

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 April 2024

Public Authority: Crown Prosecution Service (CPS)
Address: 102 Petty France
Westminster
SW1H 9EA

Decision (including any steps ordered)

1. The complainant sent a four-part follow-on request for information to the Crown Prosecution Service (the CPS) relating to specific proceedings.
2. The Commissioner's decision is that, on the balance of probabilities, the CPS does not hold information within the scope of parts three and four of the request.
3. The Commissioner does not require any steps to be taken as a result of this decision.

Request and response

4. On 12 September 2023, the complainant wrote to the CPS in the following terms:

"Your recent reply is noted.

In that case can you explain how this case -see the link below- fits within that Guidance please?

Who initiated proceedings?

Was that person approached by The Home Secretary over this case?

Was that person approached by the Attorney General over this case?

<https://www.theguardian.com/uk-news/2022...>"

5. The CPS responded on 3 October 2023 answering the first two parts of the request and stating that it did not hold information concerning parts three and four.
6. At internal review on 14 November 2023, the CPS reiterated its original response and guided the complainant to pose their questions to the persons they had identified in their request.

Reasons for decision

7. This reasoning covers whether the CPS is correct when it says that it does not hold information within scope of the request.

The complainant's position

8. The complainant considers the CPS to hold information within scope of their request.
9. The complainant said that:

"My observations on this case are as follows.

Since constitutionally it is the CPS's role to prosecute cases, particularly where the case is sent back to court. It is odd that the CPS says it does not hold the information requested. So who made the decision in this case (and similar cases)? They must know. I merely

need the job role of the person concerned." The Commissioner notes that this does not relate to the request detailed above, and therefore has not been taken into account.

10. They later clarified that the request was for: "Any approach: personal, written, via a third party or any other approach which originated from either the Home Secretary and/or Attorney General."

The CPS's position

11. In its submissions to the Commissioner, the CPS maintained its position that it does not hold information within scope of parts three and four of the request.
12. The CPS explained that they had a particular understanding of the two questions which led them to advise of a nil response: "the CPS does not hold any recorded information because no such 'approach' was made and therefore no information was ever held."

The Commissioner's position

13. The Commissioner notes that the complainant considers the CPS to hold information within scope of the request as they believe the information should have been communicated to the CPS. However, the Commissioner is satisfied that the CPS has conducted reasonable enquiries internally for information within scope of the request. He also considers that the CPS used appropriate and relevant terms to establish if information was held.
14. The Commissioner is not required to prove beyond doubt that the CPS do or do not hold further information but can only make a decision based on the civil standard of the "balance of probabilities" that information within the scope of the request is more likely than not held.
15. Furthermore, the Commissioner notes that the CPS has stated that: "the individual who initiated proceedings was not approached by the Attorney General Office (AGO) or the Home Office (HO) when they took said decision." It also stated, "CPS can confirm that the senior lawyer who took the decision to initiate the judicial review proceedings was not aware of any correspondence held at the time they took the decision to appeal."
16. Having considered the explanations provided by the CPS, the Commissioner accepts the CPS's position that, on the balance of probabilities, it does not hold further recorded information falling within the scope of the request. As such, the Commissioner is satisfied that the CPS has complied with section 1(1) of FOIA.

Right of appeal

17. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

18. 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.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF