

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 May 2019

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

Decision (including any steps ordered)

1. The complainant has requested information relating to a football match between Brighton and Hove Albion and Crystal Palace on 28 November 2017. During the Commissioner's investigation, Sussex Police disclosed some information and withheld the remaining information citing section 31(1)(g) by virtue of section 31(2)(b) of the FOIA.
2. The Commissioner's decision is that section 31(1)(g) by virtue of section 31(2)(b) of the FOIA is not engaged.
3. The Commissioner requires Sussex Police to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information to the complainant.
4. Sussex Police must take these steps 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.

Request and response

5. On 11 December 2017, the complainant wrote to Sussex Police and requested information in the following terms:

'Q1 At what time were supporters first corralled at Brighton Railway Station?

Q2 Were they, or other supporters escorted to the Amex Stadium?

Q3 If yes, at what time did they and their escort arrive at the Amex Stadium?

Q4 If their anticipated arrival time was close to kick-off time, what risk assessment was made of the possibility of public disorder if large numbers of supporters arrived close to kick-off time when they had reason to believe that their entry might be further delayed by the well-publicised [sic] security measures they were told would be in place?

Q5 Before supporters reached the turnstiles, what checks, if any, were made by police of tickets and proof of identity as anticipated in the advice to CPFC fans? If such checks were carried out, how many persons were identified as holding no tickets or holding tickets in another's identity and how many persons held valid tickets?

Q6 Before supporters reached the turnstiles, what checks, if any, were made by BHAFC staff or contractors of tickets and proof of identity as anticipated in the advice to CPFC fans? If such checks were carried out, how many persons were identified as holding no tickets or holding tickets in another's identity and how many persons held valid tickets?

Q7 Who was responsible for opening "the exit gate" mentioned in the letter written by BHAFC CEO? If a member of BHAFC staff was the decision to open it made on the advice of police? If so, why was that advice given?

Q8 How many turnstiles were "stormed"? One turnstile (as suggested by the BHA FC CEO) or turnstiles (as alleged in the Sussex Police statement)?

Q9 Do police have an estimate of the number of persons who gained entry without authority?

Q10 How many persons have the Police positively identified as having entered or sought to enter without authority who were not in possession of valid tickets? What action did Police take against those persons?

Q11 Did BHA FC notify Police of persons whom they had positively identified inside the Stadium or seeking to enter the Stadium without

a valid ticket. If so, how many and what action did Police take against them?

Q12 Did BHA FC advise Police of the number of persons they had positively identified as having entered the Stadium without valid tickets. If so, what is that number?

Q13 At what time did BHA FC lock the remaining supporters out of the Stadium?

Q14 At what time was the decision made that no further persons would be allowed entry to the Stadium?

Q15 What instances of public disorder had occurred between those two times amongst the persons locked out of the stadium.?

Q16 Did BHAFC seek advice from Police before taking their decision that no further persons would be admitted?

Q17 If so, what advice did Police give and what were the conclusions of any risk assessment carried out?

Q18 Whilst persons were locked outside were any attempts made by either police or BHAFC staff/contractors to ascertain whether those persons held valid tickets? If so, how many held tickets and how many did not?

Q19 How many persons approximately were escorted from the Stadium to Falmer Station following the decision not to allow further persons to enter?

Q20 Approximately how many persons were locked out of the Stadium and unable to enter?

Q21 Do Sussex Police have any other evidence that persons entered or sought to enter the Stadium without tickets or was the Police belief that a large number did not have tickets based simply on "information logged by our officers on the night and done so in good faith" as with the knives and knuckledusters?'

6. Sussex Police responded on 19 January 2018. It explained that it could not provide a response within the timescale originally stated as it considered that some or all of the requested information fell within a qualified exemption. It also explained that it needed to extend its consideration of the public interest test by a further 20 working days, under section 10 of the FOIA. It provided a deadline of 2 February 2018.

7. On 2 February 2018 Sussex Police contacted the complainant again and explained that it would need to extend its consideration of the public interest test by a further 20 working days and provided a new deadline of 12 February 2018. It also clarified that it was relying on sections 30 (Investigations and proceedings) and 31 (Law enforcement) of the FOIA.
8. There was correspondence between both parties. On 12 June 2018, Sussex Police provided its substantive response. It explained that it was relying on the following exemptions:
 - Section 40(2) (personal information) of the FOIA.
 - Section 31(1)(g) by virtue of 31(2)(b) (law enforcement) of the FOIA.
9. Although the complainant requested an internal review, Sussex Police did not provide one.

Scope of the case

10. The complainant contacted the Commissioner on 23 October 2018 to complain about the way his request for information had been handled. He explained that in a response from Sussex Police to another requester who had made a related request, it was confirmed that no reports were provided by Brighton and Hove Albion Football Club (BHAFC) regarding recovered weapons.
11. In a related case,¹ the complainant had complained about the way in which a request made to Sussex Police on 10 December 2017 and four further related questions he submitted on 11 December 2017, were handled. These were treated as one request by Sussex Police and the complainant was satisfied with this approach.
12. During the Commissioner's investigation into that complaint, information was disclosed by Sussex Police and the case was closed. However, with regard to question 12 of that request, Sussex Police withheld the information, relying on section 31(1)(g) by virtue of section 31(2)(b). That question was:

"What efforts were made by Sussex Police to identify the sources of the reports and to verify the accuracy the claims that such weapons

¹ See the annex at the end of this decision notice which sets out the full request.

had been found before issuing your official statement and in the week following that statement?" and the four additional questions of 11 December 2018:

'1 When [sic] did the Club draw the attention of Sussex Police to the "inaccuracies" in official police communications?

2 At that time did the Club make it clear that to their knowledge no weapons had been found?

3 Had the Club informed police that their staff and/or contractors had found no weapons before [name redacted] tweet of 7 December alleging that the Club's staff "had found those items"?

4 Had the Club drawn Police's attention to the "inaccuracies" before [name redacted] conversation with a Police Sussex Police spokesperson on 5 December?'

13. As the five outstanding questions relate to the present request, the Commissioner suggested that they should be considered as part of the present complaint. The complainant agreed with this approach.
14. The Commissioner will therefore deal with the questions in the present request and the five questions set out above, as one complaint.
15. During the Commissioner's investigation, she asked Sussex Police whether, if it had carried out an internal review, it would have upheld its application of sections 40(2) and 31(1)(g) by virtue of section 31(2)(b). Sussex Police confirmed that it would. However, Sussex Police informed the Commissioner that, given the passage of time, it was in a position to disclose some information to the complainant. It also confirmed that it may have to withhold some information under section 31(1)(g) by virtue of section 31(2)(b).
16. The Commissioner sent Sussex Police questions regarding its application of section 31(1)(g) by virtue of 31(2)(b) and asked it to confirm whether it was also relying on section 40(2). Sussex Police did not provide her with any arguments regarding its application of section 31(1)(g), nor did it provide her with any withheld information. Subsequently, Sussex Police explained to the Commissioner that it might apply section 14(1) (vexatious requests) of the FOIA to the present request but did not provide the Commissioner with any arguments in support of this. Therefore, she will not consider section 14(1) any further.
17. Sussex Police eventually disclosed some information to the complainant and explained to the Commissioner that it was

withholding the remaining information under section 31(1)(g) by virtue of section 31(2)(b); it also provided her with the withheld information.

18. Subsequently, during the Commissioner's investigation, the complainant provided her with a copy of Sussex Police's response to a related request sent in by a different complainant, in which it disclosed information which relates to questions 5 (in part), 6, 10, 11 and 12 of the present request.
19. The Commissioner has considered the withheld information. She notes that it is a log made up of numerous entries relating to the football match in question, all dated 28 November 2017 and submitted at different times.
20. The Commissioner will therefore consider Sussex Police's application of section 31(1)(g) by virtue of section 31(2)(b) to the remaining withheld information. She will also consider the considerable length of time taken by Sussex Police to deal with the request and the way it handled this request under the FOIA generally.

Reasons for decision

Section 31 – Law enforcement

21. Section 31(1)(g) of the FOIA states:

"(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under the Act would, or would be likely to, prejudice-

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)."

22. Section 31(2)(b) of the FOIA states:

"(2) the purpose of ascertaining whether any person is responsible for any conduct which is improper."

23. Section 31 is a prejudice-based exemption. 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;
- 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 resultant prejudice which is alleged 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 – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
24. The relevant applicable interest cited in this exemption is the purpose of ascertaining whether any person is responsible for any conduct which is improper.
 25. In her guidance on section 31², the Commissioner explains that 'improper conduct' relates to how people conduct themselves professionally. For conduct to be improper it must be more serious than simply poor performance. It implies behaviour that is unethical.
 26. The Commissioner also explains that she would generally expect there to be a formal code of conduct that members of a profession have to adhere to and a recognised definition of improper conduct. She considers that in many cases such a code is likely to be supported by statute, although this is not a prerequisite.
 27. Furthermore, the Commissioner considers that it will be necessary, on a case by case basis, to identify the relevant definition and which elements of any code of conduct it applies to. Therefore, the exemption will apply if disclosure would prejudice a public authority's ability to ascertain whether elements of the code falling within the stated definition of improper conduct, have been breached.
 28. The Commissioner also explains that public authorities that have functions related to ascertaining whether someone is responsible for improper conduct, are likely to include those upholding professional standards. She provided the following examples: the General Medical Council, or the Nursing and Midwifery Council.
 29. In the present case, the Commissioner notes that Sussex Police has cited section 31(1)(g) by virtue of section 31(2)(b) in relation to a football match and not in relation to members of a profession.

² <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

30. Taking all of the above into account, the Commissioner does not consider that the first criterion has been met. She therefore considers that section 31(1)(g) by virtue of section 31(2)(b) is not engaged.
31. She will not go on to consider the second and third criterion set out in paragraph 23, or any of the public interest considerations.

Procedural issues

32. The complainant submitted his request on 11 December 2017. Sussex Police did not confirm which exemptions it was relying on, or provide any public interest considerations, until 12 June 2018.

Section 10 – Time for compliance

33. Section 10(1) of the FOIA provides that a public authority must respond to a request promptly and in any event no later than 20 working days after the date of receipt.

Section 17 – Refusal of a request

34. Section 17(1) of the FOIA provides that if a public authority wishes to refuse a request it must issue a refusal notice within the 20 working day time for compliance, citing the relevant exemption(s).
35. Section 17(3)(b) of the FOIA provides that a public authority can take a “reasonable” extension of time to consider the public interest test. The Commissioner considers that this should normally be no more than an extra 20 working days, which is 40 working days in total to deal with the request. She considers that any extension beyond this time should be exceptional and a public authority must be able to justify it.
36. The Commissioner considers that Sussex Police has taken an unacceptable length of time to deal with this request. She clearly considers it has breached sections 10(1), 17(1) and 17(3) and finds it unacceptable that these delays occurred.
37. The Commissioner wishes to point out that she will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft [Openness by design strategy](#) to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her [Regulatory Action Policy](#).

Right of appeal

38. 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@hmcts.gsi.gov.uk

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

39. 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.
40. 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

Related request from the complainant to Sussex Police of 10 December 2017:

'Q1 Can you please confirm that a Sussex Police spokesperson did tell [name redacted] on 5 December that weapons had been removed and were being held as evidence? Can you also confirm that his request for proof of this claim was denied? If such proof was denied, please can you explain why?

Q2 What weapons, if any, had been removed by Sussex Police up to that time and where were they being held?

Q3 If such weapons were held by police at that time, what had happened to them in the following two days?

Q4 If no such weapons had held by police at any time, on the basis of what evidence did the Sussex Police spokesman allege that they were being held given that 5 days had elapsed since the weapons were allegedly found?

Q5 If offensive weapons are found by a football club's officials or stewards, is it normal practice for such weapons to be handed to the police and in what timescale?

Q6 At what time was the above FOI request received by Sussex Police and at what time was the Sussex Police "apology" issued?

Q7 How many logs recorded reports of weapons being seen or found?

Q8 What form did those logs take e.g. were they in officers's [sic] notebooks, electronic logs, logs of radio traffic or any other form?

Q9 How many separate reports from different sources do these logs record?

Q10 Do the logs record the sources of the reports, i.e. from police officers, from club officials or stewards, members of the public etc.?

Q11 Given that Sussex Police had stated publicly that offensive weapons had been found in the south stand what attempts were made by Sussex Police to recover those weapons in the week following the match?

Q12 What efforts were made by Sussex Police to identify the sources of the reports and to verify the accuracy the claims that such weapons had been found before issuing your official statement and in the week following that statement?'