

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

DATED: 12 July 2024

To: Chief Constable of Devon and Cornwall Police

**Of: Police Headquarters
Middlemoor
Exeter
Devon
EX2 7HQ**

1. The Chief Constable of Devon and Cornwall Police ("DCP") 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. DCP'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 DCP with an Enforcement Notice (the "Notice") under section 52 FOIA. The Notice is in relation to DCP'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 DCP 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 limited circumstances. The Code of Practice issued under section 45 FOIA recommends that, where those limited circumstances apply, an extension should be for a maximum of a further 20 working days. In all cases, the public

authority must give the requester a written response within the standard time limit for compliance advising of reliance on the permitted extension.

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 2023, as part of his routine work to monitor public authorities’ compliance with the legislation and to understand any related issues, the Commissioner recognised DCP to be performing poorly in terms of its obligation to provide responses to information requests within the statutory timeframes. This was highlighted by statistics regularly published by the National Police Chiefs’ Council¹.

11. The Commissioner wrote to DCP in November 2023 to enquire about more detailed statistics relating to its performance for 2022-23 and quarters 1 and 2 of 2023-24. Communications between the

¹ <https://www.npcc.police.uk/About-Us/governance-and-accountability/foi-and-subject-access-request/>

Commissioner and DCP about its compliance statistics continued, with DCP also providing information for quarters 3 and 4 of 2023-24 and, most recently, quarter 1 of 2024-25. Across the two years 2022-23 and 2023-24, and the first quarter of 2024-25, DCP's percentage of requests responded to within 20 working days was consistently low, ranging from 39% to 65%.

12. Also of notable concern to the Commissioner is DCP's rate of response to internal review requests, which at best across the two years was just 33% in quarter 1 of 2023-24. However all other quarterly totals across the two years were far lower, ranging from 0% to 22%.

13. The statistics provided to the Commissioner also revealed that DCP has a backlog of older requests that it has yet to respond to. The backlog sat at a total of 77 in December 2023, but has concerningly risen to 251 in the following six months to June 2024. Whilst over half of those overdue requests were less than 6 months old from the date of receipt by DCP, four of them were over 12 months old, with the oldest being some 410 calendar days old.

14. In November 2023, the Commissioner carried out a [consensual audit of DCP's FOIA practices](#)². He concluded that there was only a limited assurance that DCP had relevant processes and procedures in place in order for it to satisfy its FOIA obligations. The audit also identified considerable scope for improvement in existing arrangements to negate the risk of non-compliance with the legislation.

15. Some keys areas of concern that were identified in the audit included:

² The audit covered both Devon and Cornwall Police and Dorset Police, as both forces use a shared information management department, however this Notice applies only to Devon and Cornwall Police.

- Ensuring that regular reviews of staffing levels of the Freedom of Information team take place, and are fed back to relevant governance boards, to ensure resources are sufficient.
- Ensuring that all processes for handling request FOIA requests are formally documented in any relevant policies and procedures.
- Ensuring that a quality assurance process is developed to appropriately assess the quality of FOIA responses before they are issued.
- Ensuring that all staff who may be responsible for the handling of FOIA requests, both in the Freedom of Information team and wider departments, are provided with FOIA training suitable to their role.

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. DCP explained that its work to address the recommendations from the November 2023 audit remains ongoing, with new fixed-term staff members due to start to support improvement with the backlog of overdue requests.

18. The Commissioner acknowledges DCP's efforts to address its resourcing issues. However, he considers that DCP's compliance rate over the period for which he has been provided statistics is unacceptable on any level. Therefore, he considers it appropriate to put in place a definitive backstop to assist DCP with ensuring that its backlog figures do not slip any further. He wants to support DCP to take on board the findings from the audit and make the necessary improvements to its request handling and compliance with FOIA.

19. Taking into account the significant volume of unanswered requests, their age profile, and the need for significant and sustained improvement in providing timely response to requests, the Commissioner considers it a proportionate regulatory step to issue an Enforcement Notice to DCP.
20. This Notice requires DCP to comply with section 1(1) of FOIA in respect of each FOIA request, where the response is outside of 20 working days at the date of this Notice, and where a permitted extension of a maximum of a further 20 working days has not been applied. It is essential that the improvements described in **Annex 1** are implemented which compliance with this Notice will support.
21. The Commissioner also considers it a proportionate regulatory step to require DCP to devise and publish an action plan, which details how it will comply with this Notice. This action plan should formalise measures to mitigate delays in responding to the requests it receives, in line with statutory requirements. This action plan should be supported by a 'lessons learned' exercise, which examines the root cause of delays to responding to information requests, from allocation through to clearance and issuing, with mitigations for any recurring problems addressed specifically in the plan.

Other Matters

22. 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 FOIA. Rather they are matters of good practice which are addressed in the Code of Practice issued under section 45 of FOIA.

23. 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 should be required.
24. The Commissioner is satisfied that DCP failed to conform with the Code and recommended best practice in relation to a large proportion of the internal review requests that it received across 2022-23, 2023-34, and Q1 of 2024-25.
25. He recommends that DCP 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 actions DCP 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.
26. The Commissioner considers that DCP may benefit from using his [self-assessment toolkit](#) which is designed to help public authorities assess their current FOIA performance and provide indicators of where efforts should be focused in order to improve. Topic 1 is particularly relevant as it deals with timeliness.
27. In complying with this Notice, the Commissioner reminds DCP that it should continue to ensure that appropriate resources are available so that it meets the requirements of all information rights legislation to which it is subject. This includes handling new information requests under FOIA in a timely manner, and its duties under the Data Protection Act 2018 and UK General Data Protection Regulation, including responding to subject access requests promptly.

Terms of this Notice

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

29. 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, DCP may be dealt with as if it had committed a contempt of court.

Right of Appeal

30. 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.

31. 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

32. 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 Freedom of Information Casework
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

TERMS OF THE ENFORCEMENT NOTICE

THIS NOTICE REQUIRES DCP TO TAKE THE FOLLOWING STEPS BY NO LATER THAN THE DATES SPECIFIED BELOW:

By 12 January 2025, DCP 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, DCP 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 information requests in a timely manner, whilst also clearing its backlog of overdue requests within 6 months as required by this Notice.