

ICO complaint seeks answers from prosecutors over deleted Assange emails

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Rome, December 15 (RHC)-- The Crown Prosecution Service (CPS) is facing fresh pressure to explain why it deleted key emails exchanged with Swedish prosecutors over WikiLeaks founder Julian Assange.

A lawyer representing an Italian investigative journalist has complained to the Information Commissioner's Office that the CPS has given inconsistent explanations for deleting the emails. The complaint calls for the CPS to disclose all documentation and correspondence about its email deletion policy, and also calls for the CPS to release original documents including metadata.

Investigative journalist Stefania Maurizi filed the complaint after the prosecution service released new information this year that appears at odds with claims made over the past six years. "It is perturbing that a public body stated something to the Commissioner, from 2018 to 2022, in the strongest and clearest

terms, but which it now claims was entirely wrong,” the complaint states.

Maurizi, a journalist working for newspaper Il Fatto Quotidiano, said the deleted emails cover at least the period between 2010 and 2013, when the CPS, under former director of public prosecutions Keir Starmer, was making some of the “most crucial” decisions on the Assange case.

Assange, who has overseen a series of controversial leaks on Wikileaks, including confidential US diplomatic cables and documents on the wars in Iraq and Afghanistan, was wanted for questioning by Sweden as part of a preliminary investigation into rape allegations. Sweden dropped the case in May 2017.

Maurizi, who has worked as a media partner of WikiLeaks since 2009, has obtained emails from the Swedish Prosecution Authority (SPA) that show the CPS played an influential role in Sweden’s decision to attempt to extradite Assange in 2010.

One email from a lawyer in the CPS’s extradition unit on 25 January 2011 to a Swedish colleague, first reported in l’Espresso, states, “My earlier advice remains, that in my view it would not be prudent for the Swedish authorities to try to interview the defendant in the UK.” The same email disclosed by the Crown Prosecution Service was redacted.

The WikiLeaks founder, who is being held in the Belmarsh high-security prison in South East London, is awaiting the outcome of an appeal against his extradition following a High Court decision in June 2023.

The 53-year-old Australian citizen faces 18 charges, including 17 under the U.S. Espionage Act 1917, and a jail sentence of up to 175 years for publishing government cables leaked by Chelsea Manning, a former U.S. Army soldier turned whistleblower, in 2010-11.

Press freedom groups argue the U.S. case against Assange is likely to set a precedent that would put journalists reporting on national security matters at risk worldwide.

Trevor Timm, co-founder of the Freedom of the Press Foundation (FPF), giving evidence during an extradition hearing in 2020, told the Old Bailey the case poses extreme danger to journalists if it’s allowed to go ahead. “This would criminalise every reporter who received a secret document whether they asked for it or not,” he told the court.

Maurizi has been fighting a long-running battle with the CPS under the Freedom of Information Act for correspondence between UK prosecutors and Sweden, the U.S. and Ecuador over the Assange case since 2015.

In 2017, the CPS disclosed that it had deleted the email account of lawyer Paul Close after his retirement in 2014, and his correspondence was no longer available. “All the data associated with Paul Close’s account was deleted when he retired and cannot be recovered,” it said.

The prosecution service has maintained for six years that its policy at the time was to suspend staff’s email accounts when they retired and then delete the accounts after three months. But during a Freedom of Information tribunal in January this year, a witness disclosed for the first time that he had seen “desk instructions” that stated staff emails would be deleted 30 days after someone retired from the CPS.

A tribunal ruling in Maurizi’s favour in June 2023 led the CPS to disclose an email referring to its “leavers policy” and a copy of its “leavers process policy document” for the first time.

Maurizi said the CPS had provided no explanation for its failure to disclose details of its leavers policy during the previous six years of FOI litigation.

“If this was the document regulating the general working practice for disabling and deleting personal email accounts of CPS staff after they retired, how is it possible that no one at the CPS knew of this document or provided it to us?” she said.

“This is not the only mystery. After stating consistently for the last five years that the deletion of emails was conducted three months after the CPS lawyer, Paul Close, retired, the CPS now states that the deletion of emails was done 30 days after Close retired.”

Maurizi argues in her complaint to the ICO that it’s in the public interest for the CPS to release the email and the leavers policy document in their original format with the accompanying metadata that could explain how widely the document was circulated.

“Metadata is also information held by the public authority which is relevant to the request,” the complaint states. “Given the history of this request, the metadata is particularly relevant.”

The complaint also argues that the CPS should disclose information to explain why it changed its previous position that the agreed process was to delete emails after 30 days. “There must have been a basis or bases on which the CPS made these unequivocal and confident statements, verified by a number of statements of truth,” it said.

The Metropolitan Police should release correspondence with the US Department of Justice about three UK based WikiLeaks journalists, despite national security claims, a tribunal heard. Freedom of information tribunal rules that investigative journalists and others can use the Freedom of Information Act if they live outside the UK or are not British citizens.

CPS faces legal ruling over refusal to disclose emails with U.S. on WikiLeaks and Assange extradition. The “leavers policy” document reveals that the CPS staff leaving process generated a series of automatic emails between the IT service desk and managers when CPS staff retired.

Maurizi’s legal advisor argues that, had the CPS released the document when it was first requested, it would have been possible to request copies of the automated emails under the Freedom of Information Act.

However, nine years after the CPS deleted Close’s email account, it’s unclear whether the CPS has copies.

Maurizi said the CPS has failed to answer questions about its handling of the Assange case over the course of her long-running FOIA litigation.

“I have tried to investigate the role of the Crown Prosecution Service in the case through FOIA requests to the Crown Prosecution Service since 2015,” she said. “Unfortunately, the Crown Prosecution Service has never properly come clean about some of its questionable decisions on the case and, as my FOIA litigation has revealed, it has destroyed key documents.”

Estelle Dehon, the barrister at Cornerstone Barristers who is representing Maurizi, told Computer Weekly the CPS had frequently denied it held documents only to release them at a later date. “Stefania Maurizi’s FOIA requests show that, since 2017, almost every time that she has pushed back when the CPS said it did not hold documents, further searches revealed that it did hold relevant and disclosable information,” she said.

If his appeal fails, Assange is expected to appeal to the European Court of Human Rights.



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