

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 June 2022

**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)

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1. The complainant has requested from Sussex Police witness statements regarding drone sightings at Gatwick Airport in December 2018.
2. Sussex Police refused the request, on the grounds that the information was exempt from disclosure under section 30(1) (Investigations and proceedings) of FOIA.
3. The Commissioner's decision is that Sussex Police was entitled to rely on section 30(1)(a)(i) of FOIA to withhold the information. However, he found that it breached sections 1(1) and 10(1) of FOIA by exceeding the statutory time for compliance when responding to the request.
4. The Commissioner requires no steps as a result of this decision.

### Request and response

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5. On 22 May 2021, the complainant wrote to Sussex Police and requested information in the following terms:

"This is a freedom of information request - please supply me with all the witness statements that were made to Sussex Police in relation to

sightings of the Gatwick "drone" for any date after 19th December 2018."

6. Sussex Police responded on 4 October 2021, confirming that it held the requested information and stating that it was exempt from disclosure under sections 30(1) and 40(2) (Personal information) of FOIA.
7. The complainant requested an internal review on 21 October 2021. He clarified that he was particularly interested in receiving the following information and that any other information could be redacted:

"...all content that provides a description of the "drone" in terms of its size and shape and colour, and also including descriptions of any light and sound that the "drone" may have been seen or heard by witnesses to have been emitted, as well as disclose and release any content which provides a description of the "drone" velocity (including any subjective word-terms such as "slow", "fast", as well as any estimated numeric velocities), and also disclose and release descriptions of the movement of the "drone", and the reported time-duration which a witness observed the drone, along with any estimations of the distances away from the "drone" that a witness stated they observed it from (including any subjective word-terms such as "close", "far" as well as any estimated numeric distances)".
8. Sussex Police provided the outcome of the internal review on 18 November 2021. In view of the additional clarification provided by the complainant, it withdrew reliance on section 40(2). However, it maintained that section 30(1) of FOIA had been applied correctly.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 10 December 2021 to complain about the way his request for information had been handled. He disagreed with the decision to apply section 30 of FOIA to refuse the request.
10. During his investigation, Sussex Police provided the Commissioner with a description of the information within the scope of the request.
11. The analysis below considers whether Sussex Police was entitled to rely on section 30(1)(a)(i) of FOIA to refuse the request. The Commissioner has also considered the timeliness of its response, under section 10 of FOIA.

## Reasons for decision

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### Section 1 – General right of access

#### Section 10 - Time for compliance

12. Section 1(1) of 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.
13. Section 10(1) of FOIA states that on receipt of a request for information, a public authority should respond to the applicant within 20 working days.
14. In this case, the complainant submitted his request on 22 May 2021 and Sussex Police provided its response on 4 October 2021. It therefore breached sections 1(1) and 10(1) of FOIA by failing to respond to the request within 20 working days.
15. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. This aligns with the goal in his draft "Openness by design"<sup>1</sup> strategy 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 systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"<sup>2</sup>.

#### Section 30 – Investigations and proceedings

16. Section 30(1)(a)(i) of FOIA states:

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purpose of –

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained –

(i) whether a person should be charged with an offence..."

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

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

17. The Commissioner considers that the phrase "at any time" means that information can be exempt under section 30(1)(a)(i) of FOIA if it relates to a specific ongoing, closed or abandoned investigation.
18. Consideration of section 30(1)(a)(i) is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test. This involves determining whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Is the exemption engaged?**

19. The first step is to address whether the requested information falls within the class specified in section 30(1)(a)(i) of FOIA.
20. The Commissioner has issued guidance on section 30<sup>3</sup> which states that section 30(1)(a)(i) can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence.
21. The Commissioner's guidance describes the circumstances in which the subsections of section 30(1) might apply. With respect to section 30(1)(a), the guidance says:

"The exemption applies to both investigations leading up to the decision whether to charge someone and investigations that take place after someone has been charged. Any investigation must be, or have been, conducted with a view to ascertaining whether a person should be charged with an offence, or if they have been charged, whether they are guilty of it. It is not necessary that the investigation leads to someone being charged with, or being convicted of an offence...".

22. Sussex Police explained that the withheld information was held by Sussex Police in connection with an investigation into reported sightings of drones flying in the vicinity of Gatwick Airport in December 2018:

"The offence being investigated by Sussex Police was an offence of "serious disruption to an aerodrome" contrary to Section 1(2)(b) of the Aviation and Maritime Security Act 1990, which carries a maximum penalty of life imprisonment."

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

23. As a police force, Sussex Police has a duty to investigate allegations of criminal offences by virtue of its core function of law enforcement. It therefore has the power to carry out investigations of the type described in section 30(1)(a)(i) of FOIA.
24. The Commissioner is satisfied that the withheld information was held in relation to a specific investigation conducted by Sussex Police of the type described in section 30(1)(a)(i) of FOIA. He is therefore satisfied that the exemption provided by section 30(1)(a)(i) is engaged.

### **The public interest test**

25. Section 30(1)(a)(i) is subject to a public interest test. This means that even though the exemption is engaged, the information may only be withheld if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
26. In accordance with his guidance, when considering the public interest in maintaining exemptions the Commissioner considers that it is necessary to be clear what they are designed to protect.
27. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations. Key to the balance of the public interest in cases where this exemption is found to be engaged, is whether the disclosure of the requested information could have a harmful impact on the ability of the police to carry out effective investigations. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively, and in turn, increase the risk of harm to members of the public from offenders.

### **Public interest arguments in favour of disclosure**

28. The complainant referred the Commissioner to apparently contradictory information in the public domain about the incident:

“Sussex Police are reported by the BBC to have documented over 100 witnesses of the Gatwick drone incident, who saw two drones operating on several occasions for up to 45 minutes at a time over the three day disruptive event, [www.bbc.co.uk/news/uk-england-sussex-49846450](http://www.bbc.co.uk/news/uk-england-sussex-49846450). Despite this Sussex Police former Chief Constable, Giles York, suggested to a Parliamentary Defense [sic] Committee on 29th October 2019 that they have no description of the drone and its behaviour.”

29. In light of this, he argued:

"...it is in the interest of the public, for this information to be released and disclosed as we approach the 3 year anniversary of the unsolved, disruptive and highly costly Gatwick "drone" incident."

30. Sussex Police recognised that disclosure would demonstrate its commitment to openness and transparency which would in turn, increase public confidence in it. Disclosure would also raise public awareness of an incident it had investigated.

**Public interest arguments in favour of maintaining the exemption**

31. Sussex Police offered the following arguments in favour of maintaining the exemption:

"The witness statements being requested relate directly to [a criminal offence] and form key evidence because they describe the events and circumstances of the offence.

At the time of the request, the investigation was not complete and remains unsolved. No charges have yet been brought as a result of the investigation, and the investigation will continue as new evidence becomes available."

32. It continued:

"There is an inherently strong public interest in public authorities carrying out investigations to prevent and detect crime. This ensures that offenders are brought to justice and that the necessary checks and balances are in place to safeguard public funds and resources. The disclosure of witness statements during an investigation will reduce the effectiveness of those investigations. Sussex Police need to be allowed to carry out investigations effectively away from public scrutiny to ensure accurate, thorough and objective investigations, and the disclosure of this information would encourage and protract public discourse and speculation which would hinder the investigation, may alert offenders to the status or nature of the investigation and would actively discourage further witness participation if those potential witnesses knew their account would be made public. In addition, disclosure of the information could potentially compromise future linked investigations. Closed investigations have the potential to open at any point in the future due to repeat offending and serial offending.

Witnesses are a vital part of the investigation and prosecution processes, and it is crucial that individuals are able to provide statements without the fear that one day they may be placed in the public domain. Individuals would be less likely to come forward or co-

operate with the police if they believe information they provide to the police will be disclosed in circumstances outside of the investigative and judicial processes. The information contained in the witness statements directly and indirectly identifies individuals and organisations who assisted with the investigation and describes the circumstances of the offence. If those details were made public it could lead to speculation, media attention or a parallel and unofficial investigation by members of the public held in the public domain. This would adversely affect the police investigation, prevent other witnesses from coming forward, jeopardise any future prosecution and lead to individuals suffering unwarranted public scrutiny and reputational harm. Clearly the public interest in transparency is not overridden by the public interest in preventing such adverse effects.”

### **Balance of the public interest**

33. In reaching a conclusion on the balance of the public interest, the Commissioner has considered the public interest in Sussex Police disclosing the requested information, as clarified in the complainant’s internal review request.
34. The Commissioner has also considered whether disclosure would be likely to harm any investigation, which would be counter to the public interest, and what weight to give to these competing public interest factors.
35. As set out above, the purpose of section 30 is to protect the effective investigation and prosecution of offences. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively and, in turn, increase the risk of harm to members of the public from offenders.
36. Set against this, the Commissioner recognises the importance of the public having confidence in public authorities that are tasked with upholding the law. Confidence will be increased by allowing scrutiny of their performance and this may involve examining the decisions taken in particular cases.
37. The Commissioner also recognises the public interest in promoting transparency, accountability and public understanding with regard to decisions made by public authorities.
38. In addition, he recognises that there may be a specific public interest in disclosing the information in question, which comprises information on the Gatwick drones incident. The Commissioner notes that reported



sightings of drones at Gatwick Airport in December 2018 caused significant disruption, with hundreds of flights cancelled due to safety fears. The cancellations reportedly cost Gatwick Airport £1.4 million, and it subsequently spent around £4 million on anti drone technology<sup>4</sup>.

39. In his guidance, the Commissioner acknowledges that the stage an investigation or prosecution has reached will have a bearing on the extent of any harm that may be caused by disclosure.
40. In this case, the investigation did not lead to someone being charged and the case remains unsolved. However, should new information come to light, it may be re-opened and a prosecution pursued. Disclosure of key evidence under FOIA may jeopardise the likelihood of this happening and the success of any prosecution case. The withheld information effectively reveals exactly what the police know about the incident. This is information which would clearly be of use to the perpetrators of the crime, as it may allow them to continue to evade arrest and prosecution and also, potentially, to repeat the incident. For this reason, the Commissioner considers the protection of evidential material about the incident to be a strong argument in favour of maintaining the exemption.
41. The Commissioner has also taken into account Sussex Police's arguments about the potential harm to its general investigative processes.
42. In that regard, the Commissioner does have concerns that disclosing witness statements considered as part of a criminal investigation, could create a perception among the wider public that sensitive information about criminal investigations may be disclosed to the world at large, even where the evidence has not resulted in a prosecution. He considers that there is a real chance this may deter people (including witnesses, complainants and suspects) from coming forward and cooperating with prosecuting authorities, particularly where criminal offences have been alleged. This remains the case even where steps have been taken to anonymise information, as witnesses may be recognisable to themselves (and others) from their testimonies. There is a very significant public interest in avoiding that outcome and it is a factor of some weight in favour of maintaining the exemption in this case.
43. Taking all the above into account, and having given due consideration to the arguments on both sides, while the Commissioner accepts that

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<sup>4</sup> <https://www.theguardian.com/uk-news/2019/jun/18/gatwick-drone-disruption-cost-airport-just-14m>



disclosing the withheld information would be likely to promote transparency, he considers that the public interest in disclosure in this case is outweighed by the public interest in ensuring that the investigation and prosecution of offences is not undermined.

44. The Commissioner is therefore satisfied that the public interest in maintaining the exemption outweighs the public interest in disclosure and that Sussex Police was entitled to rely on section 30(1)(a)(i) of FOIA to refuse the request.

## Right of appeal

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45. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

46. 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.
47. 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**