

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 July 2020

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

Decision (including any steps ordered)

1. The complainant has requested information about searches made on one of its IT systems from the Crown Prosecution Service (the 'CPS'). The CPS provided some information and advised that the remainder was exempt from disclosure by virtue of section 40(2) (Personal information) of the FOIA.
2. The Commissioner's decision is that, in respect of the whole request, the CPS should have neither confirmed nor denied holding any information by virtue of section 40(5A) of the FOIA. No steps are required.

Background

3. This request relates to another request, which the Commissioner has already considered under case reference FS50910198.
4. The complainant is an ex-employee of the CPS.

Request and response

5. On 16 January 2020 the complainant made the following information request:
 1. *On the 19th July 2019 a search was done one [sic] my profile and x4 cases were found to have been searched which were a variation on the name "[name redacted]". I require the following information*

from CMS [Case Management System]

- a. *When entering the following parameters how many names appear on the CMS system*
 - i. *Surname: [name redacted]**
 - ii. *Forename: [name redacted]**
 - iii. *Area: West Midlands*

*I emphasize I am requesting the **NUMBER** of cases not names.*

2. *As per point, one [sic] a search was done on my profile, which found the said cases, had been accessed. Can you confirm the following:*
 - a. *What screen was accessed?*
 - b. *What information is available on this screen?*
 - c. *Does it contain any contact details? (addresses, phone number etc)*
3. *What date range of the search was carried out on my profile to find these cases had been accessed on the 19th July 2019?*
6. On 12 February 2020, the CPS responded. It disclosed the information for part (1) of the request but refused to provide the remainder, citing section 40(2) of the FOIA.
7. Following an internal review, the CPS wrote to the complainant on 13 March 2020; it maintained its position.
8. During the Commissioner's investigation the CPS maintained reliance on section 40(2) but did also advise that, because it was the complainant's computer profile that would have been used: "*section 40(1) should be cited*". It provided no further analysis.

Scope of the case

9. The complainant contacted the Commissioner on 3 March 2020 to complain about the way his request for information had been handled. He did not raise any specific grounds of complaint but, in his request for an internal review, he states that what he is not asking for details about any named third party.
10. The Commissioner will consider the citing of section 40 below.
11. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is concerned with

transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 40 – personal information

12. In addition to the FOIA, the Commissioner is responsible for regulating data protection legislation. As such, she takes account of the need to protect personal data when considering whether such information may be disclosed under the FOIA. Accordingly, she will intervene and apply exemptions herself to prevent the disclosure of personal data where she considers it necessary, to avoid a breach of data protection legislation.
13. Under section 1(1)(a) of the FOIA, a public authority is obliged to advise an applicant whether or not it holds the requested information. This is known as the “duty to confirm or deny”. However, the duty to confirm or deny holding information does not always apply and authorities may choose to neither confirm nor deny (‘NCND’) holding any information through reliance on certain FOIA exemptions.
14. The exemption at section 40(5) of the FOIA provides that a public authority does not have to confirm or deny whether requested information is held if to do so would itself constitute a disclosure of personal data.
15. Having considered the request, and in view of information provided to her by the CPS, the Commissioner has considered section 40(5A) of the FOIA instead of section 40(2).

Section 40(5A) - complainant’s own personal data

16. Section 40(5A) provides that the duty to confirm or deny does not arise in relation to information that, if held, would fall within the scope of section 40(1) of the FOIA.
17. Section 40(1) provides that information which is the personal data of the applicant is exempt from disclosure under the FOIA. This is because individuals may request their personal data under a separate legislative access regime, the right of subject access under the Data Protection Act 2018 (DPA).

18. Section 40(1) of the FOIA is an absolute exemption, meaning that if it applies there is no requirement to go on to consider whether disclosure would nevertheless be in the public interest.

Would confirming or denying that the requested information is held constitute a disclosure of personal data?

19. Section 3(2) of the DPA 2018 defines personal data as:-

"any information relating to an identified or identifiable living individual".

20. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

21. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

22. Section 40(1) of the FOIA states:

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject".

23. Although not argued by the CPS, the Commissioner notes the following.

24. The first sentence of the complainant's request clearly states "*On the 19th July 2019 a search was done one [sic] **my** profile*" (Commissioner's emphasis); all other parts of the request subsequently refer to results of searches made using what he describes as 'his profile'. It would therefore not be possible to proceed with any of the information request without initially confirming that any search was undertaken using the complainant's profile. Furthermore, it would be necessary to search the system referred to using the complainant's profile details, ie by mimicking his own access by typing in the parameters allegedly used by him.

25. The Commissioner agrees with the complainant in that he is not seeking personal information about third parties, however, what he is seeking is information about details allegedly input by himself, ie what would have happened when the search criteria were entered into the CPS's system using his own 'personal' profile details. The Commissioner considers that this is the complainant approaching the CPS for information about actions allegedly undertaken by him personally and that, in order to replicate these actions, the CPS would necessarily have to focus on him, as the starting point.

26. The Commissioner is satisfied that the complainant is approaching the CPS for his own personal data as it is only obtainable by undertaking searches using his own personal login details. This information, if held, would therefore relate to him personally and be his own personal data. The Commissioner therefore finds that the CPS should properly have cited section 40(5A) in respect of any information which may be held.
27. As this is an absolute exemption, the CPS was not required to confirm or deny whether any information is held in respect of the whole request.

Right of appeal

28. 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

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

29. 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.

30. 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
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Wycliffe House
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Wilmslow
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