

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 August 2013

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 associated with a Fixed Penalty Notice from Sussex Police. Although Sussex Police responded, it erred in failing to recognise the request as an FOIA request until 3 June 2013, when it provided a substantive response, some 81 working days after the request was received. The complainant requested that a decision notice be issued by the Information Commissioner recording the delay.
2. The Commissioner's decision is that Sussex Police has breached section 10(1) of FOIA by issuing its response late but, as a substantive response has now been provided to the complainant, he does not require any remedial steps to be taken.

Request and response

3. On 5 February 2013, the complainant wrote to Sussex Police and requested information in the following terms:

"My boyfriend has been issued with a Fixed Penalty Notice for a traffic offence, which we intend to challenge. Please could you let me know the procedure for obtaining the evidence upon which the prosecution intends to rely in court? Also, how can we find out the

meaning of the offence code stated on the notice? Is there a list available?"

4. That same day Sussex Police responded as follows:

"In accordance with the Criminal Procedure and Investigations Act 1996, disclosure of evidence will only be made in the event of a criminal prosecution at the Magistrates court. Under the data protection [sic] we are unable to assist you further and should your boyfriend require any further information, in relation to his ticket, he needs to contact us directly."

5. An email exchange followed in which the complainant clarified that her 5 February correspondence was intended as a request for recorded information made under the FOIA, but rather than provide a response in line with the FOIA, Sussex Police repeatedly advised that her boyfriend should contact the Central Ticket and Summons Unit ('CTSU').
6. On 11 March 2013 the manager of the CTSU responded in part to the request; however, the request was still not recognised as being made under FOIA. The public authority said that it had misunderstood what the complainant was asking and had made its staff aware of *"what is required when a request is made regarding our general procedures"*, but did not provide a response valid for the purposes of the FOIA.

Scope of the case

7. The complainant contacted the Information Commissioner (the 'Commissioner') on 15 February 2013 to complain about the way her request for information had been handled.
8. On 10 May 2013 the Commissioner wrote to Sussex Police asking it to respond to the complainant in line with section 1 of the FOIA. Sussex Police wrote to the complainant on 3 June 2013 with its substantive response. It confirmed that it did not hold any information other than that provided by its CTSU on 11 March 2013. Sussex Police apologised for *"any misunderstanding and inconvenience that has been caused"*.
9. The scope of the Commissioner's investigation has been to consider whether there had been a breach of section 10(1) of FOIA by Sussex Police in its handling of the complainant's request.
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Reasons for decision

11. Section 10(1) of the FOIA provides:

"...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

12. Whilst acknowledging Sussex Police's prior correspondence with the complainant, the Commissioner notes that Sussex Police did not provide its substantive response to her request until 3 June 2013, which is a timescale of 81 working days and well over the 20 working days allowed.
13. The Commissioner does not need to serve a decision notice in an individual case in order to use that case as evidence for future enforcement action; however, should a complainant request the Commissioner to issue a decision notice for a specific complaint he will do so.
14. The Commissioner has therefore recorded a breach of section 10(1) of FOIA and has ensured that the details of the case have been recorded for future monitoring purposes. He would remind Sussex Police of the need to recognise requests under FOIA and deal with them accordingly.

Other matters

15. In this case Sussex Police failed to recognise the request as one falling under FOIA; instead it repeatedly claimed that it was unable to assist the complainant due to the Data Protection Act 1998.
16. Although Sussex Police, via its CTSU, said it had made its staff aware of how to handle requests about general procedures associated with Fixed Penalty Notices, the Commissioner would remind Sussex Police of paragraphs 15 and 16 of the section 45 Code of Practice which state:

"Procedures and Training

15. All communications in writing to a public authority, including those transmitted by electronic means, may contain or amount to requests for information within the meaning of the Act, and so must be dealt with in accordance with the provisions of the Act. While in many cases such requests will be dealt with in the course of normal business, it is essential that public authorities dealing with correspondence, or which otherwise may be required to provide information, have in place procedures for taking decisions at appropriate levels, and ensure that

sufficient staff are familiar with the requirements of the Act and the Codes of Practice issued under its provisions. Staff dealing with correspondence should also take account of any relevant guidance on good practice issued by the Commissioner. Authorities should ensure that proper training is provided in this regard. Larger authorities should ensure that they have a central core of staff with particular expertise in Freedom of Information who can provide expert advice to other members of staff as needed.

16. In planning and delivering training authorities should be aware of other provisions affecting the disclosure of information such as Environmental Information Regulations and the Data Protection Act 1998."

Right of appeal

17. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

18. 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.
19. 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