

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 June 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 requested various information from Sussex Police relating to a football match between Brighton and Hove Albion and Crystal Palace on 28 November 2017.
2. The Commissioner's decision is that Sussex Police has breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires Sussex Police to take the following step to ensure compliance with the legislation.
 - Sussex Police must issue a substantive response to the request in accordance with its obligations under 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 15 March 2019, the complainant wrote to Sussex Police and requested information under the FOIA. The terms of the request are set out in the annex to this notice from page 5 onwards.
6. The complainant contacted Sussex Police again on 16 April 2019 to chase the response. Sussex Police acknowledged this correspondence on the same day. However, to the date of this notice it has failed to provide a substantive response to the request.

Scope of the case

7. The complainant contacted the Commissioner on 9 May 2019 to complain about Sussex Police's failure to respond to his information request.
8. On 28 May 2019 the Commissioner wrote to Sussex Police, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
9. Despite this intervention Sussex Police has failed to respond to the complainant.
10. The Commissioner has considered whether Sussex Police has complied with its obligations in relation to the time for compliance at section 10(1) 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. From the evidence provided to the Commissioner in this case, it is clear that Sussex Police did not deal with the request for information in accordance with the FOIA. The Commissioner finds that Sussex Police has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

Right of appeal

14. 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

15. 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.
16. 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

**Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex to Decision Notice FS50842450 – request to Sussex Police dated 15 March 2019:

"Q1 Can you please confirm whether a Sussex Police spokesperson told an Independent journalist on or about 5 December 2017 that weapons had been recovered at the scene and were being held as evidence? Can you also confirm that a request for proof of this claim was denied? If such proof was denied, please can you explain why?"

Q2 CS Neil Honnor was reported as saying on 8 December 2017 that Sussex Police had apologised to a journalist because "an error was made in relation to responding to [his] enquiry about this." Did that apology relate to the information given to The Independent at Q1?

Q3 If that apology did not relate to that conversation, please tell me:

- (i) what newspaper or other organisation did that journalist represent;*
- (ii) what "error" was made in responding to his enquiry;*
- (iii) what erroneous information was given to him; and*
- (iv) what was the true position*

Q4 In your letter of 13 March under ref FOI/1300/17 you have disclosed that

- (i) Sussex Police received one report of "weapons" being found at the match between BHA FC and CPFC on 28 November 2017;*
- (ii) this one report was in the form of an electronic log of radio traffic; and*
- (iii) the log recorded the source of the report.*

Please advise me whether the source of the report was a police officer, a club official, a club steward, member of the public or any other description of person. In which case, please specify.

Q5 In my FOI request dated 10 December 2017 under your ref FOI/1300/17 I referred to the fact that Sussex Police had issued an apology on the afternoon of 7 December 2017 in respect of its claim that knives and knuckledusters had been found in the away end of the Amex Stadium at the match held on 28 November 2017. I said

this apology had been issued "following an FOI request for evidence of the existence of weapons".

In that request I asked "At what time was the above FOI request received by Sussex Police and at what time was the Sussex Police "apology" issued? " The only FOI request I had mentioned previously was the one I referred to above. The FOI request in question was FOI/1294/17 which was sent by email to Sussex Police at 1323 hours on 7 December 2017.

In your reply this question you said

"FOI Request received 16.42hrs 10/12/2017. The 'apology' was prepared for release at 16.44hrs on 07/12/2017."

It appears to me that your reply may refer to a different FOI request.

Please confirm at what time and on what date Sussex Police received the FOI request under your reference FOI/1294/17.

Q6 In the FOI request under FOI/1300/17 I asked:

"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?

You replied:

"It was acknowledged that there were no weapons found."

With respect this does not appear to answer the question. I asked about attempts to recover the alleged weapons, not about whether they were found.

I am aware that in the afternoon of 7 December 2017 Sussex Police issued a statement saying:

"The reference to weapons being found discarded at the stadium following the Brighton v Crystal Palace match on November 28 was based on information logged by our officers on the night and done so in good faith.

Subsequently, it has been established that no such items were physically recovered at the stadium or in the city."

Nonetheless, it was reported by The Independent on 7 December that a Sussex Police spokesperson had told them on 5 December that weapons had been recovered and were being held as evidence. It is a fact that CI (now Supt) Simon Nelson, the Match Commander, tweeted from his corporate account on 7 December 2017 that BHAFC staff "had found those items (i.e. knives and knuckledusters) in the away end of the stadium."

In response to another question you said that it was normal practice for any offensive weapons found by a football club's officials or stewards, to be immediately handed to the police. In this case Sussex Police apparently believed that offensive weapons had been found in the stadium and Mr Nelson, the Match Commander, apparently continued to believe that BHAFC staff had found such weapons 10 days after the match. My question did not ask whether any weapons were recovered. We now know that none were. My question is about what efforts were made to recover them if Sussex Police continued to believe as late as 10 days after the match that they had been found in the stadium.

I should be grateful if you could now provide the following information:

(i) were any efforts made by Sussex Police to recover offensive weapons of any description, but to include in particular knives and knuckledusters, which it claimed had been found in the away end of the Amex Stadium on 28 November 2017, between 28 November 2017 and 9 December 2017?

(ii) if no such attempts were made, why were no attempts made given that that you have said that it is normal practice for offensive weapons found by a football club's officials or stewards, to be handed to the police and immediately?

(iii) if any such attempts were made, how many such attempts were made and when were they made?

(iv) what were the outcomes of any such attempts?

(v) if there were any such attempts when was the final attempt made?

(vi) what reports, if any were made of the failure to recover such weapons and when were they made and to whom?

Q7 In your letter dated 13 March 2018 in which you purported to disclose some of the information sought in my FOI request under your reference, you said that following:

"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?"

No physical evidence but acted upon initial verbal report.

In your reply you appear to be saying that the press spokesperson who reportedly alleged that weapons had been recovered at the scene by Sussex Police and were being held by Sussex Police, had relied on the initial verbal report to make that claim. This would suggest that the initial verbal report which the press officer relied upon, had reported that knives and knuckledusters or any other offensive weapons had been recovered by police at the scene and were being held by police as evidence. Clearly, if the verbal report did not record that such weapons had been recovered by police and were being held as evidence, then the report could not justify the press officer's claim.

You have told me that one report in the form of an electronic log of radio traffic recorded that weapons had been seen or found

Please provide the following information:

(i) did the log record that offensive weapons had been found and recovered?

(ii) If so did the log record that they had been found and recovered either by:

(a) a Sussex Police officer or officers ;

(b) a police officer or officers from another force;

(c) a member of staff employed by BHA FC or a steward employed by BHAFc or CPFC or a subcontractor of either club. If yes, please specify;

(d) or any other person, such as a member of the public, (please specify;)

(iii) if the log did not record that any offensive weapon had been found and recovered, did the log record that such a weapon had been sighted?

(iv) if so, did the log record that such a weapon had been sighted by:

(a) a Sussex Police officer or officers ;

(b) a police officer or officers from another force;

(c) a member of staff employed by BHA FC or a steward employed by BHAFC or CPFC or a subcontractor of either club. If yes, please specify;

(d) or any other person, such as a member of the public, (please specify;)

(e) did the log record the number of persons who had sighted such weapons?

(f) If so, what was the number of such persons?

(v) did the log record that any weapons recovered by police were being held as evidence?

(vi) was there any other evidence that such weapons had been recovered by police?

(vii) was there any other evidence that such weapons were being held as evidence?

(vii) if the log did not record that such weapons had been recovered and did not record that they were being held as evidence on what evidence did the Sussex Police spokesperson rely when saying on or around 5 December 2017 that weapons had been recovered and were being held as evidence?

In the light of the confusion about this matter please therefore supply me also with:

(viii) a written transcript of the electronic log of radio traffic reporting the existence of offensive weapons referred to in your answers to Q4, Q7 and Q8 of FOI/1300/17;

(ix) a copy of the all the briefing including "lines to take" given to Press Office or other officers or staff from 28 November to 9 December 2017 inclusive to be used in response to enquiries from the press or others about the presence of offensive weapons on the occasion of the match."

End of request.