

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

### **Decision notice**

**Date:** 31 January 2023

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

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

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1. The complainant has requested information about the charges brought against three individuals. The above public authority ("the public authority") relied on section 40(5B) of FOIA (third party personal data) refused to confirm or deny that it held information within the scope of the request.
2. The Commissioner's decision is that the public authority is not entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny that any information is held.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Confirm, to the complainant, whether it holds information within the scope of the request. The public authority must issue a single confirmation or denial covering all three individuals – it is not required to issue three separate responses.
  - If information is held, the public authority must either disclose the information or issue a refusal notice that complies with section 17 of FOIA. Once again, the public authority is not required to disaggregate the information in respect of any of the individuals mentioned in the request.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 1 February 2022, the complainant wrote to the public authority and requested information in the following terms:

"[1] It was noted that the CPS took a drone prosecution action against companies flying drones to video horse racing, could the CPS detail what incident they were prosecuting, was it drone flying at Aintree racecourse?

...On March 5, 2020, however, the charges were dropped. 'The CPS [Crown Prosecution Service] had formed the view that there was not enough evidence [...] to provide a realistic prospect of conviction,' a judge wrote, and had the CPS pay [Individual 1] and [Individual 2] £58,004 in legal fees. The judge also said the police had committed an 'apparent misinterpretation of the law' by saying the trio were flying their drone dangerously.

"[2] Could you explain what charges were brought and which laws were being cited to bring a prosecution?."

6. The complainant revised his request on 3 February 2022:

"This is a case where a drone was flown at Chelmsford City Racecourse, on 01/04/2019, the three men involved were [Individual 1], [Individual 2] and [Individual 3]...

"[3] Could you explain what charges were brought and which laws were being cited to bring a prosecution for the Chelmsford case?

"[4] Has the CPS has fought cases against drone operators flying at other race courses such as Aintree?

7. The public authority responded on 3 March 2022. It denied holding any information within the scope of element [4] and refuse to confirm or deny holding any information within the scope of element [3] – relying on section 40(5B) of FOIA in order to do so. It upheld this position following an internal review.

## Reasons for decision

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8. Section 40(5B) of FOIA allows a public authority to refuse to confirm or deny holding information if the mere act of confirming or denying that the information was held would, in itself, disclose the personal data of a third party in breach of data protection legislation.

9. The public authority argued that providing a confirmation or a denial that the information was held would reveal that the individuals named in the request had faced criminal charges. This information was not (the public authority argued) in the public domain and therefore it was the criminal offence personal data of the individuals concerned. It argued that it had no lawful basis on which to process this personal data.
10. The Commissioner has found two articles in the public domain which both quote Individual 1 and state that this individual had been prosecuted. One is in online magazine Wired, the other is in the Belfast Telegraph. In the Commissioner's view, Individual 1 had considerable input into the contents of these two articles. A further article on racing website "The Irish Field" again refers to the three individuals as having been prosecuted – though none are quoted.
11. The Commissioner is therefore satisfied that the fact that Individual 1 was prosecuted is in the public domain and that they themselves are responsible for this information coming into the public domain.
12. Therefore the public authority can confirm that it holds some information within the scope of the request as a whole, without confirming or denying whether it holds information specific to either Individual 2 or Individual 3. In fact, it might even be possible to reveal any information that is held (if indeed it is) in such a way as to ensure it is not attributable to any individual – although this is something that the public authority will have to give further consideration to before it issues its response.
13. The Commissioner is thus satisfied that the public authority was not entitled to refuse to confirm or deny that it held any relevant information – he now orders it to do so.

## Right of appeal

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14. 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)

15. 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.
16. 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 .....**

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