

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

### **Decision notice**

**Date:** 24 May 2023

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

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

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1. The complainant has requested information relating to Sussex Police's investigation of the drone incident at Gatwick Airport in December 2018.
2. The Commissioner's decision is that Sussex Police were entitled to rely on Section 30(3) of the FOIA to neither confirm nor deny whether information was held.
3. The Commissioner does not require any steps.

#### **Request and response**

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4. On 1 June 2022, the complainant wrote to Sussex Police and requested information in the following terms:

"In FOIA responses from the Ministry of Defence, it was noted that "Sussex Police are leading the investigation, and have deployed their own UAV Detect & Warn capability to Gatwick Airport." which was prior to the arrival of MOD assets, so on 20/12/18.

It is in the public domain that the Sussex Police "UAV Detect & Warn capability" was DJI's AeroScope so I don't require the force to name the equipment in use, I require the date that the "UAV Detect & Warn

capability" was purchased or rented by Sussex Police. If the cost and retailer can be provided too, that would be appreciated. but the date alone will be fine. If it was a rental, the period to and from of the rental is required."

5. Sussex Police responded on 13 July 2022. It stated that under Section 30(3) of the FOIA, it was unable to confirm or deny whether the information was held.
6. Sussex Police provided an internal review on 24 August 2022, in which it upheld its original position.

### **Reasons for decision**

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7. The following analysis explains why the Commissioner has decided that Sussex Police were correct to rely upon section 30(3) of FOIA to neither confirm nor deny (NCND) whether relevant information is held falling within the scope of the complainant's request.
8. Section 30(1) of FOIA provides that:

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

  - (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained
    1. whether a person should be charged with an offence, or
    2. whether a person charged with an offence is guilty of it,
  - (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
  - (c) any criminal proceedings which the authority has power to conduct."
9. Section 30(3) of FOIA provides that: "The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be exempt information by virtue of subsection (1) or (2)."
10. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information requested. The effect of section 30(3) is therefore that the public authority is not required to confirm or deny

whether relevant information is held where the exemption in section 30(3) is applicable.

11. The decision to use a NCND response will not be affected by whether a public authority does, or does not, in fact hold the requested information. The starting point, and main focus for NCND in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
12. Given the nature of the information requested, the Commissioner is satisfied that if information falling within the scope of the complainant's request were held, it could fall within the scope of the exemption in section 30(1) FOIA i.e "has at any time been held...".
13. The exemption is subject to the public interest test set out in section 2(1)(b) of FOIA. It can only be maintained if, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether or not the public authority holds relevant information.

#### **Factors in favour of confirmation or denial**

14. In its internal review, Sussex Police acknowledged the release of information would reinforce the force's commitment to be open and transparent with the information it holds.
15. The complainant has argued that the nature of the equipment used is already in the public domain, and so confirmation or denial would not result in harm.

#### **Factors in favour of maintaining the exemption**

16. Sussex Police have stated if this information was held and disclosed, it would reveal the police's detection capabilities, which would prejudice the detection and prevention of crime, as well as undermining the partnership approach to law enforcement they have with other agencies. They have advised this would also affect Sussex Police's ability to ascertain who, if anyone, was responsible for this incident, and could assist others in committing similar crimes.
17. Sussex Police have also advised they considered the wider context of this particular investigation, which has been the subject of many other information requests under the FOIA. Sussex Police advised while each of these requests individually ask for only a small amount of information, when placed together, they constitute a wider body of data which could be used to seriously compromise the investigation.

#### **The Commissioner's view**

18. The Commissioner has considered the arguments submitted by the complainant and Sussex Police, and is satisfied that the public interest in neither confirming nor denying whether information is held outweighs that in responding to the requirements of section 1(1)(a) of FOIA.
19. The Commissioner notes the complainant has stated this information is already in the public domain, and has examined the link provided. However, it appears that this refers to Gatwick Airport, not Sussex Police, being in possession of the equipment. Therefore he does not consider this information to be in the public domain.
20. In this case, the investigation did not lead to someone being charged and the case remains unsolved. Therefore, should new information come to light, it may be re-opened and a prosecution pursued. Confirmation or denial of the police's capabilities to detect crimes could jeopardise any chance of a successful investigation or prosecution.
21. The Commissioner has also considered Sussex Police's argument that numerous FOI requests for small pieces of information about this incident have been made. Although few of these requests are for large amounts of information, they constitute a wider body of data overall. The Commissioner feels this argument has weight, particularly given the amount of public attention this incident has attracted.
22. The Commissioner's decision is that Sussex Police were therefore entitled to rely upon Section 30(3) of FOIA in this case to neither confirm nor deny whether information was held.

### **Procedural matters**

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23. Section 17(1) specifies that a refusal notice must be provided no later than 20 working days after the date on which the request was received.
24. In this instance, Sussex Police did not provide a refusal notice until 13 July 2023, a total of twenty-nine working days after the complainant made his request.
25. Given the above, the Commissioner has found a breach of section 17(1) of the FOIA.

## Right of appeal

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26. 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: 0203 936 8963

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)

27. 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.
28. 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 .....**

**Susan Duffy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**