

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

### **Decision notice**

**Date:** 28 April 2021

**Public Authority:** Chief Constable of Sussex Police  
**Address:** Sussex Police Headquarters  
Malling House  
Church Lane  
Lewes  
East Sussex  
BN7 2DZ

#### **Decision (including any steps ordered)**

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1. In a multi-part request, the complainant requested information relating to a safeguarding investigation unit (SIU). Sussex Police initially advised that it would exceed the appropriate limit to comply with the request in its entirety, citing section 12 (cost of compliance) of the FOIA.
2. During the course of the Commissioner's investigation, Sussex Police revisited its handling of parts of the request.
3. The Commissioner's decision is that Sussex Police failed to fully consider and respond to the request in accordance with section 1(1) (general right of access to information) of the FOIA. She also finds procedural breaches of section 10 (time for compliance) and section 16 (advice and assistance).
4. The Commissioner requires Sussex Police to take the following step to ensure compliance with the legislation:
  - disclose the information identified in paragraphs 30 and 31 below as falling within the scope of parts 1, 2, 3, 4 and 8 of the request and provided to the Commissioner during the course of her investigation.
5. Sussex Police must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner

making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Background

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6. The request in this case was subject to an earlier complaint to the Information Commissioner regarding failure to respond. The complaint in that case was concluded by way of a decision notice (DN) FS50838265<sup>1</sup> which required Sussex Police to respond to the request.
7. With respect to Safeguarding Investigation Units, the Commissioner acknowledges that:

*"Sussex Police has established specialist Safeguarding Investigation Units (SIUs) within each local authority area. These teams manage both the criminal and safeguarding aspects of investigations involving child and adult abuse, high risk domestic abuse, rape and serious sexual offences<sup>2</sup>".*

## Request and response

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8. On 6 February 2019, the complainant wrote to Sussex Police and requested information in the following terms:

*"Please provide the following information on the Safeguarding Investigation Unit of Sussex Police.*

*1) Who has been in overall charge of this unit since it was formed in 2015?*

*2) When was this individual, or individuals, appointed?*

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2615059/fs50838265.pdf>

<sup>2</sup> <https://sussexsafeguardingadults.procedures.org.uk/pkoth/sussex-safeguarding-adults-procedures/safeguarding-and-criminal-investigations#s2814>

*3) Was this post advertised and selection made this way, or how was/were the person/people appointed?*

*4) What experience of safeguarding did the person/people have prior to holding the post?*

*5) To whom does the head of The Safeguarding investigation Unit report? Does anyone else have accountability for this unit?*

*6) Has the Sussex Police and Crime Commissioner been involved with this unit in any way?*

*7) Provide copies of all communications between the head of this unit and his/her superior, or the Sussex Police and crime Commissioner, since the unit was set up in 2015.*

*8) What statistics has this unit been required to produce since its inception? Please provide copies of all of these with certain details redacted if necessary".*

9. The request was made via the 'whatdotheyknow' website.

10. Following the Commissioner's intervention regarding its failure to respond to this request for information, Sussex Police responded on 11 June 2019. It refused to provide the requested information, citing section 12 (cost of compliance) of the FOIA as its basis for doing so. Specifically it cited section 12 in respect of parts (7) and (8) of the request. It did, however, provide some information in scope of parts 1-6 of the request in order to assist.

11. On 14 June 2019, the complainant requested an internal review of its handling of parts 1, 2, 3, 4 and 8 of the request. In an attempt to bring the request within the cost limit, he no longer requested information within the scope of part (7) of the request and narrowed the scope of part (8). In that respect, he requested to know the nature of the statistics that have been produced:

*"8) The request asked for two areas concerning the statistics. One asked what statistics had been produced since inception, the other asked for copies of these. It is accepted that the copies would require over the amount of time for which there is a cost limit in the FOI Act. It should be possible to provide details of what statistics have been produced however. These would just have headings, or titles, of the areas of concern, groups covered etc and no further information apart from those. Please provide these as this shouldn't need an amount of time to cost in excess of the limit imposed under the FOI Act".*

## Scope of the case

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12. Following earlier correspondence, the complainant contacted the Commissioner on 5 August 2019 to complain about the way his request for information had been handled. He advised that, despite the Commissioner's intervention on the matter, a response to his request for internal review remained outstanding.
13. Given the history of this request for information, the Commissioner exercised her discretion to accept the complaint without the internal review having been carried out.
14. As is her practice, the Commissioner wrote to both parties setting out the scope of her investigation. In light of the wording of the request for internal review, she asked Sussex Police to revisit its handling of parts 1, 2, 3, 4 and 8 the request.
15. The Commissioner considers that the response ultimately provided by Sussex Police failed to provide sufficient detail to explain its handling of those parts of the request.
16. During the course of her investigation, the Commissioner asked Sussex Police, on more than one occasion, to confirm that its responses related to the revised scope of part 8 of the request, challenging its view that it would exceed the appropriate limit to provide information within the scope of that part of the request. Although unable to give an expert opinion on the matter, the Commissioner considered that it was not unreasonable to consider that the request could be complied with, particularly in light of the revised scope.
17. She also asked Sussex Police to confirm that it was addressing matters related to this case independently of those raised in the separate request and case about the SIU that the complainant had brought to her attention, and into which she was also conducting an investigation (case reference FS50836015<sup>3</sup>).
18. Over the course of her investigation, the Commissioner found Sussex Police fell short of the level of engagement she considers acceptable: responses were frequently late and failed to address the issues raised, requiring the Commissioner to persist with her enquiries.

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<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618572/fs50836015.pdf>

19. As a result of her continued intervention, matters were escalated within the public authority, with Sussex Police's Data Protection Officer (DPO) taking personal responsibility for this case.
20. The Commissioner acknowledges that the DPO contacted the complainant with a view to explaining the structure of safeguarding in Sussex Police in order to ensure the context of the request was clear.
21. The Commissioner considers that approach was in line with her guidance to public authorities<sup>4</sup> which states:

*"Even after we are involved and have accepted the case for investigation, you can discuss the case with the complainant – particularly if this is likely to lead to you resolving the case informally".*
22. However, the complainant chose not to engage directly with Sussex Police, preferring the Commissioner to progress matters. Accordingly, the Commissioner wrote to the complainant, explaining that as safeguarding was a complex business area, Sussex Police required him to clarify which SIU his request related to. She sent him a copy of a structure chart, provided to her by Sussex Police, in order to assist.
23. In his response, the complainant maintained that it was clear which SIU his request related to. In support of that position, he provided the Commissioner with links to information which he considered showed that he was requesting information about a specific unit.
24. The Commissioner notes that while the first of those links related to Brighton and Hove SIU, the paragraph highlighted by the complainant in the second link referred to SIUs in the plural.
25. Despite that reference to units in the plural, the Commissioner interpreted the complainant's correspondence to mean that the SIU he was interested in was the Brighton and Hove SIU. Accordingly, she asked Sussex Police to revisit its handling of the request on the basis that the SIU referred to in the request is the Brighton and Hove SIU.
26. The analysis below considers Sussex Police's handling of parts 1, 2, 3, 4 and 8 of the request, taking into account the revised wording of part 8 of the request.

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<sup>4</sup> <https://ico.org.uk/for-organisations/how-we-deal-with-complaints/>

## Reasons for decision

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### *Section 1 general right of access*

27. Section 1 of the FOIA states that:

*"Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

28. Section 10(1) of the FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

29. Over the course of its protracted engagement with the Commissioner, and with the benefit of the clarification provided by the complainant with respect to which SIU he was interested in, Sussex Police carried out fresh searches for the requested information. No reference was made to section 12 in relation to the searches.

30. With respect to the information within the scope of parts 1-4 of the request, Sussex Police located and retrieved relevant information.

31. Furthermore, Sussex Police was able to locate and retrieve information within the scope of the revised wording of part 8 of the request.

32. Sussex Police provided the Commissioner with the information resulting from those searches, in piecemeal fashion, over the course of its correspondence with her.

33. That information comprises information relating to the Head of the SIU and information relating to details of the statistics produced by the SIU.

34. The Commissioner finds breaches of sections (1)(1)(b) and 10(1) of the FOIA for failing to communicate that information to the requester within the statutory time for compliance.

### *Section 16 advice and guidance*

35. During the course of the Commissioner's investigation, it became apparent that, while the request referred to **the** Safeguarding Investigation Unit of Sussex Police, there is no one safeguarding team

(singular) in Sussex; rather, safeguarding is a complex area of business with many teams.

36. The Commissioner recognises that it can be difficult for requesters to understand how information is labelled and organised by public authorities. However the FOIA contains a provision that ensures that public authorities must consider whether they should provide advice and assistance, within reasonable limits.
37. Where there was any doubt as to the actual information the complainant was requesting, best practice should have caused Sussex Police to contact him, in accordance with its duty under section 16 of the FOIA, to explain the delivery of safeguarding in Sussex Police and to clarify the nature of his request before responding.
38. Sussex Police was therefore in breach of section 16, as it failed to provide reasonable advice and assistance to the complainant at the time the request was made.

## **Other matters**

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### *Internal review*

39. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA. However, the Commissioner has issued guidance in which she has stated that in her view, internal reviews should take no longer than 20 working days to complete, and even in exceptional circumstances the total time taken should not exceed 40 working days.
40. In this case, despite the intervention of the Commissioner, Sussex Police failed to complete an internal review in a timely manner.
41. The Commissioner expects Sussex Police to ensure that it has robust procedures in place to enable the internal reviews it handles in the future adhere to the timescales she has set out in her guidance.

### *Level of engagement*

42. The Commissioner has recorded, in this decision notice, her comments in relation to Sussex Police's level of engagement during the course of this request for information.

43. She also records here that, in order to progress her investigation, she found it necessary to issue the Chief Constable of Sussex Police with an Information Notice (IN), in accordance with her powers under section 51 of the FOIA. In the interests of transparency, and as is her practice, the Commissioner will publish that IN on her website once this case is concluded.
44. The Commissioner is concerned that Sussex Police's poor practice in responding to FOIA requests is not only resulting in complaints to her office, but also causing lengthy investigations in order to resolve those complaints.

*The Section 45 Code of Practice*

45. The section 45 Code of Practice<sup>5</sup> (the Code) provides guidance for public authorities on best practice in meeting their responsibilities under Part I of the FOIA. The Code should be used as a handbook which sets out best practice to help with the day-to-day handling of requests.
46. The Commissioner recognises that adhering to the Code will result in positive benefits for the public authority, and in practical terms, offer good customer service.
47. The Code is designed to help a public authority understand its obligations under the FOIA. These benefits are interlinked, and a public authority will obtain most benefit by adhering to all aspects of the Code. Adhering to the Code should result in positive benefits for the authority and will help it to provide good customer service.
48. The Commissioner recommends the section 45 Code of Practice to Sussex Police, noting the particular relevance of the following topics in the circumstances of this case:
  - Advice and assistance
  - Time limits for responding to requests
  - Internal Reviews
  - Cost limit

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)



*The Section 46 Code of Practice*

49. With respect to the information within the scope of part (8) of the request, Sussex Police told the Commissioner that the information was obtained from a variety of sources, including a daily report showing active investigations by officer and other measures.
50. The Commissioner acknowledges that, in its correspondence, Sussex Police described there being '*a plethora of issues*' when looking at this request and '*extreme difficulty*' in sourcing data in this case. In that respect, she notes that it made reference to the way in which relevant performance information is created and stored.
51. Guidance for public authorities on good records management is provided by the section 46 Code of Practice<sup>6</sup>. If an authority follows the code, its standard of record keeping and records management should conform to an acceptable standard.
52. Good records management should be seen as a benefit, not a burden. All organisations, public and private, are advised to have good records management in place as part of achieving business efficiency, by making sure that information is easily retrieved and properly documented.
53. The Commissioner recommends the section 46 Code of Practice to Sussex Police.

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<sup>6</sup> <https://ico.org.uk/media/for-organisations/research-and-reports/1432475/foi-section-46-code-of-practice-1.pdf>

## Right of appeal

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54. 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: 0300 1234504

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)

55. 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.
56. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Laura Tomkinson**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**SK9 5AF**