

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 December 2017

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

Decision (including any steps ordered)

1. The complainant requested statistical information about arrested persons who have been released whilst under investigation. Sussex Police failed to respond to the request.
2. The Commissioner's decision is that Sussex Police has breached sections 1 and 10 of the FOIA in failing to provide a valid response to the request within 20 working days of receipt.
3. The Commissioner requires Sussex Police to take the following steps to ensure compliance with the legislation:
 - issue a response to the request in accordance with its obligations under the FOIA.
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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 31 August 2017, the complainant wrote to Sussex Police via the "What do they know?" website¹ and requested information in the following terms:

"Due to unreasonable delays between arresting and charging suspects the police have been given the option of allowing arrested individuals to be 'released under investigation' rather than released on bail.

Since this option has been open to your force, I would like to know how many suspects have been 'Released under Investigation' a breakdown of the offences they are suspected of, the length of time between arrest and a charge/no charge decision, and the duration of investigations still open.

Ideally, for each month since this option has been available I would like to know how many suspects were 'Released under Investigation', the eventual duration of the release (before charge/no-charge) and the number still open (as of the date of this request)

I do not know how you hold this information, so if there are any issues about providing it do contact me ASAP to identify what you can provide."

6. No reply was received, and so, on 29 September 2017, the complainant requested an internal review of the handling of his request. Sussex Police acknowledged receipt of the request for a review the same day.
7. To date no response to either the original request or the request for an internal review has been provided.

Scope of the case

8. The complainant contacted the Commissioner on 20 October 2017 to complain about the way his request for information had been handled.
9. The Commissioner wrote to Sussex Police on 27 November 2017, reminding it of its responsibilities and asking it to respond to the complainant's request within 10 working days.
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¹ <https://www.whatdotheyknow.com/>

10. The complainant has confirmed that no substantive response to the request has been received by the date of this notice.

Reasons for decision

Section 1 – general right of access

Section 10 – time for compliance

11. Section 1(1) of the 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.

12. Section 10(1) of FOIA states that:

"... 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".

13. The complainant requested information on 31 August 2017. As a response has not yet been provided, the Commissioner finds that Sussex Police has breached section 1(1) and section 10(1) of the FOIA in failing to respond within 20 working days.
14. As well as issuing this notice, the Commissioner has made a separate record of the failure by Sussex Police to respond to the complainant's request. This issue may be revisited should evidence from other cases suggest that this is necessary

Other matters

Internal review

15. There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one, the code of practice established under section 45 of the FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.
16. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances. In no case should the internal review exceed 40 working days.

17. The complainant asked for an internal review of his request on 29 September 2017. The purpose behind the request for a review at this stage was to alert Sussex Police to the fact that it had exceeded the statutory 20 working day time limit for responding. However, Sussex Police failed to respond.
18. The Commissioner considers that in failing to conduct an internal review within the timescales set out above, Sussex Police has not acted in accordance with the section 45 code.

Right of appeal

19. 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

20. 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.
21. 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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF