

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

### **Decision notice**

**Date:** 4 May 2023

**Public Authority:** Chief Constable of Sussex Police  
**Address:** Sussex Police Headquarters  
Mailing House, Church Lane  
Lewes, East Sussex  
BN7 2DZ

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

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1. The complainant has requested information relating to Sussex Police's investigation of the drone incident at Gatwick Airport in December 2018. Under Section 30(3) of FOIA, the Chief Constable of Sussex Police (Sussex Police) refused to confirm or deny whether relevant information was held.
2. The Commissioner's decision is that Sussex Police were correct to apply Section 30(3) of FOIA to neither confirm nor deny holding information.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 10 May 2022, the complainant wrote to Sussex Police and requested information in the following terms:

"What date did Giles York personally first arrive at Gatwick Airport in December 2018 when there were reports of a drone?"

If you can provide a rough time too that would be better."

5. Sussex Police responded on 13 July 2022. It stated that if the information was held, it would be exempt under Section 30(3) (investigations and proceedings) of FOIA and it could neither confirm nor deny whether it was held.
6. Following an internal review, Sussex Police conducted an internal review on 24 August 2022, in which it upheld its original decision.

## Reasons for decision

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7. The following analysis explains why the Commissioner has decided that Sussex Police were correct to rely upon section 30(3) of FOIA to neither confirm nor deny (NCND) whether relevant information is held falling within the scope of the complainant's request.
8. Section 30(1) of FOIA provides that:

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

  - (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained
    1. whether a person should be charged with an offence, or
    2. whether a person charged with an offence is guilty of it,
  - (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
  - (c) any criminal proceedings which the authority has power to conduct."
9. Section 30(3) of FOIA provides that: "The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be exempt information by virtue of subsection (1) or (2)."
10. Given the nature of the information requested, the Commissioner is therefore satisfied that if information falling within the scope of the complainant's request were held, it would by definition, be held for the purposes of a criminal investigation under section 30(1). The exemption under 30(3) is therefore engaged.

### **Public interest test**

11. Section 30(3) is a qualified exemption. This means that the Commissioner must consider the public interest test contained at section 2 of FOIA and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying whether the requested information is held.
12. 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. In broad terms, the section 30 exemptions exist to ensure the effective investigation and prosecution of offences and the protection of confidential sources. They recognise the need to prevent disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings.

### **Factors in favour of confirmation or denial**

13. The Commissioner acknowledges there will always be a public interest in transparency and accountability in the decision-making processes of public authorities and Sussex Police accepts this.
14. The complainant has argued that other senior officers were known to have attended Gatwick Airport during the incident, and at the time of his request, the incident was more than three years old.

### **Factors in favour of maintaining the exemption**

15. Sussex Police has stated:

“If information of this nature were to be disclosed this could potentially compromise this investigation into what is currently an unsolved crime, or compromise related or similar investigations. Disclosure would hinder the prevention or detection of crime, undermine the partnership approach to law enforcement with other agencies, and would subsequently affect the force's future law enforcement capabilities. This would also affect the force's ability to ascertain whether any person is responsible and could assist offenders in commissioning similar crimes.”

16. Sussex Police went on to state they had also considered the wider context of this particular investigation, which has been the subject of many other information requests under the FOIA. Sussex Police advised while each of these requests individually ask for only a small amount of information, when placed together, they constitute a wider body of data which could be used to seriously compromise the investigation.

### **The Commissioner's view**

17. The Commissioner has considered the arguments submitted by the complainant and Sussex Police. He is satisfied that the public interest in neither confirming nor denying whether information is held outweighs that in responding to the requirements of section 1(1)(a) of FOIA.
18. 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.
19. In addition, the Commissioner has considered Sussex Police's argument that numerous FOI requests for small pieces of information constitute a wider body of data overall and feels this carries weight, particularly given the media attention that has been devoted to this particular incident.
20. The Commissioner's decision is that Sussex Police were therefore entitled to rely upon Section 30(3) of FOIA in this case to neither confirm nor deny whether information was held.

### **Procedural matters**

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21. Section 17 states that any refusal notice, which must include the exemption under which any information is withheld, must also be issued within twenty working days of receipt of the request
22. The Commissioner notes that the complainant made their request on 10 May 2022 but did not receive a refusal notice until 13 July 2022, which represents a breach of Section 10(1) of the FOIA.

## Right of appeal

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23. 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)

24. 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.
25. 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

**Joanna Marshall**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**