FREEDOM OF INFORMATION ACT 2000 (SECTION 52) ENFORCEMENT POWERS OF THE INFORMATION COMMISSIONER ENFORCEMENT NOTICE

DATED: 9 August 2024

To: Chief Constable of Surrey Police

Of: Police Headquarters

Mount Browne

Sandy Lane

Guildford

GU3 1HG

- 1. The Chief Constable of Surrey Police ("SP") is a "public authority" listed in Schedule 1 and defined by section 3(1)(a)(i) of the Freedom of Information Act 2000 ("FOIA"). FOIA provides public access to information held by public authorities.
- 2. SP's obligations as a public authority under FOIA include:
 - a. Being obliged to publish certain information about its activities;
 - b. Responding to requests for information from members of the public.
- 3. The Information Commissioner (the "**Commissioner**") hereby issues SP with an Enforcement Notice (the "**Notice**") under section 52 FOIA. The Notice is in relation to SP's:
 - a. Continuing non-compliance with section 1(1) FOIA;

b. Continuing breach of section 10(1) FOIA.

4. This Notice explains the Commissioner's decision to take enforcement action. The specific steps that SP is required to take are set out in Annex 1

5. The Commissioner expects SP to ensure that it continues to meet its obligations to comply with subject access requests under the UK GDPR whilst actioning the steps in **Annex 1**.

Legal Framework for this Notice

- 6. A person requesting information from a public authority has a right, subject to exemptions, to be informed by the public authority in writing whether it holds the information, and to have that communicated to him, if the public authority holds it. This is set out in section 1(1) FOIA-
 - "(1) 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."
- 7. Section 10(1) FOIA specifies that public authorities must respond to requests within 20 working days:
 - "... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following

receipt."

- 8. There is provision under FOIA for a public authority to claim a reasonable extension to this limit in certain circumstances. The Code of Practice issued under section 45 FOIA recommends that, where those limited circumstances apply, an extension should be for a maximum of a further 20 working days. In all cases, the public authority must give the requestor a written response within the standard time limit for compliance advising of reliance on the permitted extension.
- 9. The Commissioner has various powers under FOIA. One of these is the issuing of an Enforcement Notice. Section 52(1) of FOIA states
 - "If the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I, the Commissioner may serve the authority with a notice (in this Act referred to as an "enforcement notice") requiring the authority to take within such time as may be specified in the notice, such steps as may be so specified for complying with those requirements."
- 10. Section 52 FOIA has effect subject to section 53 FOIA, which provides details of the exceptions from the duty to comply with a decision notice or enforcement notice.

Background

- 11. The Commissioner regularly reviews the National Police Freedom of Information and Data Protection Unit ("NPFDU") FOI and SAR Performance and Monitoring Report (the "Report") which is published on the National Police Chiefs' Council ("NPCC") website.
- 12. The Report showed that since the beginning of 2024 compliance had

fallen; in January 2024 SP provided 73% of requesters with a response within the statutory timeframe under FOIA. By March, that figure had fallen to 64%, with the February figures unknown.

- 13. In 2023 the Commissioner received four complaints in relation to timeliness issues, all of which were resolved informally once the Commissioner had contacted SP. Comparatively, in the first 6 months of 2024, the Commissioner received 7 timeliness complaints, of which one led to formal action, namely, a Decision Notice finding a breach of Section 10(1) of FOIA and ordering compliance.
- 14. In May 2024 the Commissioner asked SP to provide up-to-date compliance figures, as those published by the National Police Chief's Council were concerning and incomplete. The Commissioner also asked for further information to better understand any factors which may be affecting SP's ability to meet its statutory obligations under FOIA, as evidenced by the recent increase in timeliness complaints to the Commissioner's Office.
- 15. SP responded promptly in May 2024, providing current figures and an updated action plan. However, the complete figures for 2023/24 showed an overall compliance rate of 69% and a sizeable backlog, with the oldest open request being nearly 2 years old. Furthermore, the action plan highlighted a lack of in-built resilience; factors that could have an impact on future compliance included staffing changes, ongoing recruitment and training, and upcoming support renewal dates for software. Consequently, in order to get a clearer and more current picture, in July 2024 the Commissioner asked SP to provide the quarter one statistics for 2024/25 and any further updates.
- 16. In July 2024 SP provided the figures for quarter one of 2024/25.

 These showed a fall in compliance rates, from 69% in quarter four of

2023/24 to 54% in quarter one of 2024/25.

17. The figures also showed that SP has a significant backlog of overdue requests, including 192 over a month old, 141 over 3 months old and 133 between 6 months and over a year old, the oldest of which was 648 days overdue as of the end of July.

18. SP updated the Commissioner about its ongoing recruitment, explaining that it had appointed two new staff members to its Information Access Team in July, both of whom were subsequently undergoing training. Further to this a replacement for a third position had recently been provided with an offer of employment.

The Contravention and Reasons for this Notice

- 19. FOIA requires a public authority to inform people whether it holds information they have requested and to communicate it to them within 20 working days of receipt of their request.
- 20. The Commissioner accepts that SP have limited resources for processing requests under FOIA. This is an issue across the public sector, but is particularly acute amongst police forces as new recruits must also gain a security clearance – elongating the recruitment process.
- 21. That being said, responding to requests for information is a statutory duty. FOIA requires a public authority to inform people whether it holds information they have requested and to communicate it to them within 20 working days of receipt of their request.
- 22. The updated action plan highlights that a variety of staffing changes have taken place, requiring training for staff, and some recruitment is

yet to be finalised. The lack of a full complement of trained staff coupled with the recent fall in compliance rates, shows that Surrey Police is not currently able to adequately meet its obligations under the Act, and may not be able to do so until such time as new staff members are in position and fully trained.

- 23. SP has provided no clear action plan to address its backlog on top of increasing its compliance rate to meet current service demand. While certain measures noted in the most recent action plan might help reduce the number of cases brought to SP and free up staff time to handle the backlog, such as the intention to consider implementing the ICO's model publication scheme for police forces, no timeline has been provided for such actions, nor have impact forecasts been considered.
- 24. Despite recent recruitment, with the pressures of upcoming training affecting the amount of time new staff can spend on core tasks, some new staff not yet in place, and no concrete plan to address compliance issues, SP is at a high risk of seeing its backlog stagnate or increase, and its compliance rate remain at an unacceptable level or worsen.
- 25. In the circumstances, the Commissioner considers it a proportionate regulatory step to issue an Enforcement Notice requiring SP to address its backlog of overdue requests.
- 26. Imposing a deadline makes clear the priority that the Commissioner considers this task should be given. He has taken into account the scale of the backlog and the timing of this notice in relation to the ongoing training pressures faced by SP when setting the timeframe by which he expects compliance.
- 27. The Commissioner accepts that Surrey Police has engaged positively with him in recent months, and is proactively taking steps to improve

compliance through the recruitment of new staff and the updating of its action plan. However, the Commissioner considers that a proportionate regulatory step is to require SP to devise and publish a more detailed action plan, which formalises measures to mitigate delays and address the backlog of unanswered requests. This action plan should be supported by a 'lessons learned' exercise, which examines the root cause of delays in the requests over the most recent four quarters, from allocation through to clearance at different stages, with mitigations for any recurring problems addressed specifically in the plan.

28. The Commissioner advises SP to make use of resources available on his website when updating its action plan, such as What does good FOI practice look like in the police sector? | ICO. SP should also review its record keeping practices to ensure that up to date figures are regularly recorded on the FOI and SAR Performance and Monitoring Report, and that upcoming or overdue requests can be clearly monitored and addressed, to avoid lengthy delays to requesters.

Other Matters

- 29. The Commissioner considers that SP may benefit from using his <u>FOI</u> self-assessment toolkit | ICO which is designed to help public authorities assess their current FOI performance and provide indicators of where efforts should be focused in order to improve. Topic 1 is particularly relevant as it deals with timeliness.
- 30. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in an enforcement 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.

31. Sections 5.4 and 5.5 of the Code set out that a reasonable time for the completion of an internal review is 20 working days following the receipt of the request for review, and that, usually, no more than 40 working days will be required.

- 32. The Commissioner is satisfied that SP failed to conform with the Code and recommended best practice in relation to the reviews it has failed to complete within 40 working days. In the first 6 months of 2024, SP provided approximately one third of internal reviews within the recommended time frame, with compliance ranging from 36% in quarter one of 2023/24 to 33% in quarter one of the current financial year.
- 33. He recommends that SP should ensure that internal review requests are responded to in a timely manner. He is therefore also recommending in line with his powers under section 48(1) of FOIA that the action plan he has required under this Notice also captures the activity SP will take to bring its handling of internal reviews in line with the section 45 Code of Practice. He recommends the root cause analysis of first instance requests that is required as part of the Notice is extended to also cover the internal review cases currently delayed.

Terms of this Notice

- 34. The Commissioner therefore exercises his powers under section 52 of FOIA to serve an Enforcement Notice requiring SP to take specified steps to comply with FOIA. The specified steps are set out in **Annex 1** of this Notice.
- 35. The consequence of failing to comply with an Enforcement Notice is that the Commissioner may make written certification of this fact to

the High Court pursuant to section 54 of FOIA. Upon consideration and inquiry by the High Court, SP may be dealt with as if it had committed a contempt of court.

Right of Appeal

36. By virtue of section 57 of FOIA there is a right of appeal against this Notice to the First-tier Tribunal (Information Rights). If an appeal is brought against this Notice, it need not be complied with pending determination or withdrawal of that appeal.

37. 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 9368963

Email: GRC@justice.gov.uk

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

chamber

38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Enforcement Notice is sent.

Phillip Angell
Head of Freedom of Information Casework
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

TERMS OF THE ENFORCEMENT NOTICE

THIS NOTICE REQUIRES SP TO TAKE THE FOLLOWING STEPS BY THE DATES SPECIFIED BELOW:

By 9 February 2025, SP shall:

- (i) in respect of each information request where the response is outside of 20 working days as at the date of this notice, and where a permitted extension has not been applied, comply with section 1(1)(a) of FOIA and, if information of the description specified in the request is held, either:
- (ii) communicate that information pursuant to section 1(1)(b) FOIA; or issue a valid refusal notice under section 17 FOIA, unless section 17(6) FOIA applies.

Within 30 calendar days of this notice, SP shall:

(iii) devise and publish an action plan formalising the measures it will take to ensure it complies with its legal duties under Part 1 of FOIA to respond to information requests in a timely fashion, while also clearing its backlog of overdue requests as required by this notice.