

**FREEDOM OF INFORMATION ACT 2000 (SECTION 52)
ENFORCEMENT POWERS OF THE INFORMATION COMMISSIONER
ENFORCEMENT NOTICE**

DATED: 14 December 2023

To: Chief Constable of Greater Manchester Police

**Of: GMP Headquarters
Central Park
Northampton Road
Manchester
M40 5BP**

1. The Chief Constable of Greater Manchester Police ("GMP") is a "public authority" listed in Schedule 1 and defined by section 3(1)(a)(i) of the Freedom of Information Act 2000 ("FOIA"). FOIA provides public access to information held by public authorities.
2. GMP's obligations as a public authority under FOIA include –
 - a. Being obliged to publish certain information about its activities;
 - b. Responding to requests for information from members of the public.
3. The Information Commissioner (the "**Commissioner**") hereby issues GMP with an Enforcement Notice (the "**Notice**") under section 52 FOIA. The Notice is in relation to GMP's:
 - a. Continuing non-compliance with section 1(1) FOIA and;
 - b. Continuing breaches of section 10(1) FOIA.

4. This Notice explains the Commissioner's decision to take enforcement action. The specific steps that GMP is required to take are set out in **Annex 1**.

Legal Framework for this Notice

5. A person requesting information from a public authority has a right, subject to exemptions, to be informed by the public authority in writing whether it holds the information, and to have that communicated to him, if the public authority holds it. This is set out in section 1(1) FOIA–

“(1) 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.”

6. Section 10(1) FOIA specifies that public authorities must respond to requests within 20 working days:

“... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following receipt.”

7. There is provision under FOIA for a public authority to claim a reasonable extension to this limit in certain circumstances, but in all cases the public authority must give the requestor a written response within the standard time limit for compliance.
8. The Commissioner has various powers under FOIA. One of these is the issuing of an Enforcement Notice. Section 52(1) of FOIA states –

“If the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I, the Commissioner may serve the authority with a notice (in this Act referred to as an “enforcement notice”) requiring the authority to take within such time as may be specified in the notice, such steps as may be so specified for complying with those requirements.”

9. Section 52 FOIA has effect subject to section 53 FOIA, which provides details of the exceptions from the duty to comply with a decision notice or enforcement notice.

Background

10. In 2022, the Commissioner’s routine monitoring revealed that GMP had been the most complained-about police force for timeliness over the previous 12 months.
11. On 3 February 2023, the Commissioner issued a [Practice Recommendation](#) to GMP. He noted that GMP’s request-handling practices did not conform with part 4 of the FOIA Code of Practice.
12. Practice Recommendations are not directly enforceable, but the Commissioner made clear that if GMP did not comply with the Practice Recommendation, it was likely that it was not complying with FOIA and that further action may be needed subject to the evidence at that point.
13. As well as generally improving its timeliness, the Commissioner recommended that GMP should take the following steps:
 - Publish its information access request statistics on its website.
 - Revise its request handling procedures to ensure a robust mechanism of escalation for requests that were, or were at risk of becoming, late.

- Ensure that its training was sufficient to ensure that response times would not be unduly affected by staff absence.
 - Create an action plan to ensure 90% timeliness was achieved by the end of April 2023.
 - Carry out a 'lessons learned' exercise, examining the root cause of delays, with mitigations for any recurring problems addressed specifically in the action plan.
14. Data provided by GMP indicates that its timeliness is improving in respect of new requests. Having dipped as low as 43% during 2019, statistics from the most recent completed quarter (July to September 2023) show that GMP is now responding to 77% of requests within the statutory timeframe. GMP has informed the Commissioner that it exceeded 80% compliance in August, September and October of 2023.
15. However, GMP has also explained that it has a backlog of 850 older requests that it has yet to respond to. Of these overdue requests, more than 800 are over six months old and 580 are over a year old. The oldest open request was submitted almost two and a half years prior to the issuing of this notice.

The Contravention and Reasons for this Notice

16. The Commissioner recognises that GMP has made progress to improve its timeliness since the issuing of the Practice Recommendation.
17. In particular, he notes that GMP has put training in place across the organisation to emphasise the importance of FOIA. It has an action plan in place to improve its timeliness and has allocated additional resources.
18. GMP's response rate to new requests has improved considerably (albeit from a low starting point) and GMP has noted that it is currently

exceeding the average response rate across police forces (currently around 76%).

19. However, whilst GMP has clearly taken steps to ensure improvement in its rate of compliance, the Commissioner considers that this has come at the expense of older requests. GMP's backlog is substantial and unacceptable. GMP appears to have done very little to address it since February and has no immediate plans to begin doing so.
20. GMP has explained that it carried out small-scale pilot programmes to explore ways of reducing the backlog, but it has either been unable or unwilling to expand these pilots to deliver significant results.
21. GMP has tried to assure the Commissioner that it has an action plan in place to clear its backlog and that senior leaders recognise the progress that needs to be made. Its suggested timeframe is that it will do this by December 2024.
22. Whilst the Commissioner recognises that a plan has been drawn up, he is not persuaded that a plan on this timeframe, especially one that is voluntary, is sufficient, for two reasons.
23. Firstly, the anticipated timescale is too long. By December 2024, the oldest current request will be three and a half years old. Requests that are over a month old now will be more than a year old at that point.
24. The Commissioner recognises that a backlog of this scale cannot be cleared overnight, but GMP's suggested deadline for the amount of requests involved is beyond the amount of time he could tolerate. Given the scale of the issue, a binding, enforceable commitment is also needed.

25. That is not to say that the assurances GMP has provided have not been made in good faith. However the Commissioner recognises that priorities can change considerably from month to month. Without an enforceable deadline, there is nothing to prevent "December 2024" slipping to "January 2025" and so on and so forth.
26. Secondly, the Commissioner notes that the action plan that GMP wishes to rely upon assumes that additional resources will be available in the new financial year. There is no guarantee that sufficient resources will be available to enable GMP to deliver its plan and no work on backlog reduction appears likely to take place until the additional resources have been secured. This is also not acceptable.
27. Responding to requests for information is a statutory duty. It is imperative that GMP recognises the importance of clearing its backlog and the legal implications of failing to do so. Imposing a legally-enforceable deadline makes clear the priority that the Commissioner considers this task should be given. He has taken into account the scale of the backlog and the timing of this notice when setting the timeframe by which he expects compliance.
28. Taking into account the scale of the backlog and the lack of confirmed resource available to tackle it, the Commissioner considers it a proportionate regulatory step to issue an Enforcement Notice requiring GMP to comply with section 1(1) of FOIA in respect of all its outstanding requests. It is essential that the assurances provided to the Commissioner are translated into actions and the steps outlined in Annex 1 provide an enforceable means of holding GMP to account.

Other Matters - Internal Review and statistics

29. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in an enforcement 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.
30. Sections 5.4 and 5.5 of the Code set out that a reasonable time for the completion of an internal review is 20 working days following the receipt of the request for review, and that, usually, no more than 40 working days will be required.
31. The Commissioner is satisfied that GMP has failed to conform with the Code and recommended best practice in relation to the reviews it has failed to complete within 40 working days.
32. He recommends that GMP should ensure that internal review requests are responded to in a timely manner. He is therefore also recommending in line with his powers under section 48(1) of FOIA that the action plan he has required under this Notice also captures the activity GMP will take to bring its handling of internal reviews in line with the section 45 Code of Practice. He recommends GMP carries out root-cause analysis of the delays and identifies any recurring issues which are preventing reviews from being completed within time.
33. The Commissioner also notes that GMP still does not publish timeliness statistics. This is despite it forming part of his Practice Recommendation and despite GMP admitting that this data is circulated internally. The Commissioner cannot require this as part of an enforcement notice under FOIA, but reiterates that GMP should do this in line with the section 45 Code of Practice. He would also recommend that GMP

published on a monthly basis its progress in clearing its FOIA backlog in line with the updates it gives the Commissioner about its compliance with this notice.

Terms of this Notice

34. The Commissioner therefore exercises his powers under section 52 of FOIA to serve an Enforcement Notice requiring GMP to take specified steps to comply with FOIA. The specified steps are set out in **Annex 1** of this Notice.

35. The consequence of failing to comply with an Enforcement Notice is that the Commissioner may make written certification of this fact to the High Court pursuant to section 54 of FOIA. Upon consideration and inquiry by the High Court, GMP may be dealt with as if it had committed a contempt of court.

Right of Appeal

36. By virtue of section 57 of FOIA there is a right of appeal against this Notice to the First-tier Tribunal (Information Rights). If an appeal is brought against this Notice, it need not be complied with pending determination or withdrawal of that appeal.

37. 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 9368963

Email: GRC@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Enforcement Notice is sent.

Warren Seddon
Director - FOI and Transparency
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

TERMS OF THE ENFORCEMENT NOTICE

THIS NOTICE REQUIRES GMP TO TAKE THE FOLLOWING STEPS BY THE DATES SPECIFIED BELOW:

By 31 July 2024, GMP shall:

- (i) in respect of each information request where the response is outside of 20 working days as at the date of this notice, and where a permitted extension has not been applied, comply with section 1(1)(a) of FOIA and, if information of the description specified in the request is held, either:
- (ii) communicate that information pursuant to section 1(1)(b) FOIA; or issue a valid refusal notice under section 17 FOIA, unless section 17(6) FOIA applies.

Within 35 calendar days of this notice, GMP shall:

- (iii) devise and publish an action plan formalising the measures it will take to ensure it complies with its legal duties under Part 1 of FOIA to respond to information requests in a timely fashion, while also clearing its backlog of late requests by 31 July 2024 as required by this notice.