

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

### **Decision notice**

**Date:** 28 June 2024

**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, from the Crown Prosecution Service (CPS), "a copy of the CPS written decision" relating to a specified investigation. CPS refused to confirm or deny holding information, citing section 30(3) of FOIA.
2. The Commissioner's decision is that CPS was correct to cite section 30(3) and neither confirm nor deny (NCND) holding information.
3. The Commissioner doesn't require any steps as a result of this decision notice.

#### **Request and response**

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4. The following details are based on an internal review document that the complainant has supplied.
5. On 2 January 2024 the complainant wrote to CPS and requested information in the following terms:  
  
"In accordance with [FOIA] and in the public interest can you please provide me with a copy of the CPS written decision in relation to the

Corporate Manslaughter investigation into the Countess of Chester NHS Managers ...”.

6. CPS responded on 30 January 2024. It neither confirmed nor denied holding the requested information, on the basis of section 30(3) of FOIA.
7. Following an internal review, CPS wrote to the complainant on 14 March 2024, upholding its original decision.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 14 March 2024 to complain about the way their request for information had been handled.
9. They complained about CPS “refusing to provide my requested information”, and said it’s in the public interest for CPS to “provide an update”. They expressed a concern that investigations have been ongoing for over six months, and said “the public could presume this is a public sector cover-up”.
10. The Commissioner considers that the scope of this case is to decide whether CPS was correct to NCND holding the requested information, on the basis of section 30(3).

### **Reasons for decision**

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#### **NCND**

11. Section 1(1)(a) of FOIA provides that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request. This is known as ‘the duty to confirm or deny’.
12. However, there are exemptions to this duty, such as at section 30(3) of FOIA.
13. CPS is neither confirming nor denying whether it holds the requested information, by citing section 30(3). The issue that the Commissioner has to consider here isn’t the disclosure of any relevant information that may be held. Rather, it’s whether CPS is entitled to NCND holding the

requested information. In this case, the Commissioner must consider whether CPS is entitled to NCND, under section 30(3), whether it holds information on “the CPS written decision” that the complainant requested, in relation to the investigation that the complainant specified in the request.

14. Whether the requested information itself (if held) is suitable for disclosure is a different matter, and not one that is being considered in this decision notice.
15. The Commissioner doesn't know whether CPS holds information within scope of the request. He doesn't consider it necessary to know this in order to reach a decision on the application of section 30(3) of FOIA.

### **Section 30**

16. Under section 30(3), the duty to confirm or deny doesn't arise in relation to information which, if held, would be exempt information by virtue of section 30(1) or (2).
17. The Commissioner has published detailed guidance on section 30<sup>1</sup>.
18. The complainant requested information about a CPS decision regarding a particular investigation. The context of the complainant's request of 2 January 2024 is the complainant's desire to know whether CPS “is considering issuing charges ...”. The complainant has said that if CPS isn't pursuing charges, they want to know why not. Furthermore, as noted above, the complainant considers it's in the public interest for CPS to provide an update.
19. Given the type of information requested, and the public authority in question (CPS), the Commissioner considers that section 30(1)(c) would apply to the requested information, if held.
20. Section 30(1)(c) provides that information is exempt if it has at any time been held by the public authority for the purposes of any criminal proceedings which the public authority has the power to conduct. The words ‘at any time’ mean that information can be exempt under section

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

30(1)(c) if it relates to ongoing, closed or abandoned proceedings; however, information must be held for specific criminal proceedings, not criminal proceedings in general.

21. The Commissioner's guidance notes that there's no investigatory element to section 30(1)(c), and that typically it will be applied by public authorities that lack an investigative function but do have the power to conduct criminal proceedings; the guidance names CPS as an example.
22. The Commissioner is satisfied that if CPS did hold any information relevant to the request, CPS would hold it for the purposes of (specific) criminal proceedings that CPS has the power to conduct. Such information would be exempt by virtue of section 30(1)(c), and it follows that section 30(3) is engaged.

### **Public interest test**

23. Section 30(3) is a qualified exemption. This means that the Commissioner must consider the public interest test and whether the public interest in maintaining the exemption outweighs the public interest in confirming or denying whether the requested information is held.
24. In accordance with his guidance, when considering the public interest in maintaining exemptions, the Commissioner considers that it's necessary to be clear about what they're designed to protect. Broadly, the section 30 exemptions recognise the need to prevent disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including prejudice to future investigations and proceedings.
25. In this instance, the exemption could only be maintained if confirmation or denial would interfere with the effective conduct of the proceedings.
26. The complainant's comments about public interest have been outlined at paragraph 9 above.
27. In the internal review document that the complainant sent to the Commissioner as their supporting information, CPS's comments focus on the public interest in maintaining the exemption.
28. CPS has said:

"There is information about this matter already in the public domain ... including a website for the independent Thirlwall Inquiry as well as media reports following the announcement from Cheshire Police on 4 October 2023 that they are in the early stages of an investigation into potential corporate manslaughter. It is therefore important to allow the investigation to progress without any prejudice to any future investigations and proceedings that may arise from disclosures outside of such an investigation".

29. CPS added that it's:

"not conducive to effective investigations for information to be published to the world at large ... it could prejudice any prosecution that may follow ... Furthermore, I understand that there remain live proceedings in respect of the prosecution and appeal ... the public interest in maintaining the exemption clearly outweighs the public interest in disclosing the information. It is therefore appropriate neither to confirm nor deny ...".

30. In considering the balance of the public interest in this case, the Commissioner recognises that there's a significant public interest in preventing any disclosure (by way of confirmation or denial) that would prejudice a set of proceedings, and prosecution processes generally, including prejudice to future proceedings. This goes to the heart of what the section 30 exemption is designed to protect.

31. The Commissioner is prepared to accept that confirming or denying in this case would enhance accountability and transparency, in relation to a high-profile matter.

32. However, as the Commissioner's guidance explains:

"whilst investigations and prosecutions are ongoing, public authorities require a safe space in which to operate and premature disclosures could create intense media pressure which could present problems for the judicial processes".

33. The request was made less than three months after the announcement of a police investigation; and as noted above, CPS has told the complainant that "there remain live proceedings". The Commissioner's guidance notes that the stage of a particular investigation or prosecution will have a bearing on the extent of any harm caused by a disclosure;

and emphasises that as a general rule, there will always be a strong public interest in maintaining section 30 whilst matters are ongoing.

34. CPS's website<sup>2</sup> explains that CPS "prosecutes criminal cases that have been investigated by the police ... we make our decisions independently of the police and government"; and that CPS "decides which cases should be prosecuted" and "advises the police during the early stages of investigations", among other things.
35. Clearly, considerations around safe space are relevant in this instance; investigations and proceedings were ongoing, and CPS will have been concerned about prematurely indicating (by way of confirmation or denial) whether it had made a decision regarding the investigation and proceedings in question.
36. The Commissioner considers that confirmation or denial could create the type of intense media pressure envisaged in the Commissioner's guidance (see paragraph 32 above), given the high-profile nature of the matter.
37. The Commissioner hasn't seen any information in the public domain about whether the police or CPS have made a decision regarding the corporate manslaughter investigation announced in October 2023.
38. Nor is the Commissioner aware of any concern about a "public sector cover-up" regarding the investigation and proceedings, other than that expressed by the complainant in their ICO complaint (see paragraph 9).
39. He doesn't consider that, at the time of the request (January 2024 – relatively soon after the corporate manslaughter investigation was announced by police), there was any real, compelling public interest in CPS confirming or denying whether it holds information about any CPS decision.
40. The Commissioner recognises that there's a very strong public interest in protecting CPS's ability to conduct criminal proceedings effectively.

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<sup>2</sup> <https://www.cps.gov.uk/>

41. The Commissioner is satisfied that the public interest in neither confirming nor denying whether information is held outweighs the public interest in confirming or denying.
42. For the avoidance of doubt, nothing in this decision notice should be taken to mean that CPS does or doesn't hold the requested information.

## **Right of appeal**

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43. 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)

44. 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.
45. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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