

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 July 2020

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

Decision (including any steps ordered)

1. The complainant requested information about 'targeted individuals'. Sussex Police initially denied holding any information; however, during the course of the Commissioner's investigation, it partly revised its position. Whilst it clarified its position for part of the request, it maintained that it did not hold some of the requested information. Sussex Police also refused to confirm or deny whether it held the remaining information on the basis of section 31(3) (law enforcement) of FOIA.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, no further information beyond that provided is held for parts 1-4 of the request. She concludes that Sussex Police had responded to part 5 of the request by virtue of its responses to parts 1-4 and that it was not entitled to rely on section 31(3) for this part of the request. The Commissioner has also concluded that section 31(3) is engaged in respect of parts 6-9 of the request, and that in all the circumstances of the case the public interest favours maintaining the exemption.
3. No steps are required to ensure compliance with the legislation.

Background

4. A previous decision notice *FS50841989*¹ has been issued in relation to the request under consideration here, because Sussex Police initially failed to provide any substantive response to the request within the requisite 20 working days. That decision notice ordered Sussex Police to provide its substantive response.
5. Sussex Police was also late in complying with that decision notice. It issued its response to the request on 27 August 2019 (see below for further details).
6. The complainant has alleged that she has evidence that Sussex Police engages in "unlawful activities" or corruption (such as those set out in her request at paragraph 8 below). The Commissioner has informed the complainant that her remit does not extend to the consideration of such allegations but she relayed this view to Sussex Police. It responded as below, which the Commissioner has in turn relayed to the complainant:

"Given [the complainant's] accusations of effectively corrupt practice I would suggest she formulates a complaint to our Professional Standards Department with factual evidence which she suggests she is in possession of and accepts that the FOI Act 2000 is not the correct vehicle to consider her allegations of corruption."

7. The investigation in this case has been delayed by Sussex Police's initially unclear revised response and the need for the Commissioner to contact both parties at several points during her investigation, seeking both further clarification from Sussex Police and views from the complainant each time the response was added to or amended. The Commissioner has included further details in the 'Scope' section.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615255/fs50841989.pdf>

Request and response

8. On 5 January 2019, the complainant wrote to Sussex Police via the *WhatDoTheyKnow.com* website² and requested information in the following terms:

"A Targeted Individual, otherwise described as someone who was persecuted by Sussex Police, who subjected her to extreme harassment and criminal acts when she lived in Sussex. She has clear evidence of Sussex Police being involved in harassment, intimidation, dissemination of false information and more over a period of time.

The following information is requested in relation to the activities on the part of Sussex Police:

1) Who is responsible for the control and activities of the activities surrounding Targeted Individuals, or those people who are subjected to extreme harassment by Sussex Police?

2) Is there a specific unit which directs these operations?

3) How many officers are deployed specifically on this work?

4) Sussex Police are known to be responsible for the dissemination of false information to third parties which smears the characters of these individuals. It deliberately aims to portray them in a bad light by the falsehoods spread by Sussex Police. There is specific information that a large number of individuals have been slandered (and libelled) by Sussex Police. Amongst other things, third parties have been advised they have criminal convictions when they do not.

Who is responsible for the selection of people to be targeted in this manner? Who directs these activities and controls the operation subsequently? Who undertakes the actual character assassination? Why are such individuals selected when they do not have any criminal convictions, do not commit crimes, or engage in criminal behaviour?

5) Sussex Police undertook surveillance of one particular individual selected for this treatment. Some of this was covert surveillance, such as following them on foot, use of vehicles to

² https://www.whatdotheyknow.com/request/sussex_police_activities_surroun

follow them, monitoring phone calls bank transactions and travel. Who controls these activities? Are they undertaken lawfully ie do the necessary legal procedures be put in place beforehand (RIPA etc)? Are officers who engage in this work dedicated in a special unit or are they Police officers in general?

6) It is understood that outside agencies and third parties are used for this work. Is this the case? Who is responsible for the recruitment of these people? What sums are paid to them for this work? Are these monies subject to tax etc? How much has been paid to such people/agencies in each of the past ten years?

7) Are the costs of these activities calculated by Sussex Police? Are there any estimates of the costs involved? Are they borne by Sussex Police or another body?

8) Is the Sussex Police and Crime Commissioner advised of this particular activity?

9) Has any legal opinion been sought as to the lawfulness of these operations by Sussex Police?

10) Is it the policy of Sussex Police to target people for political reasons, or for reasons other than [sic] law enforcement?"

9. Following the issuing of the decision notice referred to earlier in the 'Background' section, Sussex Police responded to the request on 27 August 2019 and denied holding the requested information, stating:

"I have to confirm that Sussex Police does not hold a record or document specific to your request and in particular I have been unable to locate records or documents in regards to suggestions of the following activities, extracts from your request.

i) Sussex Police being involved in harassment, intimidation and dissemination of false information.

ii) Disseminating of false information to third parties which smears the characters of these individuals.

iii) Third parties being advised they have convictions when they do not.

iv) Undertaking of character assassinations

Surrey and Sussex Police Specialist Crime Unit is managed by T/Assistant Chief Constable Jon Savell and I have attached the

Chief Officer Statement of Assurance 2019 for your interest and information. The statement, counter signed by the Deputy Chief Constable of Sussex Jo Shiner, shows the lawful basis for investigative activity and references the Police and Crime Commissioner.

I regret I am unable to comment further on your request and have therefore determined the information you seek is not held by this force."

10. As stated above, by way of information and interest, Sussex Police also included its Chief Officer's Statement of Assurance 2019³ as part of its response.
11. The complainant requested an internal review on 27 August 2019, which included the following:

"...The document you have forwarded, the, "Statement of Assurance", is not relevant to this question as it asked about people who do not engage in criminal behaviour, commit criminal offences, or have criminal convictions. This document relates to the Specialist Crime Unit. I note it does refer to "Surveillance", "Special Branch- Regional Collaboration, Covert Policing Authorities" and "Intelligence and Tasking". All of these may be relevant to my FOI request. Can it be construed that Sussex Police include individuals they target as being within the jurisdiction of this unit?

I note that you have failed to provide information on specific questions which I would contend must be available to you, or within your power to obtain it..."

12. Sussex Police acknowledged receipt of the internal review request on 9 September 2020 but failed to provide any review outcome.

Scope of the case

13. The complainant initially contacted the Commissioner on 9 November 2019 to complain about the way her request for information had been handled, specifically the outstanding internal review.
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³ <https://www.sussex.police.uk/SysSiteAssets/media/downloads/sussex/about-us/governance-and-processes/chief-officer-assurance-statements/2019-assurance-statement-tacc-savell.pdf>

14. Despite the Commissioner's intervention, Sussex Police failed to provide an internal review. The Commissioner therefore exercised her discretion in this case and accepted the complaint without the internal review being completed.
15. The 'Scope' section is unusually long in this case; this is due to various factors which are set out in the following paragraphs. The Commissioner considers it necessary to include the full chronology of responses from both Sussex Police and the complainant in order to clarify what explanations have been provided by both parties.
16. At the Commissioner's request, the complainant submitted her reasons for believing that information relevant to her request must be held by Sussex Police. The Commissioner has reproduced the key points below:

"The issue you asked me to consider was in relation to the Statement of Assurance provided by Sussex Police on 27 August 2019. The original request made it known that individuals being targeted were not engaging in criminal acts, or offences and had no criminal convictions. The Assurance Statement at Item 2, refers to a Surveillance Unit, Intelligence and Tasking, Cyber Crime Unit and Force Authorising Officers. These suggest that there would be records in existence relevant to the FOI request. In the same heading, it refers to Proactive Investigations: Surveillance, Intelligence and Tasking: CHIS (Covert Human Intelligence Sources). All of these would very likely be involved in the activities described in the FOI request. There would have to be records held by Sussex Police.

At Item 4 of the Statement it refers to Undercover Policing Management Board Meeting, again this is something that would be minuted and records held for it.

The contents of this document reveal as a fact that Sussex Police is involved in Surveillance, CHIS and other activities described in the FOI request. It makes it clear there is a chain of command with officers being responsible for specific areas. This means that records would exist in relation to the identity of people responsible for the actions described. The Statement indicates that records were kept and covered the items requested on 5 January 2019.

At Item 5 of the FOI request it asked if legal procedures were put in place, eg RIPA and Sussex Police must have records for cases where authorisation under RIPA was sought..."

17. The Commissioner commenced her investigation initially to determine whether, on the balance of probabilities, Sussex Police held any of the requested information. She asked Sussex Police to also consider the complainant's points set out above when responding to her investigation.
18. During the course of the investigation. on 13 March 2020, Sussex Police partly revised its position. Whilst it maintained that no information was held for parts 1-4 of the request, Sussex Police now cited sections 31(a) and (b) of the law enforcement exemption in relation to parts 5-9 of the request. It also appeared to state that it would neither confirm nor deny whether it held the requested information at parts 5-9 and did not refer to part 10 of the request. It wrote to the complainant setting out its revised position on 11 March 2020, copying that correspondence to the Commissioner.
19. Sussex Police told the Commissioner that:

"However having shown below extracts from the original request which allege criminal activities by Sussex Police which were responded to in my initial response as information not held I do not believe there can be any argument that information relating to alleged unlawful practices would be documented, as it does not exist. Further I find the tone of the original request and subsequent complaint offensive in the matters alluded to. I therefore maintain the stance information is not held in relation to questions 1-4 of the original request coupled with the Assurance Statement previously provided."

20. On 31 March 2020, the Commissioner contacted Sussex Police again, both to determine which exemption it wished to rely on in regard to parts 5-9 of the request and to ask it to clarify its position in relation to part 10 of the request.
21. Subsequently, Sussex Police provided the following response to part 10 of the request:

"I can confirm it is not the policy of Sussex Police to target people for political reasons or for reasons other than law enforcement."

and said it:

"...would appear we have incorrectly cited S.31 (1) when intended to cite 31(3) NCD [sic] as the body of the response suggests, in respect of questions 5-9."

22. The Commissioner has commented on part 10 of the request under the 'Scope' section of this notice.

23. Although normally the responsibility of the public authority, for time and efficiency reasons, the Commissioner wrote to the complainant on 14 April 2020 to inform her of the above two updates.
24. On 21 April 2020, the Commissioner found it necessary to contact Sussex Police again in relation to its response to parts 1-4; she clarified that, in her view, the answer to question 2 (namely whether there is a specific unit) would either be 'Yes' or 'No' and that this answer would have a bearing on the remaining questions.
25. In reply, Sussex Police explained that it had:
- "interpreted [the complainant's] request as alleging unlawful practices by Sussex Police and therefore the information in respect of those unlawful activities does not exist. However covert policing does obviously exist."*
26. For part 1 it now said:
- "The Head of Specialist Crime would be responsible for covert policing. In respect of those subjected to extreme unlawful harassment - NO information is held."*
27. For part 2, it said:
- "See 1 above. There is not a specific unit responsible for unlawful targeting or harassment therefore NO information held."*
28. For parts 3 and 4, it now responded *"not applicable"*.
29. On reviewing all the case correspondence in preparation for drafting this notice, the Commissioner noticed that Sussex Police had not made any specific comments in relation to the complainant's view as to why more information must be held (see paragraph 16). On 27 April 2020, the Commissioner asked Sussex Police if it wished to comment; in reply it said that it would wish to NCND in accordance with section 31(3) of FOIA.
30. With Sussex Police's consent, the Commissioner relayed Sussex Police's updated response to the complainant on 27 April 2020. She asked the complainant to contact her with any comments and, in order to move forward in line with the intended interpretation of the request, the Commissioner asked the complainant to confirm her understanding of this.
31. On 7 May 2020 the complainant responded as follows:
- "I think Sussex Police are engaging in obfuscation in relation to their latest responses to you. The request was intended to covert*

[sic] both covert policing and unlawful activities by Sussex Police. Prima facie, the request was in order to obtain information on covert policing as these activities were being used for unlawful conduct. I think it is unacceptable for Sussex Police to state they require clarification now, or that they didn't know the context of the request. They have had since January 2019 to seek guidance on this matter.

Sussex Police are known to engage in all the activities described in the request. This can be stated as a fact. It is not a case of this applying to one individual, rather it is quite common for Sussex Police to engage in such activities. It is known that some outside people/agencies are used by them for these purposes.

I dispute their contention that the request was designed to obtain information on their unlawful activities since there was no possibility they would admit to these, or provide information on them. For this reason I was probing the manner in which Sussex Police operated with regard to the situation that existed. This was intended to examine their covert policing which, it was assumed, was involved in these activities.

I had never indicated there was a special unit that undertook these activities and I had asked if this was the case at item (2) of the request.

I would contend that the information requested in items (3) and (4) is applicable in view of the fact I know of a number of people who have been targeted in this manner. Item (3) should be interpreted as how many officers are deployed in covert policing.

... I do know for certain that Sussex Police engage in unlawful activities. This is something that needs to be brought into the public domain as it is in the public interest to do so".

32. The Commissioner relayed the above to Sussex Police on 11 May 2020. It said it would consider the complainant's comments and issue a further response.

33. Sussex Police did not provide its further response until 20 June 2020. It said:

"I write further to my previous responses to [the complainant], our conversations and exchange of emails. I have discussed this request again with the Detective Chief Superintendent (now retired) and confess to having difficulty in providing a further or additional response, as [the complainant's] request and subsequent clarification are full of unfounded allegations and

accusations of unlawful practice by Sussex Police. I have attempted to answer questions 1-4 below [see paragraph 35 below] and rely on S.31 as my previous response to [the complainant] states in regards to lawful covert policing."

34. It was at this point that Sussex Police suggested that the complainant write to its Professional Standards Department in relation to her concerns that it engages in unlawful activities/corrupt practice (see 'Background' section of this notice).
35. On 22 June 2020, the Commissioner wrote to the complainant again to update her as to Sussex Police's latest response to parts 1-4 of her request which was as follows (bold text as shown by Sussex Police):

1)Who is responsible for the control and activities of the activities surrounding Targeted Individuals, or those people who are subjected to extreme harassment by Sussex Police?

Head of Specialist Crime and Head of Major Crime are responsible for lawful investigations.

2)Is there a specific unit which directs these operations?

NO

3) How many officers are deployed specifically on this work?

N/A - All officers can be deployed to lawful covert policing

*4)Sussex Police are known to be responsible for **the dissemination of false information to third parties** which smears the characters of these individuals. It deliberately aims to portray them in a bad light by the **falsehoods spread by Sussex Police**. Amongst other things, **third parties have been advised they have criminal convictions when they do not.***

Who is responsible for the selection of people to be targeted in this manner? Who directs these activities and controls the operation subsequently? Who undertakes the actual character assassination? Why are such individuals selected when they do not have any criminal convictions, do not commit crimes, or engage in criminal behaviour?

No information is held in regards to the highlighted comments [ie text in bold] above."

36. The Commissioner asked the complainant to let her have any final comments before she proceeded to her decision notice in this case.

37. On 11 July 2020, the complainant responded as follows:

"1) It is much the same as that they have sent previously. This was forwarded to me with your communication of 27 April 2020. The content differs little from that and is equally unacceptable.

2) The content and tone of their response is disparaging of me and contains the same falsehoods they have used in the past.

3) They continue to deny their activities and maintain these are in the nature of false allegations/accusations.

4) The request was made due to a number of people experiencing similar treatment from Sussex Police. There is evidence of this. I also know a former officer in Sussex Police who advised me of these unlawful activities. Some people received more extreme treatment than others. I have no doubt that the information provided to me is truthful.

5) I consider that the responses from Sussex Police amount to a refusal to comply with the FOI Act."

38. The Commissioner notes that Sussex Police has clarified its position in relation to parts 1-4 in relation to the lawful activities it undertakes relevant to the complainant's request. It has responded to parts 1-3 and maintained that no information is held in relation to part 4 of the request.

39. The Commissioner has considered whether, on the balance of probabilities, Sussex Police holds any information (beyond who is responsible for covert policing) in regard to parts 1-4 of the request.

40. She has also considered whether Sussex Police was entitled to 'neither confirm nor deny' ('NCND') holding the requested information in parts 5-9 of the request by virtue of section 31(3) of FOIA.

41. As Sussex Police has now provided its response to part 10 of the request, which the complainant has neither disputed nor has any exemption been applied, the Commissioner has not considered this part of the request further.

Reasons for decision

Section 1 - general access to information (Parts 1-4 of request)

42. Section 1 of FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information, and, if so, to have that information communicated to them.
43. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA. The FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
44. In cases where there is some dispute about the amount of information located by a public authority the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that Sussex Police holds further information relevant to parts 1-4 of the complainant's request.
45. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
46. During the course of her investigation, the Commissioner asked Sussex Police questions, as is her usual practice, relating to how it established whether or not it held information within the scope of parts 1-4 of the request.
47. At the start of the investigation, Sussex Police explained it had:
"interpreted [the complainant's] request as alleging unlawful practices by Sussex Police and therefore the information in respect of those unlawful activities does not exist. However covert policing does obviously exist."
48. In relation to the searches undertaken in relation to this request, Sussex Police told the Commissioner that searches were made of senior officers in its specialist crime unit *"as this would be the area responsible for covert policing"*.

49. Sussex Police said that searches were made of personal computers and laptops and email accounts for any information falling within the scope of parts 1-4 of the complainant's request, using the search term 'covert policing'. It said that, as the requested information, if held, would be held as both manual and electronic records, its searches had included both.
50. Sussex Police said that MOPI (management of police information) governs its retention and deletion of records, which are generally held for seven years. It explained that, dependent on the nature of any offence, there may be a business and/or statutory purpose for which information may be held. It clarified that its response related to all policing records, not just those relevant to the request, and gave the example that murder records may be kept indefinitely.
51. Sussex Police also confirmed that no records were deleted in relation to any alleged unlawful practices.
52. This case has been complicated by the complainant's belief that Sussex Police engages in the types of unlawful activities set out in her request, and Sussex Police's statement that it does not. Whilst the complainant states that she has evidence to support her view, she has not provided any of it to the Commissioner.
53. The Commissioner is mindful of Sussex Police's interpretation of the request as alleging unlawful practices in relation to targeted individuals, whilst acknowledging that it does carry out lawful covert policing. Given the complainant's subsequent clarification that she was asking for recorded information about both covert policing and unlawful activities, the Commissioner is satisfied that Sussex Police has responded appropriately to parts 1-4 of the request.
54. The Commissioner considers that Sussex Police made its enquiries with those personnel which would be most likely to hold any recorded information. Furthermore, the search terms it used were the most likely ones to locate any information of relevance to the subject matter of these parts of the request.
55. In the absence of any evidence to the contrary, the Commissioner considers it reasonable that Sussex Police would not hold information relating to unlawful activities.

Conclusion

56. Having considered Sussex Police's explanation, together with the complainant's submissions, the Commissioner considers, on the balance of probabilities, that it does not hold any further recorded information for parts 1-4 of the request.

Section 31 – law enforcement (Parts 5-9 of request)

57. When a request for information is made under FOIA, the first duty of a public authority, under section 1(1)(a) of FOIA, is to inform the requester whether it holds information of the description specified in the request. This is known as the duty to confirm or deny.
58. However, the duty does not always apply and a public authority may refuse to confirm or deny whether it holds information through reliance on certain exemptions under FOIA.
59. Section 31(3) of FOIA excludes a public authority from complying with the duty to confirm or deny in relation to information if to do so would, or would be likely to, prejudice any of the functions in sections 31(1); Sussex Police has relied on sections 31(1)(a) (the prevention or detection of crime) and 31(1)(b) (the apprehension or prosecution of offenders) to 'neither confirm nor deny' or 'NCND' whether it holds the requested information.
60. When considering a prejudice based exemption such as section 31, the Commissioner will:
 - identify the applicable interests within the relevant exemption;
 - examine the nature of the prejudice, the likelihood of it occurring and that the prejudice claimed is real, actual and of substance; and
 - examine whether there is a causal link between confirming or denying and any prejudice claimed.
61. Addressing these parts of the request as a whole, Sussex Police said that by confirming or denying whether it holds the requested information for parts 5-9, it would disclose information regarding specific capabilities which the police service may or may not utilise as part of its response to investigating and combatting crime. The Commissioner accepts that this relates to the prevention or detection of crime and to the apprehension or prosecution of offenders, and that it is therefore an applicable interest.
62. The Commissioner then considered the extent to which confirming or denying would result in a real and significant likelihood of prejudice to the prevention or detection of crime, and to the apprehension or prosecution of offenders. In doing so, she has taken account of Sussex Police's assessment that the higher likelihood of prejudice threshold applies (ie that confirmation or denial "would" prejudice the prevention or detection of crime and the apprehension or prosecution of offenders).

63. Sussex Police explained that criminals would be able to gauge its covert policing investigative capabilities by it confirming or denying whether it holds the requested information and exploit any weaknesses. In addition, it said that if this request was sent nationally to all police forces and each force confirmed whether or not information is held, this would allow for criminals to geographically map activities, hence undermining policing. As a result of this mapping, Sussex Police argued that criminals could look to exploit vulnerable areas ie it would enable those with criminal intent to build up a nationwide picture of where covert policing investigative capabilities appeared to be stronger or weaker, and to target those areas of the UK where they believed they were less likely to be apprehended.
64. It also said:
- "To confirm or deny information is held in this case has the potential to undermine the flow of information (intelligence) received from members of the public into the Police Service and other outside agencies relating to criminal activity. This could lead to police officers having to be removed from their frontline duties in order to increase manpower relating to this subject matter. As resources are already stretched this would cause significant issues for the police service being able to effectively operate."*
65. The Commissioner is satisfied that the prevention and detection of crime is the foundation upon which policing is built. The Police Service has a clear responsibility to prevent and detect crime and disorder as well as maintaining public safety. There are a number of tactics available to the Police Service to ensure public safety is at the top of the agenda.
66. In respect of parts 6–9 of the request, these all relate to the alleged use of third parties/outside agencies for covert surveillance by Sussex Police. The Commissioner considers that the confirmation or denial of details which evidence how Sussex Police goes about its covert policing would have a detrimental effect on its ability to police effectively by revealing policing tactics.
67. However, she does not consider that these arguments are relevant to part 5 of the request, which seeks information about an alleged (unspecified) act of surveillance, whether it was lawful and the types of officers who would have been involved in the surveillance. In that respect, the Commissioner considers that Sussex Police has actually responded to part 5 by virtue of its response to parts 1-4, as already analysed above. This is because it has already advised the complainant that it does undertake lawful covert policing. It has also

explained that its Head of Specialist Crime and Head of Major Crime are responsible for such lawful investigations, that there is no special unit which deals with covert policing/surveillance and that any of its officers can be diverted to lawful, covert policing. Sussex Police has also confirmed that it holds no recorded information in relation to any 'unlawful' police activities of the type alleged by the complainant.

68. For this reason, the Commissioner does not consider that Sussex Police was entitled to cite section 31(3) for part 5 of the request. However, she finds that it has answered the questions in part 5 by virtue of its response to parts 1-4 of the request above. As such, the Commissioner has determined that no steps are required in respect of this part of the request.
69. In respect of parts 6-9 of the request, the Commissioner is not persuaded that Sussex Police has presented arguments which convey the higher level of likelihood, ie that prejudice 'would' occur were it to confirm or deny whether the requested information is held. Therefore, in line with her guidance on the prejudice test⁴, she has substituted the lower threshold of 'would be likely' to prejudice.
70. In this respect, the Commissioner is satisfied that the envisaged prejudice is real and significant and that this would be likely to occur. Furthermore, she is satisfied that there is a causal link between the information requested and the prejudice claimed and she therefore accepts that the exemption is properly engaged.

Public interest test

71. However, section 31(3) is a qualified exemption. Therefore, the Commissioner must consider the public interest test contained at section 2 of FOIA and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming whether or not the requested information is held.

Public interest arguments in favour of confirming whether or not the requested information is held

72. In relation to releasing information covered by parts 6-9 of this request, the complainant argued: "*I maintain the public interest is*

⁴ https://ico.org.uk/media/for-organisations/documents/1214/the_prejudice_test.pdf

paramount". She did not provide any supporting arguments for the Commissioner to consider.

73. Sussex Police explained that it recognised the importance of transparency and accountability in general, particularly given that *"public taxes fund the police"*.

Public interest arguments in maintaining the exclusion to confirm or deny whether the requested information is held

74. Conversely, Sussex Police argued that there is an inherent public interest in a public body maintaining confidentiality in respect of the information requested, as follows:

"By neither confirming nor denying whether information is held would suggest that Sussex Police [sic] their responsibility to protect confidential information provided to them seriously and appropriately to ensure operational law enforcement is effectively delivered.

Additionally Sussex Police has a duty of care to the community at large and public safety is of great importance. An FOI response revealing information, by citing an exemption or stating no information held, which confirms police are aware of criminal activity in a particular area, would cause significant issues. These issues would be criminals targeting specific locations for crimes of this subject matter. Criminals are always evolving their approach, therefore by being provided the information to geographically map out vulnerable locations could lead to an increase of criminal offences occurring at specific locations. An increase of crime would significantly affect operational policing and further stretch resources."

Balance of the public interest arguments

75. Sussex Police submitted the following arguments, all of which it also provided to the complainant:

"There are points that highlight the merits of confirming or denying that information pertinent to this request exists around transparency and accountability.

Nevertheless the Police Service relies heavily on members of the public providing information to assist in criminal investigations and has a duty to protect those individuals considered to be vulnerable. Anything which places that confidence at risk, no matter how generic, would undermine any trust or confidence individuals have in the Police Service. Additionally the effective delivery of operational law enforcement takes priority and is at

the forefront of Sussex Police to ensure the prevention and detection of crime is carried out and the effective apprehension or prosecution of offenders is maintained. There is a need to ensure our relationship with other law enforcement agencies runs smoothly and we do not increase criminal activities for particular areas.

Therefore, at this moment in time, it is our opinion that for these issues the balance test supports the neither confirm nor deny approach.

Please note that this should be not be taken as confirmation or denial that any information is held in respect of your request."

76. The Commissioner initially notes that the arguments relating to the provision of information by the public are not relevant to the information being requested here, so she has not taken them into account.
77. The Commissioner acknowledges the public interest in transparency about the management of intelligence gathering and the techniques used to achieve it. Further, she recognises that the disclosure of information, if held, may aid in showing the public how it directs its resources to invest in their safety, which is of paramount importance. It recognised that this in turn may promote and instil greater confidence in the communities served by Sussex Police.
78. The Commissioner acknowledges there is a legitimate and important public debate to be had about the scope and extent of powers available under RIPA and there is a need for transparency and accountability in this regard. However, she notes that this interest is partly met by work undertaken at the Office of Surveillance Commissioners ('OSC'), which carries out regular inspections of the use of RIPA powers and publishes an annual breakdown of all authorisations sought by offence type, although not by public authority. Any breaches of the legislation must be reported to the OSC and are included in its annual report to the Prime Minister – the report being available to the general public. The Commissioner therefore considers that there is already existing independent oversight of the exercise of RIPA powers.
79. The Commissioner accepts that confirming or denying whether the information exists would potentially assist those who would gain from knowing whether it is possible they are, or could in the future be, under surveillance and what form that may take. The information could help individuals gauge the extent to which covert surveillance is undertaken, and by whom, which could lead to the alteration of behaviour and methods which may frustrate attempts to investigate

offences and criminal behaviour. Similarly those intent on, or actually engaged in, criminal activities could use the disclosure of such information to avert detection or to be encouraged (or not) to continue their illegal activity.

80. In the Commissioner's view there is a very strong public interest in ensuring that Sussex Police's ability to prevent and detect crime is not compromised and she has concluded that it is therefore not in the public interest to reveal police tactics. Further, she recognises that where any disclosure of information compromises police tactics, it also has the potential to place public safety at risk.
81. In reaching her decision, the Commissioner accepts that confirming or denying if the requested information is held would be likely to assist those engaged in, or contemplating, unlawful activity, and that where there is criminal activity there are invariably victims.

Conclusion

82. In light of these broader consequences, the Commissioner has concluded that the public interest favours maintaining the exemption contained in section 31(3) of FOIA, for parts 6-9 of the request.

Other matters

Internal review

83. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision 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.
84. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.

85. The Commissioner is concerned that Sussex Police failed to carry out an internal review in this case, despite her intervention.
86. The Commissioner 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"⁵ 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"⁶.

Compliance and engagement issues

87. An earlier decision notice was issued in the course of this complaint (see 'Background' section of this notice for details) ordering Sussex Police to provide its substantive response to the request under consideration here as it had failed to respond at all. Sussex Police was required to do so within 35 calendar days of the date of that previous decision notice but failed to meet this deadline. The Commissioner would remind Sussex Police of the need to comply with the steps in decision notices in a timely fashion.
88. Given that the Commissioner had cause to revert to Sussex Police for clarification of its partially revised position which emerged during the course of her investigation, she would also remind Sussex Police to ensure that its investigation responses are both complete and that it clearly cites any exemptions it wishes to rely on.

⁵ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁶ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

89. 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@justice.gov.uk

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

90. 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.
91. 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

Carolyn Howes
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SK9 5AF