

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

### **Decision notice**

**Date:** 24 May 2019

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

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

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1. The complainant requested information about arrests made as a result of failed breathalyser tests
2. The Commissioner's decision is that the Chief Constable of Sussex ("the Constabulary") failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires the Constabulary to take the following steps to ensure compliance with the legislation.
  - Issue a substantive response, under the FOIA, to the request.
4. The Constabulary 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**

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5. On 3 December 2018, the complainant wrote to the Constabulary to make a formal complaint and, in the process, requested recorded information in the following terms:

*"Under Freedom of Information I would like to know from you how often you arrest member of the public at the roadside breath test for failing the test (as opposed to refusing to be tested) and then when tested at the police station find they are at least 70% below the limit? I would also like to know how many people you arrest for failing a roadside test who when tested at the police station are between 5-10%, 11-20%, 21-30%, 31-50% and more than 51% under the limit when tested."*

6. The Constabulary acknowledged the request on 10 December 2018 but had failed to provide a substantive response by the date of this notice.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 10 December 2018 to complain about the failure, by the Constabulary, to respond to the request.
8. In line with her usual practice, the Commissioner contacted the Constabulary on 16 April 2019 to highlight the outstanding response. She requested that the Constabulary respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to.
9. The complainant contacted the Commissioner on 21 May 2019 to request a decision notice considering the Constabulary's compliance with the FOIA.
10. The scope of this notice and the following analysis is to consider whether Constabulary has complied with section 10 of the FOIA.

### **Reasons for decision**

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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 8(1) of the FOIA states:

*In this Act any reference to a "request for information" is a reference to such a request which –*

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

13. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.
14. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
15. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Constabulary has breached section 10 of the FOIA.

## Right of appeal

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16. 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)

17. 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.
18. 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**