

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 17 July 2012

**Public Authority:** Chief Constable of Sussex Police

**Address:** Police Headquarters

Church Lane

Lewes

East Sussex

BN7 2DZ

### Decision (including any steps ordered)

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1. The complainant requested information concerning payments received by Sussex Police and related correspondence regarding the production of the BBC series 'Traffic Cops'. Sussex Police provided information in relation to part (a) of the request about the total sum of money received but stated that no information with regard to part (b) of the request for related correspondence was held. During the Information Commissioner's (the Commissioner) investigation, Sussex Police located related information and provided it to the complainant. The complainant received the information but continued to dispute whether Sussex Police had provided him with all the information which it held.
2. The Commissioner's decision is that Sussex Police provided all the information it held in relation to part (b) of the request and as such complied with section 1(1) of the FOIA. However, Sussex Police failed to provide the information within the statutory timeframe laid down by the FOIA and therefore breached section 10(1).
3. As the information held by Sussex Police in relation to the request has been provided to the complainant, the Commissioner does not require the public authority to take any further action to ensure compliance with the legislation.

## Request and response

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4. On 14 August 2011, the complainant wrote to Sussex Police and requested information in the following terms:

*"(a) All payments received by Sussex Police in relation to the production of the BBC series 'Traffic Cops'.*

*(b) All correspondence held by Sussex Police (internally, with the BBC and any other person, company or organisation involved) in relation to the production of the BBC series 'Traffic Cops'."*

5. Sussex Police responded on 14 September 2011. In relation to part (a) of the request it provided the total sum of money received from the production company but stated that, in relation to part (b), no related information could be located. Sussex Police advised the complainant that further searches would be carried out and that he would be contacted in due course.
6. On 4 October 2011 the complainant requested an internal review of the handling of the request. He did not accept that information in relation to part (b) of the request could not be located and remained dissatisfied with the delay involved in the further searches being carried out by Sussex Police.
7. Following an internal review Sussex Police wrote to the complainant on 4 November 2011. It upheld its decision that no information in relation to part (b) was held.

## Scope of the case

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8. The complainant contacted the Commissioner on 7 November 2011 to complain about the way his request for information had been handled. He did not accept that Sussex Police held no information in relation to part (b) of the request.
9. The Commissioner has therefore investigated whether Sussex Police held information in relation to part (b) of the request.
10. On 28 November 2011 the Commissioner contacted Sussex Police to ascertain whether the further searches for information, detailed in its September correspondence to the complainant, had been carried out and what, if any, information had been located. Throughout November 2011 to January 2012 the Commissioner and Sussex Police exchanged correspondence and telephone calls regarding what information

pertaining to part (b) of the request could be located. Sussex Police led the Commissioner to believe that searches for the related information were underway and a positive result would be achieved.

11. On 14 March 2011 the Commissioner issued an information notice to Sussex Police in an effort to accelerate the conclusion of its searches and to obtain a clear picture as to what related information was held.
12. As a result of the Commissioner's investigation, on 25 April 2012 Sussex Police provided the complainant with information in relation to part (b) of the request. This information included emails between the production company and Sussex Police, a filming synopsis and queries of a procedural nature that were raised prior to the making of the programme. Sussex Police apologised for the delay involved in locating the information provided and explained that this had been due to a *'transfer of responsibilities for this business area'*.
13. The complainant contacted the Commissioner on the same day to inform him of Sussex Police's disclosure. He explained to the Commissioner that he still considered that further information relating to part (b) of the request would be held. The Commissioner has therefore gone on to investigate whether Sussex Police held other related information than that which was supplied in April 2012.

## Reasons for decision

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14. 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."*

15. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
16. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority

holds any information which falls within the scope of the request (or was held at the time of the request).

17. On 26 April 2012 the Commissioner discussed with Sussex Police the complainant's concerns that more information relating to part (b) of the request was held. He explained that the complainant had expected to be provided with, for example, emails to and from everybody involved with the filming, the production company and the Police Authority, and internal emails within Sussex Police. The complainant had also argued that information of a legal nature must have been held and retained by Sussex Police.
18. Sussex Police agreed that it was reasonable for the complainant to suggest that further information could be held and agreed that at some point there would probably have been more information than that which had been located and provided. However, Sussex Police argued that if there had been more information held at some point in the past, the information had not been retained and therefore was no longer held.
19. Sussex Police explained that this may have been due to the fact that the information was not retained prior to a move between departments covering responsibility for the information, from the Traffic Unit to the Corporate Press Office. Sussex Police also suggested that this move may have caused the information to have been lost or destroyed.
20. Sussex Police confirmed on the telephone to the Commissioner that searches of the relevant personal drive had been undertaken within the Traffic Unit and that all documents located containing relevant information to part (b) of the request had been provided to the complainant. It went on further to say that if more information had been located, the information would have been provided to the complainant as Sussex Police would not seek to exempt any of the information.
21. Following the telephone discussion about the case, the Commissioner made further enquiries in writing to Sussex Police with regard to the type of searches that had been carried out and any relevant retention issues that would help to ascertain whether further information was held.
22. Sussex Police confirmed that searches were carried out for both paper and electronic records within the Roads Policing Unit (RPU), Corporate Communications (Press Office) and Finance Department. It also explained that the RPU had had initial responsibility for this business area and that the responsibility had subsequently been transferred internally to the Press Office.

23. Searches were carried out on generic systems (Sharepoint) within the named departments and the personal drives of the RPU Officer and the Head of Corporate Communications who had subsequently assumed responsibility for the business area. Sussex Police explained that the email system and Sharepoint system had been searched and that some of the information was expected to be manual, paper documents that had been scanned on to Sharepoint folders.
24. Again Sussex Police made reference to the fact that related information could have been deleted or destroyed during the physical change of location of the information and the change in responsibility for the business area. It confirmed to the Commissioner, however, that it did not have a record of the information's destruction due to the fact that if any information had been deleted or destroyed that had been done inadvertently due to the move.
25. Sussex Police went on to explain that there was no formal retention policy that covered information of the nature described in part (b) of the request. It stressed that while some information may have been inadvertently destroyed, the *'core data relating to the event was kept by the RPU Officer in a personal Sharepoint folder and it would not have been necessary to retain other documents'*.
26. Sussex Police confirmed that the searches carried out had resulted in locating all the information held pertaining to part (b) of the request including the 'core data' held by the RPU Officer and that this information had been provided to the complainant on 25 April 2012. Sussex Police also confirmed that there was no ongoing business purpose with regard to the information held as it related to the agreement to participate in the programme, the programme's completion and the payment received and that there was no statutory requirement to retain information of this nature.
27. In order to come to a balanced decision, the Commissioner has weighed up the complainant's arguments that further information would be held against the details provided by Sussex Police concerning the searches it has carried out and the information which was located and provided. The Commissioner does agree with the complainant, as does Sussex Police, that it would be reasonable to suggest that further information in the form of internal emails or legal contracts might have been held in relation to the production of the programme. However, for the Commissioner to take a definite view that more information is still held by Sussex Police, the view must be based on more than just suspicion and a general feeling that the public authority should hold information.
28. The searches carried out by Sussex Police did result in information relating to part (b) of the request being located and provided to the

29. Section 10(1) of the FOIA states that:

*"Subject to subsections (2) and (3), 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."*

30. Owing to the fact that Sussex Police took a significant amount of time over 20 working days to locate the information in relation to part (b) of the request and provide it to the complainant, the Commissioner finds that the public authority breached section 10(1) of the FOIA.

## Right of appeal

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31. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

32. 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.
33. 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  
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SK9 5AF**