

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 November 2024

Public Authority: Chief Constable of Surrey Police
Address: PO Box 101
Guildford
Surrey
GU1 9PE

Decision (including any steps ordered)

1. The complainant has asked Surrey Police for information on incidents, crimes and reports which mention sodium nitrite. Surrey Police disclosed some figures, but the complainant believed that it held further information.
2. The Commissioner's decision is that Surrey Police's interpretation of the request as only being for information on "incidents" was unreasonably restrictive and that it wrongly defined its scope. In doing so, Surrey Police failed to comply with the provisions of section 1(1)(a) (General right of access) of FOIA. He also finds it breached sections 1 and 10 of FOIA by failing to respond to the request within the statutory 20 working day time for compliance.
3. The Commissioner requires Surrey Police to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response, having carried out further searches to identify **all** information held which falls within the scope of Request 1, in accordance with the meaning clarified in paragraphs 21 and 22 of this notice.
4. Surrey Police must take these steps within 30 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.

Request and response

5. On 7 May 2024, as part of a larger request for information (the other parts of which are not the subject of complaint), the complainant wrote to Surrey Police and requested information in the following terms:

“REQUEST 1:

Please provide the number of incidents/crimes/reports received/attended by Surrey Police referencing ‘sodium nitrite’.

Please search records from 2018 to present.

Please break down the statistics by year and month.

2018

2019

2020

2021

2022

2023

2024”.

6. Surrey Police responded on 26 June 2024. It disclosed the following information in response to Request 1:

MONTH	TOTAL
2018-09	1
2020-02	1
2021-01	2
2022-04	1
2023-04	1

MONTH	TOTAL
2018-09	1
2021-01	2
2022-04	1

7. Surrey Police said these results were extracted from a live incident information system which is subject to change over time.
8. The complainant requested an internal review on 11 September 2024, expressing concern that the figures disclosed were not complete. He pointed out that they did not appear to take account of at least two

deaths he knew of between October 2021 and March 2022 which involved the ingestion of sodium nitrate.

9. Surrey Police provided the outcome of the internal review on 7 October 2024, maintaining that the information it disclosed was correct.

Scope of the case

10. The complainant contacted the Commissioner on 22 October 2024 to complain about the way his request for information had been handled. He remained concerned that the figures disclosed to him did not reflect the two incidents of which he was aware, and he provided the Commissioner with corroborating information.
11. The analysis below considers whether Surrey Police has complied with the requirements of section 1(1)(a) in its handling of Request 1.
12. It is important to clarify that the right under FOIA is to information which is 'held', and not to information which is 'accurate'. The issue of the accuracy of any information held by Surrey Police is not within the ICO's powers and, if the information Surrey Police disclosed reflected the recorded information that it holds (or held at the time of the request), the Commissioner cannot require it to alter its records.

Reasons for decision

Section 1 – Information held

13. Section 1(1)(a) of FOIA states that anyone making a request for information is entitled to be told whether a public authority holds the requested information. A public authority must therefore establish what information it holds¹ before going on to consider whether it may be disclosed.
14. Surrey Police says that it has disclosed all the information that it holds on the matter. The complainant disputes this, as he knows of two deaths involving sodium nitrite poisoning which do not appear to be reflected in the figures disclosed to him.

¹ unless doing so would exceed the appropriate costs limit at section 12 of FOIA

15. Where there is some dispute between a public authority and the requester about whether all the information that is held has been identified and located, the Commissioner will apply the civil standard of proof in determining whether, on the 'balance of probabilities', further information is held. In deciding where the balance of probabilities lies, the Commissioner will consider evidence and arguments from both parties. He has also considered the interpretation of the request employed by Surrey Police in this case.
16. Surrey Police told the complainant the following about the source of the disclosed information:

"Important notes

- Results are extracted from a live incident information system, which is subject to change over time.
 - The date an incident was recorded (the entered date) is used to determine if it falls within the specified period. The incident may have occurred in a different period.
 - Only incidents are included where the relevant text strings been [sic] mentioned in the incident text - this does not necessarily mean the incident relates to this".
17. The Commissioner asked Surrey Police to provide more detailed information about how it handled the request. He advised Surrey Police that it was its responsibility to satisfy him that it had complied with the law and to:

"...provide a thorough response to the above questions, and provide full details of searches to support your conclusions. The Tribunal has been critical of public authorities that fail to respond adequately to the Commissioner's enquiries. The Commissioner will therefore challenge responses and assertions made which fail to satisfactorily address our questions or require a more detailed explanation."

18. Surrey Police's response to the nine questions posed by the Commissioner, was as follows:

"The request had only asked for information pertaining to incidents and so this is what was provided (as explained in the 'important notes' section of the response). Our CAD [Computer Aided Dispatch] system does not have stat offences – so we are unable to pull any specific crime from incidents data. The results for this request were only pulling incidents that had the following wording in the text string 'sodium nitrate' 'sodium nitrite' 'suicide kit' 'NCA' 'National crime agency' - so if none of these words were used, there would be no result."

19. It should be noted that this brief response did not satisfactorily answer the questions the Commissioner asked. Some points remained entirely unaddressed.

The Commissioner's decision

20. It is clear from Surrey Police's submissions to the Commissioner that it has interpreted the request as being only for information on "incidents" and that this interpretation led it to focus its searches on its CAD system, which is used to dispatch units to calls received by Surrey Police.
21. The Commissioner considers this to be an unreasonably restrictive interpretation of the request. The request quite clearly asked for a breakdown of the number of "incidents", "crimes" and "reports" referencing sodium nitrite, received or attended by Surrey Police during the period specified. Its intended scope is clearly wider than just "incidents" but the Commissioner is not satisfied that the searches Surrey Police has described took account of this.
22. Furthermore, when requesting the internal review, the complainant provided Surrey Police with specific information about two deaths where sodium nitrite was a factor. The Commissioner considers it reasonable to believe that, on the balance of probabilities, further information on these matters (and possibly other, similar cases) might be held in locations other than on Surrey Police's CAD system, such as on its crime recording system or its intelligence system.
23. Taking all of the above into account, it appears to the Commissioner that the searches that Surrey Police carried out to locate and identify all the information it holds that falls within scope of the request, were inadequate. Surrey Police therefore breached section 1(1)(a) of FOIA.
24. Surrey Police must now take the action specified in paragraph 3.

Procedural matters

25. By failing to comply with the request within the statutory 20 working day time for compliance, Surrey Police breached sections 1 and 10 of FOIA.
26. The Commissioner has made a separate record of this delay, for monitoring purposes.

Other matters

Engagement

27. The Commissioner asked Surrey Police to provide detailed information about its handling of the request and the searches it conducted.
28. It is disappointing that Surrey Police's response was cursory and that it did not address all of the points raised in the Commissioner's questions, including requests for some very specific information on a sensitive matter.
29. The Commissioner has made a separate record of Surrey Police's poor engagement with this complaint, for monitoring purposes.

Right of appeal

30. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Samantha Bracegirdle
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