

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 March 2014

Public Authority: Crown Prosecution Service (CPS)

Address: Rose Court
2 Southwark Bridge
London
SE1 9HS

Decision (including any steps ordered)

1. The complainant made a 56-part information request to CPS relating to a criminal conviction against him and asked CPS to bear in mind that there were connected appeals pending at the Criminal Cases Review Commission and the European Court of Human Rights.
2. The Commissioner's decision is that CPS has complied with FOIA and applied the section 14(1) FOIA exemption correctly.
3. The Commissioner does not require CPS to take any further steps to comply with the legislation.

Request and response

4. On 25 March 2013 the complainant wrote to CPS and submitted a 56-part information request relating to a criminal conviction it had secured against him following a crown court trial by jury in 2010. He asked CPS to bear in mind that there were connected appeals pending at the Criminal Cases Review Commission and the European Court of Human Rights.
5. The text of the information request is lengthy and is reproduced in full in the confidential annex to this notice which is being made available to CPS and the complainant only.

6. Also on 25 March 2013 the complainant sent CPS a further 16-page letter complaining about its handling of earlier FOIA information requests from him. There has been further related correspondence.
7. The CPS responded on 25 April 2013. It stated that the information requested was exempt from disclosure and cited the section 40(1), 40(2) and 30(1)(c) FOIA exemptions.
8. Following an internal review, which the complainant had requested on 27 April 2013, CPS wrote to the complainant on 25 September 2013. CPS said it no longer relied upon the section 30 and 40 FOIA exemptions but had concluded instead that the request was vexatious. CPS now relied upon the section 14(1) FOIA exemption as its grounds for not complying with it.

Scope of the case

9. The complainant contacted the Commissioner on 28 September 2013 to complain about the way his request for information had been handled. He had earlier complained to the Information Commissioner about the delay by CPS carrying out its internal review. He disputed the decision by CPS that his request had been vexatious.
10. During his investigation, the Commissioner examined the request and related correspondence including representations from the complainant and from CPS. The Commissioner considered the CPS handling of the matter and whether or not CPS was entitled to rely on the vexatious provision at section 14(1) FOIA.
11. The Commissioner accepted that it had been proper for CPS to rely on a different exemption at internal review from those relied on at refusal notice stage – something which the complainant had disputed - since the purpose of a review stage is to enable a public authority to take a fresh look at the matter.
12. The complainant told the Commissioner that the refusal of 25 April 2013 and the internal review of 25 September 2013 had been conducted by different parts of CPS, which he said was completely misleading and futile. The Commissioner saw that the review had been conducted by another CPS unit which was independent of that which had issued the refusal notice. The Commissioner did not accept the complainant's view that this had been inappropriate.
13. The Commissioner has seen evidence dating from October 2012 that the complainant has already placed this matter before the Criminal Cases Review Commission.

Reasons for decision

14. Section 14(1) FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
15. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield* (GIA/3037/2011). The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
16. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterises vexatious requests" (paragraph 45).
17. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

Representations by CPS

18. CPS told the Commissioner that the complainant had appealed his conviction but the appeal had been refused. CPS said, and the Information Commissioner has seen evidenced, that he had since contacted the Criminal Cases Review Commission.
19. In its analysis, CPS said that: the tone and language of the request had been unreasonable, there had been unreasonable persistence, there had been frequent and overlapping requests, at least one part of the request lacked serious purpose, and responding positively to the request would

require a disproportionate amount of CPS resource. The Commissioner has considered each of the factors CPS identified in reaching its decision.

Representations from the complainant

20. On 16 February 2014 the complainant made representations to the Commissioner explaining why he regarded the CPS handling of the matter to have been wrong and explaining why his information request had not, in his view, been vexatious.
21. The complainant said that CPS had taken too long to review his complaint. He added that the review of 25 September 2013 had been conducted by a CPS unit that was quite separate from that which had issued the refusal notice of 25 April 2013; and the change of direction by CPS at internal review had, he said, denied him the opportunity to make representations to CPS as to why his request had not, in his view, been vexatious.
22. The complainant said that his information request had been intended to elicit new evidence to enable him to challenge his conviction from 2010; he said he was pursuing a legitimate grievance against CPS. He added that he had appealed his conviction to the Criminal Cases Review Commission and the European Court of Human Rights and needed the requested information to assist him in taking these matters forward.
23. The complainant denied making frequent requests saying that his 25 March 2013 information request had been the only one of its kind. He affirmed that all of the parts of his information request had had a serious purpose behind them. He said that the seriousness of his purpose and the nature of his grievance justified the accusatory tone he had adopted in his correspondence with CPS. He added that, in his view, the CPS prosecution and the conduct of named CPS officers had been racially motivated to his detriment. He wished to pursue what he said was a legitimate grievance against CPS and he reasonably needed the requested information to assist him in that.

Decision

24. The Commissioner considered the reasons cited by CPS for treating the information request as vexatious.

Aggressive tone and abusive language of the request

25. The complainant acknowledged that his language when writing to CPS had been accusatory in tone which, he said, was justified by the plight in which he found himself having been wrongly convicted and sentenced for a crime he says he did not commit. He also said that the conduct of CPS and some of its officers against him had been racially motivated.
26. The Commissioner, in his examination of the correspondence between CPS and the complainant that he has been shown, and in the CPS correspondence with himself, has seen no evidence of bad faith or of racially prejudiced conduct by CPS or individual officers.
27. The Commissioner saw that some of the language used by the complainant had indeed been intemperate. The complainant had made frequent liberal and sweeping accusations of bad faith and of serious malpractice on the part of named CPS officers, both administratively within CPS and by it within the court setting. These went well beyond the level of criticism that a public authority or its officials should generally be expected to tolerate.

Unreasonable persistence

28. The Commissioner would characterise an obsessive request as one where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
29. In this matter, the request crossed over the line between persistence and obsessiveness. The complainant has been clear in his representations to the Commissioner that his information request was made in order for him to seek to reopen the criminal matters which have been determined against him both at first instance and on appeal. The complainant's conviction followed trial before a jury which was itself an independent arbiter of the facts of the matter; he has unsuccessfully appealed his conviction through the UK courts. He has now complained to the Criminal Cases Review Commission and the European Court of Human Rights.
30. It was clear to the Commissioner that the 2010 criminal conviction has already been appealed unsuccessfully and is being given independent and serious consideration in other jurisdictions. These are the proper channels for the complainant to pursue his dissatisfaction with the outcome of his criminal matter. This he has done, and is doing, but he remains dissatisfied; it is not the purpose of FOIA to provide a further appeal route.

Frequent and overlapping requests

31. The information request of 25 March 2013 retraced much of the same ground as earlier information requests to CPS from the complainant. CPS provided evidence of a set of information requests made to it on 21 May 2011, 23 May 2011, 3 June 2011, 9 June 2011, 11 June 2011 and 12 June 2011 – all relating to essentially the same subject matter. The complainant said, and the Commissioner agrees, that the information requests taken together, while repetitive, could not, given the time delay, convincingly be characterised as 'frequent' in the context of the 25 March 2013 information request.
32. CPS also said that the information requests were overlapping. The Commissioner confirmed from his inspection of the 25 March 2013 information request, that some 15 of the 56 parts of that information request from the complainant overlapped as they all appeared to be intended to elicit copies of the evidence used to bring the prosecution against him.
33. CPS said, and the Commissioner accepts, that the full prosecution case would have been available to the complainant's defence team at trial. FOIA does not provide an alternative route to challenge disclosures made following a trial.

Lacking any serious purpose

34. CPS said that query 42 of 56, which was for a 'novel concept' used by prosecution counsel during the trial, lacked serious purpose. This was disputed by the complainant.
35. The Commissioner accepts that the complainant was serious in his intent, even if he might have been mistaken in his approach, and concluded that the query was intended to elicit further background to the evidence used by CPS at trial.

Disproportionate effort

36. The Commissioner is satisfied that responding to the request in detail would cause CPS disproportionate and unjustified disruption, irritation and distress. The information request has had the effect of harassing CPS and having to respond further would impose an additional burden on the resources of CPS that is unjustified given the extent to which the complainant has already had recourse to alternative proper channels to pursue his grievance.
37. In reaching his decision, the Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority. He is satisfied that the request is obsessive and had the effect

of burdening and harassing CPS and that the complainant has, and has had, other more appropriate channels to pursue his grievance. Accordingly, the Commissioner finds that the section 14(1) FOIA exemption has been applied appropriately in this instance.

Other matters

38. The Information Commissioner saw that it took CPS until 25 September 2013, a period of some five months, to respond to the complainant's 27 April 2013 request for a review of its 25 April 2013 refusal notice. This was much too long and far in excess of the Commissioner's 20 working days guideline.

Right of appeal

39. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

40. 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.
41. 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

Jon Manners
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