

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 November 2020

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)

1. The complainant requested information relating to the Safeguarding Investigation Unit. Sussex Police provided some information within the scope of the request but denied holding the remainder.
2. During the Commissioner's investigation, further recorded information was identified and disclosed to the complainant.
3. The Commissioner's decision is that Sussex Police breached sections 1 (general right of access) and 10 (time for compliance) of the FOIA, by failing to disclose to the complainant information to which he is entitled within 20 working days of his request.
4. As a response has now been provided to the complainant, the Commissioner does not require Sussex Police to take any further steps in relation to this request.

Background

5. The request in this case was subject to an earlier complaint to the Information Commissioner regarding failure to respond. The complaint in that case was concluded by way of a decision notice¹.
6. With respect to adult protection matters, Sussex Police advises²:

"Adults requiring care and support may not be able to protect themselves from abuse or neglect. Sussex Police has specialist trained officers and staff who work to protect adults at risk of abuse..."

Any reports of adult abuse or neglect will be sent to specialist trained officers in our Safeguarding Investigation Units...

Sussex Police and multi-agency partners also hold regular Safeguarding Adults Boards (SAB) across the county and set policy and procedures for all multi-agency partners who support adults at risk."

7. With respect to Safeguarding Investigation Units, the Commissioner acknowledges that:

"Sussex Police has established specialist Safeguarding Investigation Units (SIUs) within each local authority area. These teams manage both the criminal and safeguarding aspects of investigations involving child and adult abuse, high risk domestic abuse, rape and serious sexual offences³".

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2018/2553978/fs50796995.pdf>

² <https://www.sussex.police.uk/advice/advice-and-information/ap/adult-protection>

³ <https://sussexsafeguardingadults.procedures.org.uk/pkoth/sussex-safeguarding-adults-procedures/safeguarding-and-criminal-investigations#s2814>

Request and response

8. On 10 July 2018, the complainant wrote to Sussex Police and requested information in the following terms:

"Please provide the following information concerning the Safeguarding Investigation Unit which deals with cases of abuse, or potential abuse, against adults:

1) When was the Safeguarding Investigation Unit created?

2) How many cases have been referred to it since this date?

3) How many of these were investigated?

4) Is there any breakdown in the figures between males and females being subjected to abuse where abuse has been reported? What are the figures for male, or female, abuse for each of the years so far?

5) What was the outcome of cases reported, or referred, to it? How many of these were taken up with other relevant bodies? How many were then investigated by Sussex Police for criminal offences? Please give the figures for each of the years so far.

6) Have there been any cases referred to the Crown Prosecution Service for prosecution? Please state the number of the cases referred to the CPS for each of the years to date.

7) Have there been any successful prosecutions to date?"

9. The request was made via the 'whatdotheyknow' website.
10. Following the Commissioner's intervention regarding its failure to respond to this request for information, Sussex Police responded on 16 January 2019. It provided information in scope of part (1) of the request.
11. With respect to the remaining information within the scope of the request, Sussex Police told the complainant that the information was not held.
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12. It explained:

"... due to the limitations of retrieving information from our various systems we are unable to report on the specific questions you have raised in respect of questions 2,3,4,5,6 and 7".

13. With respect to part (2) of the request, it also told him:

"We are unable to accurately provide figures for this due to the varying methods and systems used to 'refer' 'cases' to the unit."

14. With respect to part (6) of the request, it described this information as relating *"to the numbers 'Charged'"*.

15. Sussex Police provided the complainant with advice and assistance with respect to how to obtain the information requested at part (7) of his request.

16. The complainant requested an internal review on 6 February 2019.

Scope of the case

17. Following earlier correspondence, the complainant contacted the Commissioner on 9 April 2019 to complain about the way his request for information had been handled. He advised that, despite the Commissioner's intervention, a response to his request for internal review remained outstanding. The complainant continued to dispute that Sussex Police did not hold all of the requested information.

18. Given the history of this request for information, the Commissioner exercised her discretion to accept the complaint without the internal review having been carried out.

19. The Commissioner wrote to the complainant explaining that the scope of her investigation was with regard to Sussex Police's handling of parts (2) – (6) of the request.

20. The Commissioner also wrote to Sussex Police. Given the subject matter of the request, and the significance of such matters, the Commissioner asked questions regarding its handling of the request, including with respect to its interpretation of the information requested. She also sought clarification from Sussex Police regarding its view that it did not hold information within the scope of parts (2) – (6) of the request.

21. While Sussex Police did, ultimately, provide a response, that response did not address all of the issues raised. In its submission to the Commissioner, Sussex Police maintained its position, confirming what it

had told the complainant, namely that there are limitations within its systems for retrieving information.

22. The Commissioner advises that, before a public authority decides that it does not hold any recorded information, it should make sure it has carried out adequate and properly directed searches, and that it has convincing reasons for concluding that no recorded information is held.
23. During the course of her investigation, the Commissioner asked Sussex Police, on more than one occasion, to describe the searches it had carried out for information falling within the scope of the request, and the search terms used. She also asked other questions, as is her usual practice, relating to how Sussex Police established whether or not it held the requested information.
24. Over the course of her investigation, the Commissioner found Sussex Police's level of engagement to be unacceptable: responses were frequently late and failed to address the issues raised.
25. In order to progress her investigation, the Commissioner found it necessary, on two separate occasions, to issue the Chief Constable of Sussex Police with an Information Notice (IN), in accordance with her powers under section 51 of the FOIA.
26. Ultimately, having consistently maintained that it did not hold information within the scope of parts (2) –(6) of the request, Sussex Police revisited its handling of those parts of the request. It issued a fresh response to the complainant on 20 October 2020, providing him with information.
27. Sussex Police explained that it was:

"... unable to split this response into the separate reference numbers and retain perspective".

28. It did, however, relate the information it provided to specific parts of the request, namely parts (3), (4) and (5).
29. The complainant expressed dissatisfaction with that response. He told the Commissioner that did not consider that the response provided the requested information:

"...in a format which is possible to interpret and tie in with the original request".

30. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is to do with transparency

of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

31. The Commissioner previously found, (case reference FS50796995), that Sussex Police breached section 10(1) (time for compliance) of the FOIA in relation to the request in this case, in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
32. The analysis below considers whether Sussex Police complied with section 1 (general right of access) of the FOIA.

Reasons for decision

Section 1 general right of access

33. Section 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."

34. Section 10(1) of the FOIA provides that 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.
35. When a public authority receives a request, its first task is usually to determine whether it holds the requested information. In many cases it will be simple to locate information, particularly if the public authority practices good records management.
36. The Commissioner acknowledges that Sussex Police advised the complainant that there are limitations within its systems for retrieving information and attempted to explain the difficulties in obtaining data from the various systems it uses.
37. For example, with respect to the information requested at part (2) of the request, Sussex Police told the complainant:

"We are unable to accurately provide figures for this due to the varying methods and systems used to 'refer' 'cases' to the unit.

Initially both Steria STORM and Niche were systems used to send reports to the unit which makes it difficult when obtaining quantitative data".

38. The Commissioner's guidance '*Determining whether information is held*⁴ explains to public authorities how to determine whether they hold the information that has been requested.
39. Of particular relevance in this case, it explains the extent to which a public authority is obliged to extract information from their records to compile information in response to a request.
40. During the course of her investigation, the Commissioner also referred Sussex Police to her guidance⁵ which states:

"The Act covers recorded information, whether or not it is accurate. You cannot refuse a request for information simply because you know the information is out of date, incomplete or inaccurate. To avoid misleading the requester, you should normally be able to explain to them the nature of the information, or provide extra information to help put the information into context".

41. Despite the intervention of the Commissioner, it was not until the revised response of 20 October 2020 that Sussex Police finally confirmed that it held information within the scope of parts (2) – (6) of the request and provided it to the complainant.

The Commissioner's view

42. When the Commissioner receives a complaint that a public authority has not provided any or all of the requested information, it is seldom

⁴ https://ico.org.uk/media/for-organisations/documents/1169/determining_whether_information_is_held_for_eir.pdf

⁵ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>

possible to prove with absolute certainty that there either isn't any information or anything further to add. The Commissioner will apply the normal civil standard of proof in determining the case, ie she will decide on the balance of probabilities whether the information is held.

43. In this case, the Commissioner considers that Sussex Police's responses suggested that relevant information may be held, albeit that the information may be difficult to retrieve.
44. The Commissioner accepts that, when it finally disclosed information to the complainant, Sussex Police told him that the search criteria used to produce the disclosed information "*was not available at the time of the last response*".
45. In that respect, the Commissioner is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085) which explained that the FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".

46. The scope of the Commissioner's investigation in this case is parts (2) – (6) of the request. The Commissioner accepts that parts (3) – (6) of the request refer back to part (2) of the request.
47. The Commissioner is satisfied, from the evidence presented to her, that Sussex Police related the information it provided to parts (3), (4) and (5) of the request. The Commissioner is mindful that those parts are subsets of part (2) of the request. She also accepts that the information provided included details of numbers charged/summonsed and that Sussex Police had previously told the complainant that '*the numbers 'Charged'*' would relate to part (6) of the request.
48. In failing to confirm that information within the scope of parts (2) – (6) of the request is held, Sussex Police's response of 16 January 2019 did not comply with the requirements of section 1(1)(a) of the FOIA.
49. The Commissioner also finds breaches of sections (1)(1)(b) and 10(1) for failing to communicate that information within the statutory time for compliance.

Other matters

Internal review

50. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA. However, the Commissioner has issued guidance in which she has stated that in her view internal reviews should take no longer than 20 working days to complete, and even in exceptional circumstances the total time taken should not exceed 40 working days.
51. In this case, despite the intervention of the Commissioner, Sussex Police failed to complete an internal review in a timely manner.
52. The Commissioner expects Sussex Police to ensure that the internal reviews it handles in the future adhere to the timescales she has set out in her guidance.

Level of engagement

53. The Commissioner has recorded, in this decision notice, her comments in relation to Sussex Police's level of engagement during the course of this request for information. She acknowledges that the complainant has had to wait an unacceptable length of time for the information to which he was entitled.
54. The Commissioner is concerned that Sussex Police's poor practice in responding to FOIA requests is not only resulting in complaints to her office, but also causing protracted investigations in order to resolve those complaints.

Right of appeal

55. 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

56. 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.

57. 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

Laura Tomkinson
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SK9 5AF