

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 June 2025

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)

1. The complainant has requested a secured by design (SBD) assessment which has been carried out by Sussex Police for St Peter's Health Centre and a copy of an email address to contact it. Sussex Police refused to provide a copy of the SBD assessment citing section 31(1)(a) of the FOIA (law enforcement). It provided the email address.
2. The Commissioner's decision is that Sussex Police was entitled to rely on section 31(1)(a) of FOIA to withhold the SBD assessment.
3. The Commissioner also finds that, in providing a late response, Sussex Police breached sections 1(1) (general right of access) and 10(1) (time for compliance) of FOIA. No steps are required.

Request and response

4. On 23 July 2024, the complainant wrote to Sussex Police and requested information in the following terms:

"A secured by design assessment has been carried out by Sussex Police (ref:NW/M/19/006B SBD) for St Peter's Health Centre, 30-36 Oxford Street, Brighton BN1 4LA

I would like a copy and also provide email address to contact."

5. Sussex Police responded on 30 October 2024 refusing to provide the SBD assessment report citing section 31(1)(a) of the FOIA.
6. Following an internal review Sussex Police wrote to the complainant on 2 January 2025. It stated that it was upholding its original decision in regards to the SBD assessment report. In regards to the request to provide the complainant with an email address to contact it, Sussex Police apologised for not responding to this part of the request and provided the information.

Scope of the case

7. The complainant contacted the Commissioner on 8 January 2025 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to consider whether Sussex Police was entitled to refuse the copy of the SBD report under section 31(1)(a) of the FOIA.

Reasons for decision

Section 31 – Law enforcement

9. Section 31(1)(a) of FOIA states that:

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(a) the prevention or detection of crime."
10. Section 31 is a prejudice based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but that it can only be withheld if the public interest in the maintenance of the exemption outweighs the public interest in disclosure.

11. In order to be engaged, the following criteria must be met:

- The actual harm which the public authority alleges would, or would be likely to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption (in this case, the prevention or detection of crime);
- The public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the alleged resultant prejudice must be real, actual or of substance; and,
- It is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – that is, 'would be likely' to result in prejudice or 'would' result in prejudice.

12. The Commissioner must first consider whether the arguments provided by Sussex Police relate to the relevant applicable interests, namely the prevention or detection of crime.

13. In its submission to the Commissioner, Sussex Police confirmed that the 'applicable interest' in this case is the security of an NHS premises located in the centre of the city of Brighton and Hove.

14. Sussex Police explained that, whilst the NHS Trust which operates the buildings has various obligations regarding the health and safety of its staff, patients and visitors, the application of section 31 of the FOIA in terms of the applicable interest in this case is strictly limited to the role played by the provision of a Secured By Design (SBD) crime prevention assessment.

15. Sussex Police explained that the SBD assessments enable premises operators to understand risks (including risks associated with the surrounding area) and implement physical and procedural controls to deter crime or, where crime is attempted, to frustrate potential offenders or mitigate the damage they may cause.

16. Sussex Police stated that in the case of NHS premises, they contain many items which may attract criminals, in addition to valuable equipment and machinery which may be found in any commercial premises.

17. Sussex Police provided the Commissioner with further arguments as to why the premise may attract criminals but he has not felt it appropriate to replicate these in this notice.

18. Firstly, the Commissioner is satisfied that the envisaged harm relates to the law enforcement interests protected by section 31(1)(a), namely the prevention of crime.
19. Sussex Police has stated that there is a real and substantial risk that the disclosure of the SBD assessment into the public domain carries the risk that crime prevention measures may be undermined or even that the data contained therein will actually enable crime.
20. Sussex Police explained that the causal link between the disclosure of this report and an increased risk of crime and disorder comes from the detail in which the premises are described and the way vulnerabilities are highlighted. It argued that the public sharing of measures to deter or mitigate crime clearly provides an opportunity for a motivated offender to use the report for the purposes of planning.
21. Sussex Police provided the Commissioner with examples of how the information contained in the report would highlight vulnerabilities which would make them less secure and therefore more vulnerable to crime.
22. With regard to the second criterion, having viewed the withheld information and considered the context of this case and in conjunction with Sussex Police's arguments, the Commissioner is satisfied that the SBD assessment, if disclosed, would have a detrimental effect on the prevention of crime at the premises concerned.
23. In its submission to the Commissioner, Sussex Police confirmed that it does consider that the sharing of confidential crime prevention advice into the public domain 'would be likely' to prompt offending.
24. The Commissioner has considered all of Sussex Police's arguments and accepts it logical to argue that the disclosure of the report would likely increase risks to the premises in that criminals would be aware of vulnerabilities and in turn would likely encourage criminal behaviour.
25. The Commissioner therefore accepts that the outcome of disclosure predicted by Sussex Police would be likely to occur and is therefore satisfied that section 31(1)(a) of the FOIA is engaged.

Public interest test

26. Section 31(1)(a) of the FOIA is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at section 31(1)(a) outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

27. Sussex Police recognised the following factors which favour disclosure:

- Transparency in policing activity
- Public trust and confidence
- Reassurance that the Force is proactive in preventing crime, not just reactive when it occurs
- Increased public awareness of available safety measures.

Public interest arguments in maintaining the exemption

28. Sussex Police argued that the following factors favour non-disclosure:

- Compromise of effective delivery of operational law enforcement
- Risk of harm to the public through the creation of opportunities for offending
- Contribution to the sum of criminal knowledge, specify methods to defeat or circumvent security measures

29. In Sussex Police's internal review it stated the following:

"When balancing the public interest, it is necessary to consider the release of the requested information into the public domain. The public interest is not what interests the public but what would be of tangible benefit to the public as a whole. In this instance, the strongest argument for the disclosure, that of openness and accountability on the part of the police, is outweighed by the strongest argument against disclosure i.e. the potential impact upon the ability of the police to enforce the law".

30. Sussex Police told the Commissioner that the public is reassured to know that the it is proactive in preventing crime but Sussex Police also offers a large and diverse set of messages to regularly reassure the public to that effect. It explained that the media for these messages range from its internet site, through to targeted media campaigns to face to face meetings in communities.

31. Sussex Police argued that the knowledge of work done to target-harden one premises (which is commercial not residential) would have a minimum impact on trust and confidence.

32. Sussex Police explained that in regards to the awareness of safety measures, each of the measures suggested in the SBD report can be researched through open sources and the public would receive no additional value from this single report which focusses on the most suitable installations for a specific premises.
33. Sussex Police concluded that disclosure of the information requested has negligible public interest benefit; rather, it is of interest to the applicant who has raised public complaints and objections to the NHS premises over some years.
34. Sussex Police argued that it is clearly in the interests of the NHS as a service provider, the police service and the wider public to minimise or mitigate the risk of crime; in this case, these interests will include maintenance of service provision and protection of publicly funded equipment and infrastructure which may be adversely impacted.
35. In his complaint to the Commissioner he complainant referred to Sussex Police's statement that:

"If disclosure under the FOIA reveals information to the world, this would compromise the effective delivery of operational law enforcement and would undermine policing as providing the information could place the public at risk of harm."
36. The complainant argued that it is not the case that disclosure of the document requested would compromise the effective delivery of operational law enforcement and would undermine policing as providing the information could place the public at risk of harm.

Balance of the public interest

37. The Commissioner accepts that disclosure would to some extent help to increase openness and transparency of policing measures in regards to safety as well as increase public awareness of available safety measures.
38. The Commissioner also accepts that disclosure of the report would go towards increasing public trust and confidence in Sussex Police's security measures and provide reassurance that the it is proactive in preventing crime, not just reactive when it occurs.
39. However, beyond the general public interest in transparency, the Commissioner is not aware of any specific public interest arguments in favour of disclosing the information requested, at least none which would counterbalance the public interest in preventing crime, which

disclosure would be likely to cause. It is not apparent what legitimate interests would be served by placing the information in the public domain.

40. The Commissioner does consider that it would be counter to the public interest for criminals to be given material which could potentially make the premises less secure and enable crime. He considers this argument to be of considerable weight in favour of maintaining the exemption.
41. The Commissioner therefore considers that there is a very strong public interest in protecting the law enforcement capabilities of public authorities. When considering the public interest in preventing crime, it is important to take account of the consequences that can reasonably be anticipated.
42. The Commissioner's decision, having considered all the arguments in this case, is that the public interest in maintaining the exemption outweighs the public interest in disclosure. Therefore, section 31(1)(a) of the FOIA was correctly applied to the withheld information.

Procedural matters

43. Section 1(1) of FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
44. Section 10(1) of FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) initially requires a public authority in receipt of a request to confirm whether it holds the requested information.
45. The complainant submitted his request on 23 July 2024 and Sussex Police replied on 30 October 2024. By failing to respond to the request within 20 working days of receipt, Sussex Police breached sections 1(1) and 10(1) of FOIA.

Right of appeal

46. 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

47. 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.
48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Robyn Seery
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