



Ref: 5275

## Section 17 Notice under the Freedom of Information Act 2000

### WITHHOLDING INFORMATION

#### **Section 30(1)(c) – Information held for the purposes of criminal proceedings which the authority has power to conduct.**

This applies to all information held within the scope of your request.

This is a qualified exemption which means that the decision to disclose the requested material is subject to the public interest test. The public interest factors taken into account in this case are explained below:

#### Public interest factors in favour of disclosure

- To increase public understanding of the CPS decision making and prosecuting process.
- Transparency may increase public confidence in the CPS.

#### Public interest factors against disclosure

- There is a strong public interest in safeguarding the prosecution process. Maintaining the confidentiality of communications between the Police and the CPS, as well as other public bodies is an essential part of this process. It is important for officials to be able to freely justify and maintain their thought process when making decisions on criminal cases, without fear of the routes leading to those decisions later being disclosed into the public domain. Additionally, it is important to remember that to release case information may dissuade witnesses from assisting in future investigations. Witnesses are a vital part of the prosecution process and it is crucial that they are able to approach the investigative body and provide statements without fear that they may one day be placed into the public domain, save through the court process. Releasing this sort of information would be likely to prejudice future prosecutions.
- There is a particularly strong public interest in not releasing information which forms part of an investigation when it has been decided not to charge; to release would be extremely unfair to the individual involved.
- There is a strong public interest in the courts being the sole forum for determining guilt. Putting this information into the public domain would lead to unfair speculation about the individual in this case.

On balance, I consider the public interest favours maintaining the exemption.

### **Section 40(2) – Personal Data Relating To Third Parties**

The information you have requested contains the sensitive personal data of Dr Jane Barton. The sensitive personal data consists of personal data relating to the alleged commission of an offence. Personal data can only be released if to do so would not contravene any of the data protection principles. The first principle states:

*Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—*

*(a) at least one of the conditions in Schedule 2 is met, and*

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.*

We believe releasing the requested information into the public domain would cause damage and distress to Dr Jane Barton; she would have a clear and strong expectation that her personal data would be held in confidence and not disclosed to the world at large under the FOI Act.

Disclosure would therefore breach the first data protection principle as it would not be fair. We do not have to consider schedules 2 and 3. This is an absolute exemption and does not require consideration of the public interest.

Further information on the data protection principles is available as follows:

<http://www.legislation.gov.uk/ukpga/1998/29/schedule/1>

<http://www.legislation.gov.uk/ukpga/1998/29/schedule/2>

<http://www.legislation.gov.uk/ukpga/1998/29/schedule/3>

### **Section 42(1) – Legal Professional Privilege (LPP)**

The CPS view is that section 42(1) applies to some material on the basis of advice privilege. Section 42(1) is a qualified exemption that exempts from disclosure information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Whilst we recognise that there is a public interest in transparency, we consider that the public interest in not disclosing this information is greater.

It is vital for the effective conduct of the prosecution process that confidential communications between the CPS and third parties can take place. The prosecution process would be severely prejudiced if such communications were hindered by the fear of subsequent disclosure.

On balance, the CPS considers the public interest favours maintaining the exemption.