

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 January 2021

Public Authority: Chief Constable of Sussex Police
Address: Sussex Police Headquarters
Malling House
Church Lane
Lewes
East Sussex
BN7 2DZ

Decision (including any steps ordered)

1. The complainant requested information from Sussex Police relating to particular claims it had made, and subsequently retracted, of crowd disorder at a football match between Brighton & Hove Albion and Crystal Palace in November 2017. Sussex Police refused to comply with the request on the grounds that it was vexatious within the meaning of section 14(1) of the FOIA.
2. The Commissioner's decision is that Sussex Police was entitled to rely on section 14(1) of the FOIA to refuse the request.
3. The Commissioner requires no steps as a result of this decision.

Background

4. On 28 November 2017 Brighton & Hove Albion played against Crystal Palace Football Club at the Amex Stadium in Brighton.
5. On 29 November 2017, Sussex Police issued a press release about the match which referred to fans with weapons. A senior officer also

'tweeted' from his official Sussex Police Twitter account, referencing fans with weapons. These claims were widely published in the media.

6. Subsequently, on 7 December 2017, Sussex Police issued a press release in which it retracted these claims (accepting them as incorrect), and it issued an apology. It issued a further public clarification and apology on 8 December 2017.
7. Sussex Police's policing of the match and its subsequent comments about fans, were subject to a referral to the Independent Office of Police Conduct (IOPC), which oversees the police complaints system in England and Wales¹. The first referral was made by Sussex Police on 16 April 2018; the IOPC determined that the referral was invalid due to the complaint being made by the Crystal Palace Supporters Trust and not a member of the public.
8. Eligible complainants were subsequently identified and on 6 July 2018 the complaint was re-referred to the IOPC. The IOPC determined that the matter was suitable for Local Investigation by Sussex Police's Professional Standards Department (PSD).
9. Sussex Police's PSD conducted a Local Investigation and published an investigation report², detailing 33 complaints against it and its findings in respect of each one. Allegations 29-33 dealt with the specific issue of Sussex Police's public comments about crowd disorder. The investigation found that Sussex Police's initial public statements about fans having weapons were "*not a true and accurate reflection of events*". As a result of the investigation, the Match Commander and an officer who recorded the claim that weapons had been recovered were made the subject of Management Action to address identified deficiencies. A number of wider learning recommendations were also implemented, including changes to protocols with Brighton & Hove Albion regarding media releases.

¹ <https://www.policeconduct.gov.uk/who-we-are>

² <http://palacetrust.org.uk/wp-content/uploads/2019/06/Sussex-Police-Complaint-Final-Investigation-Report.pdf>

The complainant's previous requests to Sussex Police

10. The complainant told the Commissioner that he initially submitted two requests for information about the incident on 10 and 11 December 2017 (FOI/1300/17 and FOI/1314/17), asking for details of Sussex Police's handling of events on the night of the match.

"SP [Sussex Police] twice extended [sic] deadline for reply to 12 February 2018. They did not respond.

I complained to ICO. ICO wrote to SP on 10 May 2018 asking that they respond within 20 working days.

They sent me a formal reply refusing to disclose the requested information on 13 June 2018.

I sent a request for internal review on 3 July 2018. They did not reply.

On 7 September 2018 the Commissioner wrote to SP recommending that they reply within 10 working days. They did not do so.

On 13 March 2019, SP supplied what purported to be some of the information requested in FOI/1300/17 but refused to disclose other information sought in that request and all of the information sought in FOI/1314/17.

I had concerns about the information supplied by SP in response to FOI/1300/17. I asked SP for clarification in response to these concerns.

Because of doubts that SP would voluntarily address these concerns I then decided to put this request in the form of another FOI request [FOI/971/19] which SP could not legally ignore. (This is the present request.)"

11. The complainant also submitted a request on 3 December 2018 (FOI/1363/18) for information about referrals to the IOPC concerning the incident. He said that Sussex Police's refusal notice of 13 June 2018 had cited the referral to the IOPC as a factor in its refusal. He says this request was never responded to.
12. The complainant submitted another request on 11 December 2018 (FOI/1393/18) for information about Sussex Police's performance in handling FOIA requests. Following the Commissioner's intervention, Sussex Police responded on 28 November 2019. He challenged that response and subsequently received further information from Sussex Police on 3 December 2019.

Request and response

13. On 15 March 2019, the complainant wrote to Sussex Police and submitted a multipart request for information (FOI/971/19) which is reproduced in the Annex at the end of this decision notice. The request concerned claims made by Sussex Police that fans had brought weapons to a football match between Brighton & Hove Albion and Crystal Palace, and Sussex Police's engagement with the media about those claims.
14. Sussex Police initially refused to comply with the request on the grounds that compliance with it would exceed the cost limit established under section 12(1) of the FOIA. On 6 November 2019, the complainant confirmed that several parts of the request could be disregarded, as he now had the information in question, and he asked Sussex Police to consider the remainder of request on that basis. Sussex Police maintained that section 12(1) remained engaged and it refused the revised request.
15. The Commissioner considered the refusal in decision notice IC-46035-P5N6³. She found that Sussex Police had failed to demonstrate that section 12(1) of the FOIA was engaged in respect of the revised request and she ordered Sussex Police to issue a fresh response to it.
16. Sussex Police issued a fresh response to the request on 20 October 2020. It refused to comply with it on the grounds that it was vexatious within the meaning of section 14(1) of the FOIA.

Scope of the case

17. The complainant contacted the Commissioner on 21 October 2020 to complain about the way his revised request for information had been handled. He disagreed with Sussex Police's decision to apply section 14(1) to refuse to comply with it.
18. In view of the particular background to the request, the Commissioner exercised her discretion and did not require the complainant to ask Sussex Police to conduct an internal review of its decision to refuse the

³ <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2618150/ic-46035-p5n6.pdf>

revised request under section 14(1) before accepting the complaint for investigation.

Effective date of request

19. The request was initially submitted to Sussex Police on 15 March 2019, under reference FOI/971/19. Sussex Police refused to comply with it, on the grounds that section 12(1) of the FOIA applied. The complainant subsequently revised the request, advising Sussex Police that certain questions should be removed from the request's scope, as he now had that information. He asked Sussex Police to consider the refined version of the request on 6 November 2019.
20. The Commissioner's guidance on requests which engage the costs limit states that where a requester subsequently refines their request, the request becomes a new request and the statutory time for compliance commences on the date it is received⁴. It therefore follows that the effective date for the request under consideration in this decision notice is 6 November 2019.
21. The analysis below therefore considers whether Sussex Police was entitled to rely on section 14(1) of the FOIA to refuse to comply with the request as it stood at 6 November 2019. That is:
 - parts (1), (2), (3), (5), (6) and (7)(ix) of the request which was originally submitted on 15 March 2019.

Reasons for decision

Section 14(1) – vexatious requests

22. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
 23. However, section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
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⁴ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf paragraph 64

24. The term vexatious is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*⁵. The Tribunal commented that 'vexatious' could be defined as being the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
25. *Dransfield* also considered four broad issues:
- (1) the burden imposed by the request (on the public authority and its staff);
 - (2) the motive of the requester;
 - (3) the value or serious purpose of the request; and
 - (4) harassment or distress of, and to, staff.
26. It explained that these considerations were not meant to be exhaustive and also explained the importance of:
- "...adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests."* (paragraph 45).
27. The Commissioner has published guidance on dealing with vexatious requests⁶ which includes a number of indicators that may signify that a request is vexatious. In brief, these consist of, in no particular order: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; and frivolous

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<https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

⁶ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-withvexatious-requests.pdf>

requests. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious.

28. In the Commissioner's view, section 14(1) of the FOIA is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority?

29. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains:

"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies".

30. However, the Commissioner would stress that, in every case, it must be the request itself that is shown to be vexatious and not the person making it.

31. Sussex Police argued that while the request may not be considered vexatious in isolation, it was a continuation of a pattern of behaviour and part of an ongoing campaign to pressure Sussex Police to provide answers on a matter for which it had long since accepted full responsibility and taken action to address. It said it had received six detailed requests for information from the complainant since December 2017, which related in some way to the matter. Experience suggested that compliance with the request would likely lead to further correspondence, requests and complaints about the matter from the complainant. Given the request's wider context and history, Sussex Police considered the request was *"harassing, likely to impose a significant burden, and obsessive"*.

32. Sussex Police commented:

"It is clear that these applications for information are part of a relentless challenge to Sussex Police which has gone on for many years, at great expense and disruption to the force, some distress to its limited number staff [sic] processing FOI requests, with negligible tangible results and little prospect of ever attaining them. It is simply

pointless and a waste. It is manifestly unreasonable for an applicant to use information legislation in this way where disclosures have been made and apologies issued."

33. Explaining his motive for making the request, the complainant told the Commissioner that he was alarmed by the initial media reports of crowd violence at the match and then by Sussex Police's retraction of its claims in that regard. He wished to know how Sussex Police had come to make public statements which it subsequently accepted were inaccurate, and which he considered inflammatory and capable of causing reputational damage. He explained:

"I considered that the apologies given on 7 and 8 December 2017 were cursory in the extreme and made no attempt to give a proper explanation of what had happened. I thought that it was incumbent on SP to make a sincere apology and to give a full and frank admission about what had gone wrong and why. I believed that was the only way they could hope to regain the trust and confidence that had been lost. I believed modern police forces should be transparent in their dealings with the public and be accountable to them. Therefore, I believed that it was in the public interest for SP to reveal full details of events in a way that promoted accountability and transparency. My motive in making my request under FOI/1300/17 was to obtain information that shed light on how these statements came to be made, what checks had been made and why it had taken so long for the record to be corrected.

It appeared to me that the fact that SP had now admitted that some of the claims made in its statement were untrue, raised questions about the credibility of its narrative about events on the night. I felt it was important that SP should disclose further information about how they had handled the events on the night in order to form a view as to whether their actions could have been a contributory factor in the disorder that had occurred. I wondered if the late arrival of the contained group could have been in part responsible for the events leading to large numbers of fans being locked out of the ground. If SP's actions had been a contributory factor, that might have been an additional reason for them to issue an early statement to justify their actions in view of press interest. Pressure to justify their handling of events might also be a possible explanation for the complete volte-face from their previous statement. I considered that there was a genuine public interest in establishing the facts about what had actually happened on the night".

34. On the suggestion that his requests (and the way he pursued them) caused distress to staff (for which Sussex Police offered the Commissioner no evidence), the complainant accepted that he had

expressed dissatisfaction about Sussex Police's handling of his requests but said he had always been courteous in his conduct with individual staff in the face of persistent and unacceptable delays.

Would complying with the request impose a significant and disproportionate burden on Sussex Police?

35. Sussex Police said that it had tried to accommodate the complainant's requests about the match but that "*The excessive length and repetitious nature of his initial requests and subsequent follow-up emails have become obsessive*". It said the requests and follow-up replies were long, detailed and overlapping, in the sense that he persistently wrote on the same matters. It said the burden of dealing with the request would involve a significant distraction from its core functions. It believed the balance of the public interest in openness was outweighed by the resources that would be necessary to deal with his request. It also suggested that, in making the request, he was acting in concert with a third party, although it offered no evidence to support this claim.
36. When responding regarding IC-46035-P5N6, Sussex Police had provided the Commissioner with the following information about the estimated costs to it of complying with the request⁷:

"In assessing our ability to locate all the information requested within cost I have considered the following in relation to time required for the following;

- a) Determining if the information is held (and by whom and if a duplicated request).*

Search of electronic log of radio traffic recorded during match 4 x hours = £100

- b) Locating the information. (individual email accounts including retired officers)*

Search of Officers and Press Office email accounts, gaining access to retired Officers records 6 x hours + £150

- c) Retrieving the information.*

⁷ The Commissioner did not consider this sufficient evidence, on its own, of the engagement of section 12(1) of the FOIA, but she is able to take it into account, with other information, when considering the question of burden under section 14(1).

Establishing by search of telephony system (Telephone calls are not recorded) x 3 hours = £75

d) Extracting the information from previous disclosures and press releases all previously disclosed to [the complainant].

Search of 5 x FOI requests from [the complainant], 2 x request from [third party's name redacted] and 3 x similar requests on subject of the football match. 7 x hours = £175".

37. Noting that this request was the only one he had submitted throughout 2019 and 2020, the complainant argued that any burden incurred was of Sussex Police's own making, fuelled by its failure to deal with earlier requests in a timely and comprehensive fashion. He further commented:

"The burdens on them in dealing with these requests are entirely of their own making. Indeed, had they made a sincere apology and given a proper explanation in their apology, my first requests would never have been made."

38. As regards Sussex Police's claim that he had submitted frequent and overlapping requests, he said that only two requests could conceivably be said to relate to the same issue as a previous request, one of which he believed Sussex Police had never actually provided a response to.
39. The complainant vigorously denied the suggestion by Sussex Police that he had been acting in concert with a third party, when making his 2017 request. He said he only became aware of the third party through extensive coverage that the third party's requests received in the media. He said that his request was made wholly independently of the third party and that it was not until June 2018 that the two communicated with each other, regarding the progress of their requests.

Does the request demonstrate unreasonable persistence, intransigence or was it futile?

40. Citing the Tribunal's comments in *Betts vs ICO (EA/2007/0109)* Sussex Police argued that its handling of the match had been the subject of considerable public scrutiny. It had quickly withdrawn its allegations about crowd disorder, apologised for them, and it had investigated its actions in an IOPC-sanctioned investigation. It had taken responsibility for what it had done and taken steps to try to prevent any repetition. It considered that the complainant nevertheless refused to let the matter drop and continued to doggedly pursue enquiries on the matter. In view of disclosures made by Sussex Police, explanations as to its practices and apologies for public statements it made regarding the football match, it considered this unreasonable and indicative that the request was obsessive.

41. The complainant admitted that he had been persistent, but argued that this has been necessary due to what he considered was Sussex Police's inadequate responses to previous requests: *"SP complain that I have made 6 requests over the last 34 months. However, as I have explained previously, none of the subsequent requests would ever have been made if Sussex Police had paid the slightest heed to their legal obligations under the Act and the Code of Practice. I do not see how they can rely on their own failures to fulfil their obligations to refuse now information which was only requested because of their failure to give proper answers to the questions I asked in December 2017"*.
42. The complainant did not agree that the request was futile, as he disputed that there had been an independent investigation by the IOPC. He said that the report produced by Sussex Police's PSD did not cover the issues he had concerns about:

"...there is no mention of the false claim made to the Independent 8 days after the match or any investigation about why it took so long to correct the record or whether SP made any attempt to recover the alleged weapons."

The Commissioner's conclusion

43. In the Commissioner's view, section 14(1) of the FOIA is designed to protect public authorities by allowing them to refuse requests which have the potential to impose a disproportionate or unjustified level of burden, disruption, irritation or distress. Balancing the impact of a request against its purpose and value can help to determine whether the effect on the public authority would be disproportionate.

Was the request vexatious?

44. The Commissioner has considered both the complainant's position and Sussex Police's arguments regarding the information request in this case. In reaching a decision she has balanced the purpose and value of the request against the detrimental effect on Sussex Police of responding to the request.
45. The request in this case, even though it had been revised, was still for quite detailed information on Sussex Police's handling of claims that fans brought weapons to a particular match, a claim that was retracted by Sussex Police around a week after it was first made.
46. Regarding the first issue considered in *Dransfield*, as to whether or not the request was burdensome, Sussex Police has argued that a large amount of information would have to be consulted to locate any information falling within scope of the request, and that there would be a cost to it of doing so.

47. The request (as it was revised on 6 November 2019) comprises 16 questions, several of which themselves contain multiple parts. Only one is a straightforward request for documents (being for press briefings and lines-to-take) as opposed to information. The Commissioner considers that to comply with the request, quite a wide range of information would need to be consulted and the relevant information, if held, collated and presented in a form which would be intelligible (ie it is likely that some contextual narrative would need to be provided to respond intelligibly to some questions). Sussex Police has previously provided a cost estimate, and while the Commissioner did not consider it sufficiently detailed for the purposes of accepting that section 12(1) of the FOIA was engaged, she nevertheless accepts that Sussex Police would be required to expend significant resources to comply with the request, and that this would inevitably have the effect of taking resources away from other FOIA service users. The question is, therefore, whether, in all the circumstances of the case, it is reasonable and proportionate that it do this.
48. The complainant has expressed frustration that engagement with this, and other requests he has submitted to Sussex Police, has taken so long, and required the intervention of the Commissioner. He feels that the issues Sussex Police has identified with regard to burden are of its own making, in that its failure to respond satisfactorily to previous requests and questions he raised necessitated the making of this request. He said when making the revised request of 6 November 2019 that the sole reason for the request was his dissatisfaction with the response to earlier requests.
49. The Commissioner has some sympathy with the complainant's frustration about the poor engagement displayed by Sussex Police with regard to his requests. She notes that there has been a pattern of it failing to respond within required timescales, including those specified in previous decision notices.
50. While Sussex Police has referred to having provided the requested information to the complainant in response to his previous requests, the Commissioner is satisfied that he has shown that some requests have not been answered fully.
51. However, the Commissioner considers that the appropriate route to resolve any concerns the complainant had about Sussex Police's failure to properly comply with individual requests was by making a complaint to her under section 50 of the FOIA, rather than by making additional requests for information.
52. The Commissioner has then looked to the second element identified in *Dransfield*: the motive of the requester.

53. Having read the complainant's detailed submissions to her, the Commissioner is satisfied that his interest in the matter appears to be genuinely held. She has seen no evidence that he is simply using the request as a vehicle to pursue a wider grievance against the force. She also does not see any evidence that the request was made merely with the intention of monopolising Sussex Police's resources or causing irritation or distress.
54. With regard to Sussex Police's claim that the complainant was acting in concert with a third party when making the request, the Commissioner assumes Sussex Police reached this view because the complainant demonstrated knowledge of the particular details of requests submitted by the third party. The complainant has explained how he became aware of the other requests and admitted that he and the third party were subsequently in contact to compare the handling of their requests. She finds his explanation credible and reasonable. Sussex Police has offered no evidence to her that he was acting in concert with the third party when making the request, beyond stating that is its belief. She has therefore not accorded any weight to this point.
55. Turning to the third issue identified in *Dransfield*, the purpose and value of the request, the Commissioner looked at its wider context and background. In particular, she has considered Sussex Police's claim that it is obsessive.
56. When considering whether a request may be regarded as obsessive, relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered, all of which are present in this case.
57. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances?
58. The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.

59. In this case, the revised request of 6 November 2019 was made some months after Sussex Police PSD published the investigation report into the matter (which was on or before 19 July 2019⁸). The complainant commented in his revised request that: "*Since I made this request much of the information requested has become available in the SP PSD Complaint report.*" He was therefore aware of its findings when making the revised request.
60. The complainant disputes that the PSD Local Investigation had the status of an IOPC investigation, however, the fact remains that it was conducted as a result of a complaint to the IOPC and it followed established procedures.
61. While the investigation report contains a detailed assessment of the chain of events surrounding Sussex Police's public comments about fan behaviour, the questions in the request suggest the complainant is seeking to conduct his own investigation on the incident and to continue to press Sussex Police for answers about a matter for which it quickly admitted its error and publicly apologised. The matter was subsequently the subject of a comprehensive investigation sanctioned by the IOPC, the results of which have been made public. The deficiencies it identified were addressed with the officers involved and changes were made to Sussex Police's media protocols. The complainants would have had the right of appeal to the IOPC if they remained dissatisfied by the findings. Having checked the IOPC's list of investigated complaints, the Commissioner has found no evidence that they did so.
62. It is difficult to see what more Sussex Police could do in terms of acknowledging its liability over the matter, leading the Commissioner to conclude that there would be limited public interest in resources being expended in pursuit of further disclosures being made. Seen in this context, the Commissioner considers that the request could reasonably be described as obsessive.
63. The complainant would presumably argue that there is a public interest in Sussex Police being required to process requests for information in compliance with the requirements of the FOIA, and the Commissioner would agree with that. However, as explained above, section 14(1) of the FOIA exists to protect public authorities by allowing them to refuse

⁸ <https://thefsa.org.uk/news/sussex-police-lessons-learned-over-brighton-palace-policing/>

any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.

64. The Commissioner is satisfied that Sussex Police's actions have been subject to public scrutiny by virtue of the Local Investigation the IOPC instructed it to conduct. The complainants who initiated that investigation do not appear to have appealed the findings and are, therefore, presumably satisfied with the explanation and outcome in respect of the investigation. A significant amount of information about the events surrounding the public statements made by Sussex Police is already available in the public domain to satisfy the public interest, two individuals have been identified as requiring Management Action and changes have been made to media protocols.
65. The complainant appears to be seeking to reopen matters, which he did not personally complain about, that have been fully investigated and explanations provided. He is seeking opinions and further reasoning in respect of an incident which has been fully investigated and is now considered to be closed.
66. The Commissioner acknowledges that there have been deficiencies in Sussex Police's engagement with the request. However, taking into consideration the Upper Tribunal's comments on the importance of *"...adopting a holistic and broad approach to the determination of whether a request is vexatious"*, the Commissioner's decision is that Sussex Police was entitled to consider this request vexatious and that it was entitled to refuse to comply with it by virtue of section 14(1) of the FOIA.

Other matters

General engagement

67. The Commissioner commented in IC-46035-P5N6 that Sussex Police was slow to respond to her casework enquiries. She was disappointed to experience similarly poor engagement from it with her investigation of this case.
68. The Commissioner acknowledges that the COVID-19 pandemic has reduced the capacity of some public authorities to respond to FOIA complaints in a timely fashion. However, this was the latest in a series of delays that characterised Sussex Police's handling of this request, and which pre-date the particular problems caused by the pandemic.
69. Sussex Police's attention is drawn to the fact that the Commissioner uses intelligence gathered from individual cases to inform her insight

and compliance function. This aligns with the goal in her draft "Openness by design"⁹ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her "Regulatory Action Policy"¹⁰.

70. This case may be revisited with Sussex Police should its handling of other FOIA requests suggest there is an ongoing problem with timeliness and engagement.

⁹ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

¹⁰ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

71. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

72. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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

Signed

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex – complainant's FOIA request to Sussex Police

1. Parts (Q4) and (Q7)(i)-(viii) of the original request of 15 March 2019 were excluded from scope by the complainant's refined request of 6 November 2019 and they have not been considered for the purposes of determining whether section 14(1) applies. However, for completeness they are included below.
2. For ease of reference, the points of the request under consideration in this notice are shown in bold.

"I should be grateful if you could kindly provide the following information:

Q1 Can you please confirm whether a Sussex Police spokesperson told an Independent journalist on or about 5 December 2017 that weapons had been recovered at the scene and were being held as evidence? Can you also confirm that a request for proof of this claim was denied? If such proof was denied, please can you explain why?

*Q2 [name redacted] was reported as saying on 8 December 2017 that Sussex Police had apologised to a journalist because "an error was made in relation to responding to [his] enquiry about this." **Did that apology relate to the information given to The Independent at Q1?***

Q3 If that apology did not relate to that conversation, please tell me:

(i) what newspaper or other organisation did that journalist represent;

(ii) what "error" was made in responding to his enquiry;

(iii) what erroneous information was given to him; and

(iv) what was the true position

Q4 In your letter of 13 March under ref FOI/1300/17 you have disclosed that

(i) Sussex Police received one report of "weapons" being found at the match between BHA FC and CPFC on 28 November 2017;

(ii) this one report was in the form of an electronic log of radio traffic; and

(iii) the log recorded the source of the report.

Please advise me whether the source of the report was a police officer, a club official, a club steward, member of the public or any other description of person. In which case, please specify.

Q5 In my FOI request dated 10 December 2017 under your ref FOI/1300/17 I referred to the fact that Sussex Police had issued an apology on the afternoon of 7 December 2017 in respect of its claim that knives and knuckledusters had been found in the away end of the Amex Stadium at the match held on 28 November 2017. I said this apology had been issued "following an FOI request for evidence of the existence of weapons".

In that request I asked "At what time was the above FOI request received by Sussex Police and at what time was the Sussex Police "apology" issued? "

The only FOI request I had mentioned previously was the one I referred to above. The FOI request in question was FOI/1294/17 which was sent by email to Sussex Police at 1323 hours on 7 December 2017.

In your reply this question you said "FOI Request received 16.42hrs 10/12/2017. The 'apology' was prepared for release at 16.44hrs on 07/12/2017."

*It appears to me that your reply may refer to a different FOI request. **Please confirm at what time and on what date Sussex Police received the FOI request under your reference FOI/1294/17.***

Q6 In the FOI request under FOI/1300/17 I asked:

"Q11 Given that Sussex Police had stated publicly that offensive weapons had been found in the south stand what attempts were made by Sussex Police to recover those weapons in the week following the match?

You replied: "It was acknowledged that there were no weapons found."

With respect this does not appear to answer the question. I asked about attempts to recover the alleged weapons, not about whether they were found.

I am aware that in the afternoon of 7 December 2017 Sussex Police issued a statement saying:

"The reference to weapons being found discarded at the stadium following the Brighton v Crystal Palace match on November 28

was based on information logged by our officers on the night and done so in good faith.

Subsequently, it has been established that no such items were physically recovered at the stadium or in the city."

Nonetheless, it was reported by The Independent on 7 December that a Sussex Police spokesperson had told them on 5 December that weapons had been recovered and were being held as evidence. It is a fact that CI (now Supt) [name redacted], the Match Commander, tweeted from his corporate account on 7 December 2017 that BHAFC staff "had found those items (i.e. knives and knuckledusters) in the away end of the stadium."

In response to another question you said that it was normal practice for any offensive weapons found by a football club's officials or stewards, to be immediately handed to the police. In this case Sussex Police apparently believed that offensive weapons had been found in the stadium and [name redacted], the Match Commander, apparently continued to believe that BHAFC staff had found such weapons 10 days after the match. My question did not ask whether any weapons were recovered. We now know that none were. My question is about what efforts were made to recover them if Sussex Police continued to believe as late as 10 days after the match that they had been found in the stadium.

I should be grateful if you could now provide the following information:

(i) were any efforts made by Sussex Police to recover offensive weapons of any description, but to include in particular knives and knuckledusters, which it claimed had been found in the away end of the Amex Stadium on 28 November 2017, between 28 November 2017 and 9 December 2017?

(ii) if no such attempts were made, why were no attempts made given that that you have said that it is normal practice for offensive weapons found by a football club's officials or stewards, to be handed to the police and immediately?

(iii) if any such attempts were made, how many such attempts were made and when were they made?

(iv) what were the outcomes of any such attempts?

(v) if there were any such attempts when was the final attempt made?

(vi) what reports, if any were made of the failure to recover such weapons and when were they made and to whom?

Q7 In your letter dated 13 March 2018 [sic] in which you purported to disclose some of the information sought in my FOI request under your reference, you said that following:

"Q4 If no such weapons had held by police at any time, on the basis of what evidence did the Sussex Police spokesman allege that they were being held given that 5 days had elapsed since the weapons were allegedly found?"

No physical evidence but acted upon initial verbal report."

In your reply you appear to be saying that the press spokesperson who reportedly alleged that weapons had been recovered at the scene by Sussex Police and were being held by Sussex Police, had relied on the initial verbal report to make that claim. This would suggest that the initial verbal report which the press officer relied upon, had reported that knives and knuckledusters or any other offensive weapons had been recovered by police at the scene and were being held by police as evidence. Clearly, if the verbal report did not record that such weapons had been recovered by police and were being held as evidence, then the report could not justify the press officer's claim.

You have told me that one report in the form of an electronic log of radio traffic recorded that weapons had been seen or found Please provide the following information:

(i) did the log record that offensive weapons had been found and recovered?

(ii) If so did the log record that they had been found and recovered either by:

(a) a Sussex Police officer or officers ;

(b) a police officer or officers from another force;

(c) a member of staff employed by BHA FC or a steward employed by BHAFc or CPFC or a subcontractor of either club. If yes, please specify;

(d) or any other person, such as a member of the public, (please specify;)

(iii) if the log did not record that any offensive weapon had been found and recovered, did the log record that such a weapon had been sighted?

(iv) if so, did the log record that such a weapon had been sighted by:

(a) a Sussex Police officer or officers ;

(b) a police officer or officers from another force;

(c) a member of staff employed by BHA FC or a steward employed by BHAFc or CPFC or a subcontractor of either club. If yes, please specify;

(d) or any other person, such as a member of the public, (please specify;)

(e) did the log record the number of persons who had sighted such weapons?

(f) If so, what was the number of such persons?

(v) did the log record that any weapons recovered by police were being held as evidence?

(vi) was there any other evidence that such weapons had been recovered by police?

(vii) was there any other evidence that such weapons were being held as evidence?

(vii) [sic] if the log did not record that such weapons and been recovered and did not record that they were being held as evidence on what evidence did the Sussex Police spokesperson rely when saying on or around 5 December 2017 that weapons had been recovered and were being held as evidence?

In the light of the confusion about this matter please therefore supply me also with:

(viii) a written transcript of the electronic log of radio traffic reporting the existence of offensive weapons referred to in your answers to Q4, Q7 and Q8 of FOI/1300/17;

(ix) a copy of the all the [sic] briefing including "lines to take" given to Press Office or other officers or staff from 28 November to 9 December 2017 inclusive to be used in response to enquiries from the press or others about the presence of offensive weapons on the occasion of the match."