



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(INFORMATION RIGHTS)**

**Appeal No: EA/2012/0075**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50406815  
Dated: 21 March 2012**

**Appellant: Omar Stephens**  
**1st Respondent: The Information Commissioner**  
**2nd Respondent: Crown Prosecution Service**

**Heard at: Snaresbrook Crown Court**  
**Date of Hearing: 1 November 2012**

**Before**  
**HH Judge Shanks**  
**Judge**  
**and**  
**John Randall and Pieter de Waal**  
**Tribunal Members**

**Representation**

**Appellant: in person**  
**First Respondent: Robin Hopkins**  
**Second Respondent: Ben Lask**

**Subject matter**

**Freedom of Information Act 2000**

s.1 Whether information held

s.30 Qualified exemption: *Investigations and proceedings conducted by public authorities*

**DECISION**

**The Tribunal dismisses the appeal.**

HH Judge Shanks  
20 December 2012

## **REASONS FOR DECISION**

### Background

1. On 6 December 2005 the Appellant, Omar Stephens, was convicted of murder at the Old Bailey following a jury trial. He launched an unsuccessful appeal and also applied unsuccessfully for the Criminal Cases Review Commission (CCRC) to review the case. He is currently a serving prisoner at HMP Swaleside.
  
2. On 20 April 2009 he made a request expressly under the Freedom of Information Act 2000 for the following information relating to his case:
  - (a) **Previous convictions of the deceased and all of the prosecution witnesses in the case.**
  - (b) **All material which discloses information that may have been communicated by lay witnesses e.g. previous witness statements, unused witness statements, CAD Messages, Officers IRB's and CRIS.**
  - (c) **All material which directly, or indirectly reveals that the case against the defendant has been, obtained, prepared and processed by the Police Officers, e.g. crime reports, CAD messages, memos, action and message forms and other operational documents.**
  - (d) **All documentation the defendant is entitled to.**
  - (e) **Any information indicating the background to this offence which is consistent with the defendant innocence; for e.g. names and details of other suspects and their previous convictions.**
  - (f) **All information indicating that the integrity of the evidence or of the integrity of the prosecution witnesses, or the inferences to be drawn from that or their evidence is in doubt.**
  - (g) **Information as to the reliability of the observations made by the Prosecution witnesses; for e.g. any disciplinary or police complaint commission action on the investigation taken against any of the police officers involved in dealing with this offence;**
  - (h) **Any and all, other information which could reasonably be expected to assist the defence. (sic)**

3. On 20 May 2009 the CPS officer dealing with the matter replied to the request in these terms:

**In order to process your request for information, I have reviewed and considered all the material the CPS holds in relation to R v Omar Stephens ... I can confirm that the CPS does hold information in relation to your request, however the information is exempt from disclosure under section 30, 40(1), 40(2) and 42 of the Freedom of Information Act. Please see the attached section 17 notice which explains the reasons for not disclosing the requested information.**

4. Mr Stephens applied to the Information Commissioner under section 50 of the Act and in a decision notice dated 15 November 2010 he decided that all the information requested was Mr Stephens' personal data and therefore absolutely exempt under section 40(1) of the Act; in view of that decision he did not consider any of the other exemptions which had been mentioned by the CPS. Mr Stephens appealed to this Tribunal; the appeal was allowed and a substituted decision notice was issued on 20 June 2011 to the effect that the CPS should reconsider the request and either supply the requested information to him or serve a new notice under section 17 of the Act clearly identifying the information in question, the exemption relied on and why it applied.
5. The CPS served a new section 17 notice setting out reasons for not supplying the information requested on 15 July 2011. Mr Stephens applied to the Commissioner again under section 50 and he issued a decision notice on 21 March 2012. The decision notice upheld the CPS's reliance on section 30(1)(c) of the Act in relation to requests (a), (b), (c), (f) and (g); agreed that requests (e) and (h) were not proper requests for information; and, on the basis that request (d) was a request for all information to which he was entitled under the Data Protection Act 1998, upheld reliance on section 40(1) in relation to that request. Mr Stephens again appealed to the Tribunal.

The appeal

6. The CPS were joined as Second Respondent to the appeal and a full oral hearing was held at Snaresbrook Crown Court where Mr Stephens was able to participate from a secure dock. We also received helpful written and oral evidence from Andrew Penhale, a senior official at the CPS who was not involved in Mr Stephens' trial. A small part of the hearing was necessarily held in "closed session".
7. The issues in the appeal as identified by the CPS in their skeleton argument at para 2 were as follows:
  - (1) Whether the CPS was entitled to withhold the information requested at paras (a), (b) and (c) on the basis of sections 30(1)(c), 32(1)(a), 40(1), 40(2) and/or 42(1) of the Act;
  - (2) Whether they were entitled not to respond to requests (e), (f), (g) and (h) on the basis that they did not constitute proper requests for information under section 1(1) and/or by virtue of sections 1(3) or 12(1) of the Act.

Since the answers potentially dispose of the appeal, we shall first consider whether requests (e) to (h) are proper requests for information and then whether requests (a) to (c) were properly refused under section 30(1)(c).

Were requests (e) to (h) proper requests for information under the Act?

8. Section 1(1) of the Act requires a public authority to supply information "... *of the description specified in the request...*". The CPS say that these requests do not *describe* information; rather, they invite the CPS to analyse the large volume of material they hold (probably along with a transcript of the trial and other material held by the police) and to form a subjective judgment about what material may be of assistance to Mr Stephens, in the same way as they do in the course of disclosure in criminal proceedings. Save in relation to the specific example given in request (e) (which is also said to be covered by section 30(1)(c)), it seems to us that there is really no answer to this point and accordingly that the CPS were not obliged to comply with requests (e) to (h).

9. Having reached that clear conclusion on requests (e) to (h) there is no need for us to consider the points raised by the CPS on sections 1(3) and 12(1) of the Act.

Were requests (a) to (c) (and the example in (d)) properly refused under section 30(1)(c)?

10. Section 30 states as follows:

**(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of ...**

**(c) any criminal proceedings which the authority has power to conduct.**

There can be no doubt that all the information held by the CPS which came within requests (a) to (c) and the example in (d) was held by them for the purposes of Mr Stephens' criminal prosecution and that it was therefore exempt under section 30(1)(c). We accept Mr Penhale's evidence that this information comprised a large part of all the material held by the CPS in relation to the prosecution and that it is voluminous and we reject Mr Stephens' contention that it was necessary for the CPS to consider each piece of paper in their files in order to reach the view that this exemption applied to it. Accordingly, by section 2(2)(b), the CPS were not obliged to comply with the relevant requests in relation to any particular information if in all the circumstances the public interest in maintaining the exemption outweighed that in disclosure of that information. We therefore turn to consider the weight of those respective public interests.

*Public interest in maintaining exemption*

11. We accept the submissions of the Commissioner and the CPS to the effect that the general public interest served by the exemption provided by section 30(1)(c) is the effective investigation and prosecution of crime and in particular (a) the protection of witnesses and informants to ensure that people are not deterred from making statements or reports by fear that they may be publicised (b) the maintenance of the independence of the judicial and prosecution processes (c) the preservation of the criminal court as the sole forum for determining guilt and (d) ensuring that there is a safe space in which the police and CPS can communicate freely and frankly. The weight of this public interest and of the countervailing public interest in the disclosure

of information coming within the exemption are likely to be affected by considerations including (i) the stage a particular investigation or prosecution has reached (ii) whether and to what extent the information is already in the public domain (iii) the significance or sensitivity of the information requested (iv) the profile of the defendant (v) whether there is any evidence the investigation or prosecution has not been carried out properly and, we would add, (vi) the nature and circumstances of the (alleged) offence leading to the prosecution.

12. The following particular considerations apply in considering the weight of the public interest in maintaining the exemption in this case. Mr Stephens' trial took place over 5 ½ years before the second refusal notice. Some of the information he sought was (in a sense) in the public domain as it would have formed part of the evidence at the trial. Much of the other information requested would have been supplied to him (or his solicitors) in the course of the criminal proceedings as part of the normal disclosure process. As Mr Stephens is aware, there was a public interest immunity application in the course of the trial which would have indicated that there was sensitive material held by the CPS which the court did not require to be disclosed. The prosecution was for an extremely serious offence, namely murder, and it arose in the context of drug dealing.

13. Bearing those considerations in mind we are satisfied:

- (1) that the disclosure of previous convictions and statements and other information supplied by witnesses would have been contrary to their expectations, would have created real danger for them and would have been a serious deterrent to future witnesses, even taking account of the time that had passed and the fact that some of the witnesses gave evidence at the trial;
- (2) that the disclosure of the deceased's previous convictions and evidence about the circumstances of his death would have been distressing for his family;
- (3) that disclosure of other suspects and their previous convictions would have been damaging and unfair to them;

- (4) that disclosure of the police information and intelligence could have undermined their ability to conduct effective investigations;
- (5) that disclosure of the requested information could have involved the release of sensitive information (some or all of which the criminal court had already considered on a public interest immunity application); in our view it would be a very unusual case in which the disclosure of information which had already been the subject of such an application would be appropriate;
- (6) that disclosure of the requested information could have undermined the position of the court as the sole forum for determining guilt.

14. Those points lead us to the conclusion that the weight of the public interest in maintaining the exemption in relation to all the requested information in this case was very substantial and was likely to outweigh that in disclosure unless there was some unusual feature of the case.

*Public interest in disclosure*

15. There was obviously a very general public interest in the disclosure of the requested information in that it would have cast some light on the CPS's processes which would apply in any such case.
16. Mr Stephens also contends that disclosure was necessary because the court reached the wrong conclusion as to his guilt and the criminal disclosure process was not carried out fairly. Although these are in a sense private interests, clearly a wrong or unfair conviction would be a matter of great public disquiet. However, Mr Stephens was tried in a criminal court and his appeal and approach to the CCRC were both rejected and he has conspicuously failed to identify to the Tribunal any sound basis for suggesting that there has been any miscarriage of justice in his case. We also note that his solicitors ought still to have in their possession any information disclosed as part of the criminal process and that the CPS were able and willing (as indicated in a subsequent letter to Mr Stephens dated 23 July 2012) to supply any information that he might reasonably require in relation to a further appeal outside the terms of the



Freedom of Information Act (eg subject to an obligation to use it only for purposes of such an appeal and not to disclose it to the public at large).

17. Taking account of those considerations we do not consider the public interest in disclosure in this case to be substantial.

*Conclusion on public interest balance*

18. Carrying out the statutory balancing exercise in the light of the above considerations, we have come to the firm view that the public interest in maintaining the exemption at section 30(1)(c) of the Act very substantially outweighed that in disclosure in relation to all the information requested. It follows that the CPS were entitled to withhold it. It also follows that there is no need for us to consider the other exemptions raised by the CPS.

Result

19. It follows from the conclusions above that Mr Stephens' appeal must be dismissed.

20. We wish to pay tribute to the sensible and constructive way in which Mr Stephens presented his case and to the enormous amount of work done by Mr Penhale and the CPS and their lawyers on this appeal.

21. Our decision is unanimous.

HH Judge Shanks

Date: 20 December 2012

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Revised 03 January 2012: subject matter at the beginning of page 2 amended from FOIA s.31 to s.30.