 16(1) – duty to provide advice and assistance**

12. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice<sup>3</sup> in providing advice and assistance, it will have complied with section 16(1).

---

<sup>3</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

13. The Commissioner notes that, in its initial response, the public authority advised the complainant, by way of advice and assistance, that:

“Evidence transcripts are ultimately documents of the court and can be obtained from the court directly via the official court transcribers. Furthermore, the court will have an official record of when a witness gave their evidence. In some cases, requests will be sent to the judge to decide if the transcripts can be released and in others the requests are sent directly to the transcribers. In all cases a fee is payable, and this information will be provided to you once you have lodged the request with them, if this is an avenue you choose to go down.”

14. The Commissioner is therefore satisfied that the public authority met its obligations under section 16 of FOIA.

## Right of appeal

---

15. 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)

16. 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.
17. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**