

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

DATED: 14 February 2024

To: Chief Constable of Sussex Police

**Of: Sussex Police Headquarters
Church Lane
Lewes East
Sussex
BN7 2DZ**

1. The Chief Constable of Sussex Police ("Sussex Police") 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. Sussex Police'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 Sussex Police with an Enforcement Notice (the "**Notice**") under section 52 FOIA. The Notice is in relation to Sussex Police's:
 - a. Continuing non-compliance with section 1(1) FOIA; and
 - b. Continuing breach of section 10(1) FOIA.

4. This Notice explains the Commissioner's decision to take enforcement action. The specific steps that Sussex Police 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 2021, the Commissioner’s routine monitoring revealed that, since 2019, he had received a disproportionately high number of section 50 FOIA complaints about Sussex Police for the size of the force. A high proportion of these complaints resulted in decision notices recording a breach of section 10 of FOIA for non-response to a request. In addition to the high number of timeliness complaints, the Commissioner saw a pattern of Sussex Police failing to complete internal reviews, including when instructed to do so by the Commissioner on receipt of the associated complaint. The Commissioner was also concerned with the limited detail contained in responses to requesters, and in the quality of the responses he received to his substantive investigation letters.

11. On 8 July 2021, the Commissioner issued a [Practice Recommendation](#) to Sussex Police. He noted that Sussex Police’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 Sussex Police did not take action to address the issues identified, 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. Although improvement has been made in some areas following the Practice Recommendation, recent data provided by Sussex Police indicates that its timeliness has actually declined in respect of new requests. Statistics from the most recent completed quarter (October to December 2023) show that Sussex Police responded to only 32% of requests within the statutory timeframe. For the previous quarter (July to September 2023) it only responded to 22% of requests within the statutory timeframe. Since the start of 2022 it has not been able to achieve more than 66% for timeliness compliance.
14. For 2023-24 to date, Sussex Police has only completed 27% of internal reviews within 40 working days. In the 2022-23 reporting period, it completed 43% of internal reviews within 40 working days.
15. In addition to this poor performance in relation to new requests it is receiving, at the time of reporting, Sussex Police also has a backlog of 753 older requests that it has yet to respond to. Of these overdue requests, 737 requests are over three months old and 389 are over six months old. 24 requests are over a year old.

The Contravention and Reasons for this Notice

16. FOIA requires a public authority to inform people whether it holds information they have requested and to communicate it to them within 20 working days of receipt of their request.

17. Sussex Police has explained that, in October 2022 it lost two experienced members of staff from its FOI Team. Since then it has struggled with delays in its recruitment process, staff illness, training and an increase in the volume of requests being received. It has advised that it now has new staff in place as well as temporary support to clear older and more complex cases.
18. The Commissioner recognises that staff recruitment and retention is an issue across the public sector, but is particularly acute amongst police forces as new recruits must also gain a security clearance – elongating the recruitment process. That being said, responding to requests for information is a statutory duty. It is imperative that Sussex Police recognises the importance of responding to requests in a timely fashion and the legal implications of failing to do so. It is important that it has proper plans in place to reach, and then maintain, high levels of compliance with FOIA.
19. Sussex Police has tried to assure the Commissioner that it has an action plan in place to improve its FOI processes and that senior leaders recognise the progress that needs to be made. The Commissioner welcomes the engagement he has had recently from Sussex Police.
20. Whilst the Commissioner recognises that a plan has been drawn up and contains measurable actions to improve FOI performance in the longer term, the plan has scope to include more practical steps with clear deadlines to reduce the backlog and improve the timeliness of current request handling.
21. Responding to requests for information is a statutory duty. It is imperative that Sussex Police 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.

22. Taking into account the significant volume of unanswered FOI requests, their age profile including many requests subject to considerable delay, and the need for significant and sustained improvement in timely FOI responses, the Commissioner considers it a proportionate regulatory step to issue an Enforcement Notice requiring Sussex Police to comply with section 1(1) of FOIA in respect of all of its outstanding requests. It is essential that the improvements described in **Annex 1** are implemented which compliance with this Notice will support.

23. The Commissioner also considers it a proportionate regulatory step to require Sussex Police to devise and publish an action plan, which formalises measures to mitigate delays. This action plan should be supported by a 'lessons learned' exercise, which examines the root cause of delays in request handling, from allocation through to clearance at different stages, with mitigations for any recurring problems addressed specifically in the plan.

Other Matters

24. 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.

25. 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.
26. The Commissioner is satisfied that Sussex Police failed to conform with the Code and recommended best practice in relation to the reviews it has failed to complete within 40 working days.
27. He recommends that Sussex Police 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 Sussex Police will take to bring its handling of internal reviews in line with the section 45 Code of Practice. He recommends the root cause analysis of first instance requests that is required as part of the Notice is extended to also cover the internal review cases currently delayed.
28. The Commissioner considers that Sussex Police may benefit from using his [self-assessment toolkit](#) which is designed to help public authorities assess their current FOI performance and provide indicators of where efforts should be focused in order to improve. Topic 1 is particularly relevant as it deals with timeliness.
29. The Commissioner notes that Sussex Police still does not publish timeliness statistics. The Commissioner cannot require this as part of an enforcement notice under FOIA, but reiterates that Sussex Police should do this in line with the section 45 Code of Practice. He would also recommend that Sussex Police publishes, 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.

30. The Commissioner would draw Sussex Police's attention to his recent guidance on [publishing FOI compliance data](#) and recommends this approach is taken.

Terms of this Notice

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

32. 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, Sussex Police may be dealt with as if it had committed a contempt of court.

Right of Appeal

33. 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.

34. Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,

Reference: ENF0988353

PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 9368963

Email: GRC@justice.gov.uk

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

35. 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 & Transparency
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

TERMS OF THE ENFORCEMENT NOTICE

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

By 31 August 2024, Sussex Police 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, Sussex Police 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 August 2024 as required by this notice.