

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 April 2021

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 from Sussex Police about a Specialist Enforcement Unit. By the date of this notice Sussex Police had not issued a substantive response to this request.
2. The Commissioner's decision is that Sussex Police has failed to complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of the FOIA.
3. The Commissioner requires Sussex Police to take the following step to ensure compliance with the legislation.
 - Having confirmed that information is held within the scope of the request: either disclose the requested information or issue a refusal notice in accordance with the requirements of section 17 of the FOIA.
4. Sussex Police must take this step 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 10 December 2020, the complainant wrote to Sussex Police and requested information in the following terms:

"Your Chief Superintendent [name redacted] has been promoting the launch of a new unit within Sussex Police the 'Specialist Enforcement Unit' or SEU for short.

Please can you provide all documentation in relation to this unit for example officer and equipment numbers, bases, role, shift patters, aim and objectives and any specialist training the officers will undertake along with that training material."

6. Sussex Police acknowledged the request on 10 December 2020.
7. On 13 January 2021, Sussex Police wrote to the complainant to explain that it held information relevant to the complainant's request, but that it would need to extend the time taken to complete its public interest test considerations in respect of an unspecified exemption under the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 7 March 2021 to complain about the delay in Sussex Police's consideration of the public interest test.
9. On 17 March 2021 the Commissioner wrote to Sussex Police, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 20 working days. To date, a substantive response has still not been provided.
10. The Commissioner has considered whether Sussex Police has complied with its obligations in relation to section 17 of the FOIA.

Reasons for decision

11. Section 1(1) of the FOIA states that:

"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."

12. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt"*.
13. Section 17(3) of the FOIA states that where a public authority is relying on a qualified exemption, it can have a "reasonable" extension of time to consider the public interest in maintaining the exemption or disclosing the information.
14. Although the FOIA does not define what constitutes a reasonable time, the Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days. This means that the total time spent dealing with the request should not exceed 40 working days, unless there are exceptional circumstances. A public authority would need to fully justify any extension beyond 40 working days.
15. In this case, the total time taken by Sussex Police has exceeded 40 working days. The Commissioner does not consider there to be any exceptional circumstances and finds that, by failing to complete its deliberations on the public interest within a reasonable time frame, Sussex Police has not complied with section 17(3).
16. Sussex Police is now required to finalise its public interest considerations under section 17(3) of the FOIA and respond to the complainant.

Other matters

17. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.
18. Section 4.7 of the [Code of Practice](#) makes clear that when a public interest test extension is required the public authority must inform requestors which exemption/s it is relying on. In this case, Sussex Police did not do so.
19. For future requests and in relation to part 4 of the Code, Sussex Police should notify requestors which exemption/s it is relying on when it decides a public interest test extension is required.
20. 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 strategy¹ 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 our Regulatory Action Policy².

¹ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

² <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

21. 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

22. 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.
23. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF