

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 28 February 2023

**Public Authority:** Chief Constable Sussex Police

**Address:** Malling House  
Lewes  
East Sussex  
BN7 2DZ

#### **Decision (including any steps ordered)**

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1. The complainant requested information from the Chief Constable of Sussex Police ("Sussex Police") in relating to actions taken against a named police officer. The Commissioner's decision is that Sussex Police is entitled to rely on section 40(5B) (personal information) of FOIA to refuse to confirm or deny whether any information is held.
2. The Commissioner does not require Sussex Police to take any steps.

#### **Request and response**

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3. On 25 March 2023, the complainant made the following request for information to Sussex Police:  

"Can you also confirm under the Freedom of Information Act all or any disciplinary actions taken against [REDACTED] when he was an acting Police Officer. His behaviour is hostile and violent"
4. Sussex Police refused to confirm or deny holding the requested information.

## Reasons for decision

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### Section 40(5) - personal data

5. This reasoning covers whether Sussex Police was correct to apply section 40(5B) of FOIA to the request.<sup>1</sup>
6. Section 40(5B) of FOIA allows a public authority to refuse to confirm or deny that it holds particular information if the mere act of confirming (or denying) that information is held would, in itself, reveal personal data about an identifiable individual and would contravene one of the data protection principles.
7. In this case, the Commissioner is satisfied that confirming or denying whether information is held would identify third party personal data because it goes some way towards informing the public about Sussex Police's accountability in its disciplinary procedures and allow the public to have confidence in, or raise concerns about the standards the police expects of its officers. Therefore there is some legitimate interest in the confirmation or denial in this case.
8. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed – or as in this case the public authority can only confirm whether or not it holds the requested information - if to do so would be:
  - a. lawful (i.e. it would meet one of the conditions of lawful processing listed in Article 6(1) UK GDPR);
  - b. fair; and
  - c. transparent.
9. The Commissioner recognises that individuals have a clear and strong expectation that their personal data will be held in accordance with data protection laws. In this case, he is satisfied that the person concerned would not reasonably expect Sussex Police to confirm to the world at large whether or not it held the requested information in response to a FOI request.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

10. He has also determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms.
11. As there is no lawful basis for doing so, confirming or denying would be unlawful and therefore Sussex Police is entitled to rely on section 40(5B) of FOIA to neither confirm nor deny that the requested information is held.

## Right of appeal

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12. 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: 0203 936 8963

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)

13. 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.
14. 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

**Susan Duffy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**