



The CPS incorporates RCPO

Mr M. Flaherty
request-95282-
a11a7aa0@whatdotheyknow.com

Your ref:

Our ref: IR/1/12/3015

28 February 2012

Dear Mr Flaherty

FREEDOM OF INFORMATION ACT 2000 REQUEST

I write further to your e-mailed request, dated 5 January 2012, for an internal review of the CPS response to your earlier Freedom of Information Act (FOIA) request, dated 1 December 2011. Please accept my apologies for my delay in conducting the review.

Your original request sought the manner in which the CPS determined that a particular case, at Leeds Crown Court, satisfied the evidential stage of the Full Code Test.

It has already been pointed out to you that the Freedom of Information Act is a public disclosure regime, which means information disclosed under it is thereafter deemed to be in the public domain and freely available to the public on request.

The Freedom of Information Act 2000 (FOIA) places a general duty on public authorities to allow access to official information, subject to a number of statutory exceptions. Section 40(2) of the FOIA provides an absolute exemption from complying with a request for information where the requested data is "Personal Data Relating to Third Parties". Under Part 2 of section 40, personal data of a third party will be exempt if its disclosure to a member of the public would contravene any of the 'data protection principles'. The data protection principles are a statutory code for the processing of personal data, set out in Part I of Schedule 1 to the Data Protection Act 1998 (DPA).

As was pointed out to you in the original response to your request, the Data Protection Act requires that personal data must be "processed fairly and lawfully" and sensitive personal data shall not be processed unless one of the conditions are set out in schedule 3. It is clear that the CPS review document contains sensitive personal data, as defined by s. 2 DPA. In my view, none of the schedule 3 conditions are met and, as such, disclosing the requested information would breach the first data protection principle. It is not practicable for me to seek consent to reveal this sensitive information.



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Section 30(1)(c) provides an exemption from disclosure where the material sought is information held by a public authority, relating to criminal proceedings which the authority has the power to conduct. The exemption is qualified and subject to a public interest test. The original decision set out the public interest factors in favour of and against disclosure.

The main public interest considerations against disclosure relate: firstly, to the importance of maintaining the confidential nature of information obtained through criminal investigations (for example, from witnesses or other confidential sources); secondly, retaining confidentiality in communications between the CPS and police; and, thirdly, the public interest in ensuring that the courts are the sole forum for determining guilt.

Whilst I acknowledge that there is a strong public interest in favour of making CPS decision-making transparent, in order to maintain public confidence, this can be achieved by the CPS airing those decisions in a public arena. The criminal courts are just such an arena. On the other hand, the public interest is not served by having every charging decision available for scrutiny by all, which might impair the ability of prosecutors to independently make charging decisions, in accordance with the Code for Crown Prosecutors.

The original FOIA decision was communicated to you in clear terms and explained your right to a review. I am satisfied that the handling of the request has also been dealt with correctly.

If you are not content with the outcome of this internal review, you have the right to apply directly to the Information Commissioner for a decision, at the Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely

Andrew Penhale
Head of Division A
Central Fraud Group