

Freedom of Information Act 2000 (Section 48) Practice Recommendation

Date: 8 July 2021

Public Authority: Chief Constable of Sussex Police
Address: Sussex Police Headquarters
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Foreword

1. Following a number of complaints regarding Sussex Police's handling of freedom of information requests, the Information Commissioner has reached the view that Sussex Police's request handling practices do not conform to the section 45 [Freedom of Information Code of Practice](#), issued by the Cabinet Office in July 2018 (the Code).
2. The Commissioner considers that Sussex Police's practices do not conform with the following sections of the Code:
 - Part 2 – Advice and assistance – clarifying requests
 - Part 4 – Time limits for responding to requests
 - Part 5 – Internal reviews
 - Part 10 – Communicating with requesters
3. Therefore, in accordance with section 48(1) of the Freedom of Information Act 2000 (FOIA), the Commissioner has elected to issue this practice recommendation.
4. In the 'Other matters' section of this recommendation, the Commissioner has highlighted matters which do not fall within the scope

of the Code, but which bear, more generally, on Sussex Police's compliance with FOIA. Accordingly, those elements of this recommendation are issued under section 47(2) of FOIA.

Summary

5. The Commissioner is aware that, since August 2019, she has received a disproportionately high number of section 50 freedom of information complaints about Sussex Police for the size of the force. A high proportion of these complaints have resulted in decision notices recording a breach of section 10 of FOIA for non-response to a request.
6. In addition to the high number of timeliness complaints, the Commissioner has seen a pattern of Sussex Police failing to complete internal reviews, both when requested by the complainant and when instructed to do so by the Commissioner on receipt of the associated complaint.
7. Finally, the Commissioner has been concerned with the limited detail contained in responses to requesters, and also in the quality of the responses she has received to her substantive investigation letters.
8. The Commissioner has been proactively engaging with Sussex Police since the summer of 2020, with a view to improving freedom of information practices and monitoring any persistent trends. Despite the support and advice provided by the Commissioner, the situation has not improved sufficiently. She has therefore decided to issue this practice recommendation to formalise her concerns and hold Sussex Police accountable for improving its freedom of information request handling practices and, in turn, increase public confidence and trust in its information rights practices.
9. The Commissioner is mindful that her engagement with Sussex Police has spanned the pandemic period, and she is therefore sensitive to the impact this has had on Sussex Police. It is for this reason that the Commissioner initially sought to deal with these matters informally through regular written and telephone contact with the Head of Information Management, beginning in June 2020. The Commissioner found that her informal engagement with Sussex Police was having a positive impact, and in November and December 2020 the majority of outstanding cases had been dealt with and the number of new complaints had reduced. However, this improvement was not sustained, and in 2021 the Commissioner has again seen increased numbers of complaints about Sussex Police's handling of information requests, late compliance with formal notices, and poor engagement with the

Commissioner's investigations requiring information notices and the intervention of ICO management in casework matters.

10. The Commissioner also wishes to note that her engagement with Sussex Police dates back to August 2019, when the ICO's Insight and Compliance Team sought to engage with Sussex Police on similar concerns. Given that the issues addressed here have been brought to the attention of Sussex Police on multiple occasions since August 2019, she therefore finds that issuing this practice recommendation is both a proportionate and necessary response.

Nature of non-conformity

11. The Commissioner considers that the practices of Sussex Police in relation to the exercise of its functions under FOIA do not conform with parts 2, 4, 5 and 10 of the Code.

Part 2 – advice and assistance

12. Parts 2.6 and 2.8 of the Code highlight that there may be instances where it is necessary to seek clarification of the information requested by a requester.
13. The Commissioner has seen stark evidence of the impact of not clarifying a request in a case where the initial request sought information about a particular policing unit. During the course of the Commissioner's investigation it transpired that there was confusion over which unit the request referred to, and the level of detail the requester was seeking. This lack of clarity has been compounded by what can only be described as excessive delays in this case from the start. Had advice and assistance been provided when the request was received, and the requester's clarification responded to in a timely manner, the Commissioner considers it far less likely that the requester would have found it necessary to complain to the Commissioner.
14. Part 2.10 of the code states that public authorities should provide advice and assistance to help requesters reframe their requests to bring them within the cost limit. In one case, a request was refused on the grounds of costs and Sussex Police provided advice and assistance which meant that the complainant was able to amend his request. However, once that advice and assistance was provided, and the amended request was submitted, Sussex Police failed to respond in a timely manner, only doing so some 10 months later following the Commissioner's intervention.

Part 4 – time limits for responding to requests

15. Section 4.1 of the Code highlights the "clear" requirement that public authorities respond to requests for information promptly, and within 20 working days of receipt in accordance with section 10 of the FOIA.
16. Compliance with the statutory timescales for handling requests is a key priority. Good practice suggests that, when a response is late, or is likely to be late at any stage of the internal processes, it is clear when to escalate, who is responsible for taking action, the action they will take and by when. It is evident from the information available that Sussex Police is not exercising good practice in this area, and therefore is failing to conform with part 10 of the Code.
17. Since 1 August 2019, the Commissioner has received 49 complaints about Sussex Police. The vast majority of these complaints included a section 10 breach as the request had not been responded to within the statutory time limit. 21 of the cases resulted in a section 10 decision notice either requiring Sussex Police to respond to the request or recording that the response or information was provided late.
18. The Commissioner notes that Sussex Police's delays in responding to requests she has considered range from three months to in excess of two years. This is in addition to the fact that in all cases resulting in a section 10 decision notice, the Commissioner first wrote to Sussex Police to bring the request in question to its attention, asking it to respond within 10 working days, which is her standard case-handling practice. Only after that time has elapsed does she serve the section 10 decision notice compelling a response within 35 calendar days.
19. Further compounding the delays, the Commissioner also wishes to record here that, since August 2019, she has referred seven decision notices to her legal team for non-compliance within the specified 35 calendar days. Following engagement with the legal team, the decision notices were complied with and so it was not necessary to begin contempt of court proceedings. However the Commissioner is clear that this is unacceptable in terms of both the lengthy delays suffered by the requesters and the unnecessary costs to the public purse and diversion of resources to enforce compliance with what, in many cases, are simple requests. To demonstrate her concerns about Sussex Police's timeliness, the Commissioner has included some representative case examples below.
20. In one example, having received no response to a request, a complainant asked the Commissioner to intervene. The Commissioner duly wrote to Sussex Police asking it to respond to the request within 10 working days. It failed to do so and it was necessary to issue a decision

notice requiring a response (FS50882472). The complainant subsequently approached the Commissioner to advise that they had still not received a response, albeit the time for compliance with the decision notice had elapsed. This required further intervention from the Commissioner. A response was eventually sent, more than five months after the initial request.

21. In another case, having received no response to their request, a complainant asked the Commissioner to intervene. As is her usual practice, the Commissioner wrote to Sussex Police asking it to respond to the request within 10 working days. It failed to do so and it was necessary to issue a decision notice requiring a response (FS50898331 and IC-40217-W3R9). The complainant subsequently approached the Commissioner to advise that Sussex Police had also failed to comply with the decision notice. This required further intervention from the Commissioner. Again, a response was eventually sent, more than five months after the initial request. The complainant was dissatisfied with that response and requested an internal review. Despite the Commissioner writing to Sussex Police to remind it of its responsibilities to conduct an internal review, it failed to do so. Due to the delays experienced by the complainant in the original request and the internal review response, the Commissioner used her discretion to accept the case for investigation without the internal review. Further delays ensued, with the Commissioner having to issue an information notice formally requiring a response to her enquiries. The Commissioner had to write to Sussex Police advising she would consider legal action as it had failed to respond to the information notice. Sussex Police subsequently wrote to the complainant disclosing the information, and the case was concluded by decision notice 13 months after the request had been made.
22. Section 4.7 of the Code makes clear that when a public interest test extension is required, the public authority must inform requestors which exemption or exemptions it is relying on.
23. The Commissioner received a complaint about Sussex Police taking an unreasonable amount of time to carry out the public interest test (IC-92779-D5S9). On the twentieth day for compliance, Sussex Police extended the deadline to respond to the request, stating that a response would be provided within 10 working days. However, the Commissioner notes that the requestor was not informed which exemption/s Sussex Police was considering. As a response had not been provided to the complainant's request some four months later, the Commissioner issued a decision notice finding a breach of section 17(3) as it had not completed its public interest deliberations in a reasonable time. The

notice compelled Sussex Police to provide the requested information or issue a valid refusal notice.

Part 5 – Internal reviews

24. Sections 5.2, 5.3 and 5.4 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.
25. As FOIA does not set out a timeline for the completion of an internal review, the Commissioner has been unable to find that Sussex Police breached FOIA with respect to its delayed internal reviews. However, the Commissioner notes that, during the time period she is considering here, she has accepted 12 cases for investigation without an internal review. Due to the delays faced by the complainant at each stage of their request and complaint, the Commissioner has used her discretion to accept these cases for a substantive investigation without the applicant being provided with the internal review response which they requested from Sussex Police.
26. For example, in a case where a section 10 decision notice was issued to compel Sussex Police to issue a response to a late request (FS50884608), the complainant subsequently advised the Commissioner that Sussex Police had failed to comply with the decision notice. Due to the Commissioner's regulatory approach during the pandemic, she did not pursue legal action at that time, and Sussex Police eventually responded to the request more than eight months after it was made, refusing it under various exemptions. The complainant went on to request an internal review which was not provided, and again they raised a complaint with the Commissioner. The Commissioner wrote to Sussex Police to remind it of its responsibilities to conduct an internal review. However, as it did not do so within the 20 working days given by the Commissioner, she used her discretion to accept the case without an internal review due to the extensive delays experienced by the complainant. This case is still ongoing and subject to interventions from the Commissioner.
27. The Commissioner is therefore satisfied that Sussex Police has failed to conform with the Code and with recommended best practice in the timely completion of internal reviews, and has recorded this in the 'other matters' section of a number of decision notices.
28. Section 5.8 of the Code sets out that internal reviews should provide "a fair and thorough review" of relevant matters. The internal review process enables complainants to put forward their argument to the public authority as to why the information they request should be

released. The Commissioner is extremely keen to encourage this interaction to enable requests to be resolved without the need for her intervention.

29. In another case, the complainant originally wrote to the Commissioner prior to August 2019 to complain that Sussex Police had failed to respond to their request, despite several emails chasing a response. The Commissioner wrote to Sussex Police and a response was eventually sent, nearly 4 months after the request had been made. The response advised that no information was held and directed the complainant to general online advice about the subject matter; no detailed explanation was offered. Within the time frame of this practice recommendation, the complainant requested an internal review and wrote to the Commissioner again when this did not arrive. It took Sussex Police nearly 5 months to eventually respond to the internal review, again advising that no information is held and providing only a small amount of further rationale.

Part 10 – Communicating with the requester

30. Section 10.2 of the Code states that initial responses to requests for information should contain the following:

- “A statement that the request has been dealt with under the Act;
- Confirmation that the requested information is held or not held by the public authority or a statement neither confirming or denying whether the information is held;
- The process, contact details and timescales for the public authority’s internal review appeals process;
- Information about the applicant’s further right of appeal to the Information Commissioner and contact details for the Information Commissioner’s Office.
- If some or all of the information cannot be disclosed, details setting out why this is the case, including the sections (with subsections) the public authority is relying on if relevant. When explaining the application of named exemptions, however, public authorities are not expected to provide any information which is itself exempt.”

31. The Commissioner has seen evidence of responses which do not include any of the statements or information referred to in part 10.2 of the Code as outlined above. In one particular case, the Commissioner issued a section 10 decision notice compelling Sussex Police to respond to a

request which was already five months old (FS50882472). Sussex Police responded to the request providing hyperlinks to two sets of external guidance without any further wording or explanation. This response did not in any way address one part of the request nor did it explain why the links provided were the only information it held. The response also failed to include any of the information listed in part 10(2) of the Code.

32. Based on this case, and others like it, the Commissioner is satisfied that Sussex Police has failed to conform to part 10(2) of the Code.

Action recommended

33. The Commissioner is aware that Sussex Police is in the process of implementing a number of improvements to its information request handling processes, including hiring additional staff. It has also recently transitioned to a dedicated system to track and monitor its information requests, rather than the manual spreadsheet used previously. The Commissioner has therefore designed the following recommendations to support and enhance Sussex Police's plans to improve its information rights practices, and also to hold it accountable for the changes it has made and is planning to make.

The Recommendations

- a) In relation to part 2 of the Code, The Commissioner recommends that Sussex Police should commit to provide timely advice and assistance in respect of clarifying requests, and refining requests refused due to cost limits. As well as providing advice and assistance, Sussex Police should act on any clarified and refined requests in a timely manner.
- b) In relation to part 4 of the Code, The Commissioner recommends that Sussex Police should ensure that requests for information are responded to in a timely manner. When chased by the Commissioner's Case Officers to issue responses on late requests, Sussex Police should respond to both the complainant and the Commissioner in an appropriate manner and within the timeframe specified.

- c) In relation to part 4 of the Code, the Commissioner recommends that Sussex Police should consider using the Commissioner's FOI self-assessment toolkit to improve its timeliness compliance¹.
- d) In relation to part 4 of the Code, the Commissioner recommends that Sussex Police should notify requestors which exemption or exemptions it is relying on when it decides a public interest test extension is required.
- e) In relation to part 4 of the Code, and in accordance with part 8.5 of the Code, the Commissioner recommends that Sussex Police should publish its information access request statistics and make these easily accessible on its website. The statistics should include the number of information access requests that have not been processed and the number of completed requests where the processing took longer than 20 working days.
- f) In relation to part 5 of the Code, the Commissioner recommends that Sussex Police should ensure that internal review requests are responded to in a timely manner, and that internal review responses provide a fair and thorough review of the handling of each request.
- g) In accordance with part 10.2 of the code, Sussex Police should ensure that it responds fully to each request and that it provides the details and information required by section 17 of FOIA.

Other matters

34. Some of the Commissioner's wider concerns will be addressed in this section of her recommendation as they do not fall within the scope of the Code.

Engagement with the Commissioner's staff

35. In the majority of substantive investigation cases, Sussex Police has made inadequate submissions to the Commissioner's Case Officers during the course of their investigations. For example in case IC-46035-
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¹ <https://ico.org.uk/for-organisations/foi-self-assessment-toolkit/>

P5N6, the Commissioner commented that she was “*concerned by, and disappointed with, the lack of detail in Sussex Police’s submission*”. Ultimately, the Commissioner found that section 12 of the FOIA was not engaged by virtue of the very poor arguments provided by Sussex Police.

36. The Commissioner also wishes to record her concerns about the number of information notices served on Sussex Police during the period August 2019 to date. Information notices are published on the ICO website following the conclusion of the substantive investigation on which they were served. To date, three information notices against Sussex Police have been published but, for the purposes of this practice recommendation, the Commissioner notes that there are further information notices which have been issued but not yet published as the relevant investigations are yet to be concluded. The Commissioner would also like to raise the issue that four information notices have been responded to late, outside the time for compliance set out in the notices, and it was necessary for the Commissioner to refer these to her legal department for intervention. However, she must be clear that these have now been complied with and it was not necessary to commence contempt of court proceedings.
37. On the matter of information notices, of particular concern is the fact that in one case, it was necessary to serve two information notices as the response to the first contained insufficient information to allow the case to be progressed. The Commissioner notes that both of these notices were responded to outside the time for compliance. The way in which this, and a related case, have been handled by Sussex Police is a cause for concern, particularly in light of the amount of support and direct engagement the Commissioner has had on these cases, and is a major consideration for issuing this practice recommendation.
38. The delays in engagement with the Commissioner’s staff leading to very lengthy cases, combined with the late compliance with both the Commissioner’s deadlines in her investigations and legal notices is draining on both the Commissioner’s and Sussex Police’s resources. The Commissioner, mindful of the public purse, wishes to point out that timely responses to requests, and timely and meaningful engagement with the Commissioner’s investigations would reduce the impact these processes are having on public funds.

Failure to comply

- 39. A practice recommendation cannot be directly enforced by the Commissioner. However, failure to comply with a practice recommendation may lead to a failure to comply with FOIA, which in turn may result in the issuing of an enforcement notice. Further, a failure to take account of a practice recommendation may lead in some circumstances to an adverse comment in a report to Parliament by the Commissioner under section 49 of FOIA.
- 40. The Commissioner will monitor Sussex Police’s compliance and progress against these recommendations through her casework for a period of at least six months.
- 41. The Commissioner will have regard to this practice recommendation in her handling of subsequent cases involving Sussex Police.

Signed

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