

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

DATED: 9 May 2024

To: Chief Constable Dyfed-Powys Police

**Of: PO Box 99,
Llangunnor,
Carmarthen,
Dyfed,
SA31 2PF**

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

4. This Notice explains the Commissioner's decision to take enforcement action. The specific steps that DPP 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. The Commissioner regularly reviews the National Police Freedom of Information and Data Protection Unit (“NPFDU”) FOI and SAR Performance and Monitoring Report (the “Report”) which is published on the National Police Chiefs’ Council (“NPCC”) website.

11. The Report showed that in August 2022 DPP provided 83% of requesters with a response within the statutory timeframe under FOIA. However, the compliance rate dropped significantly thereafter and between January and July 2023 was consistently under 50%. Notably, compliance stood at 20% in April 2023, 6% in June 2023 and 36% in July 2023.

12. In 2023, the Commissioner received 13 complaints in relation to timeliness issues. These were resolved informally once the Commissioner contacted DPP and no formal action had to be taken.

13. As a result, the Commissioner wrote to DPP in October 2023 to ascertain why its performance was so unsatisfactory and to better understand any factors which may be affecting DPP's ability to meet its statutory obligations under FOIA.
14. In subsequent correspondence, DPP explained that some of its figures were so low, partly because it was sometimes not recording FOI requests correctly. In some instances, business as usual requests or non-valid requests were also being included within the figures. Regardless of this poor record keeping, the performance was undoubtedly of concern.
15. In November 2023, DPP provided the Commissioner with its reasons for its performance issues, primarily staffing issues and the volume of work. The Disclosure Unit is the team responsible for processing requests under FOIA but is also responsible for processing requests under Data Protection legislation, Court Orders, Safeguarding, Children and Family Court Advisory Service (CAFCASS) and Probation Service. Focus has been put on Court Orders and cases that have safeguarding ramifications resulting in less capacity to process FOI requests.
16. The Commissioner recognises that DPP has been proactive to some extent in addressing the situation. DPP has provided the Commissioner with details of action which is being taken and has confirmed that a Gold Group has been set up to manage the risks. This is headed by the Deputy Chief Constable. The aim of the Gold Group is to track and evaluate risks within the backlog of requests, ensuring highest risk cases are prioritised and that effective systems for receiving, allocating and tracking requests are in place.

17. Alongside this, other measures have been put in place such as the recruitment of a Data Protection Compliance Officer and a permanent Disclosure Officer which was previously only temporary. Staff within the Information Management and Compliance Department have also been offered the opportunity to assist with processing requests.
18. In February 2024, DPP provided the Commissioner with statistical analysis of its performance. As of 6 January 2023, there was a backlog of only 46 requests. This increased to 280 by 8 December 2023, and although this has since reduced to 196 by March 2024, it is still a significant backlog.

The Contravention and Reasons for this Notice

19. 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.
20. The Commissioner accepts that DPP have limited resources for processing requests under FOIA. This 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.
21. That being said, responding to requests for information is a statutory duty. 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.
22. Whilst other matters such as Court Orders are of importance for DPP, this does not take away from the fact that requests under FOIA should

still be dealt with in a timely manner in line with the legislation. DPP should recognise this and the legal implications of failing to do so. DPP could have proactively contacted the Commissioner to highlight any problems it was facing and what action it planned to take to address this, seeking advice from the Commissioner on whether this was sufficient.

23. DPP's compliance rate over the period outlined is unacceptable.
24. Despite the implementation of the Gold Group and details of steps being taken to improve compliance, the backlog remains significant. Without any substantial change, that backlog will not be cleared or at the very least DPP's compliance rate will not be brought up to a reasonable level.
25. In the circumstances, the Commissioner considers it a proportionate regulatory step to issue an Enforcement Notice requiring DPP to address its backlog of overdue requests.
26. 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.
27. The Commissioner accepts that steps are being taken to improve compliance. However, it also considers it a proportionate regulatory step to require DPP 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 the requests from allocation through to clearance at different stages, with mitigations for any recurring problems addressed specifically in the plan. DPP should also review and improve its record

keeping practices to better record when FOI requests have been received, to separate these out from standard queries or non-valid requests.

28. The Commissioner considers that DPP 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.

Terms of this Notice

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

30. 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, DPP may be dealt with as if it had committed a contempt of court.

Right of Appeal

31. 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.

32. 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

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

Phillip Angell
Head of FOI Casework
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

TERMS OF THE ENFORCEMENT NOTICE

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

By 9 November 2024 DPP 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 30 calendar days of this notice, DPP 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 30 November 2024 as required by this notice.