

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 December 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 has requested information about criminal investigations conducted by Sussex Police which involved civil claims being lodged against the force. Sussex Police disclosed some information, but it said that to provide information about the nature of the criminal investigations involved would exceed the appropriate cost limit at section 12 of the FOIA, because of the way the information was held.
2. The Commissioner's decision is that Sussex Police was entitled to rely on section 12 to refuse the request. However, he found that in failing to provide advice and assistance on how the complainant might refine his request, Sussex Police breached section 16 of the FOIA.
3. The Commissioner requires no steps as a result of this decision.

Background

4. Prior to making the request which is the subject of this decision notice, on 10 July 2020, the complainant requested the following information from Sussex Police:

"B). Please supply brief details of any litigation against Sussex Police in the period 2016 - 2020 and without seeking any personal details,

what were the reasons for the litigation in each case, what was the outcome if they went to court and which cases were settled out of court?"

5. In response, Sussex Police had disclosed a spreadsheet outlining court actions initiated against it since 2016. The spreadsheet included the reasons for litigation, but did not state the nature of the police investigation that each claim related to (ie the criminal offence being investigated by the police when the incident giving rise to a civil claim against them occurred).

Request and response

6. On 3 December 2020, the complainant wrote to Sussex Police and, referring to the spreadsheet he had received in response to the previous request, he asked Sussex Police to supply further information on particular entries:

*"Please see the revised excel sheet attached - I have gone through the cases from 2017-2020 which are relevant to my enquiry and have deleted everything else. The figures for 2016 are not relevant as the revised operational procedures were not in place until early 2017. This is a repeat of the request that I sent to [Sussex Police employee], he told me that [Office of the Sussex Police and Crime Commissioner (OSPCC) employee] would send this data, however the excel sheet he sent me had the same limitations. My question in relation to the revised excel sheet was - **Please can you tell me the nature of the crimes being investigated and how much was paid in settlement** (some cases were settle [sic] before proceedings were issued, some afterwards, either way this information should be readily available on file), **in relation to the following case numbers -***

2017 - 1, 14, 17, 34, 54, 62, 81, 102, 106, 125, 203, 204, 211, 228, 235, 237, 243.

2018 - 11, 48, 72, 74, 94, 98, 109, 110, 113, 125, 127, 141, 147, 154, 156, 166, 194, 224, 231.

2019 - 26, 29, 35, 52, 78, 86, 93, 106, 109, 110, 115, 127, 128, 129, 130, 146, 147, 152, 158, 166, 169, 170, 171, 172, 174, 175, 184, 185, 186, 189, 190, 194, 195, 200, 204, 213, 216, 227, 228, 229, 231, 242, 251, 253, 260, 267, 270, 280.

2020 - 5, 10, 15, 16, 28, 29, 55, 65, 68, 74, 93, 101, 114, 121, 144, 147.

It must be logged what kind offences the accused were being investigated for, when the incidents which caused these claims to be initiated took place - Sussex Police must keep track of this to identify any recurring problems and it is this information I wish to see. I have gone through these sheets myself and done a great deal of the manual research to ensure that the remaining information required should not take too long and would be well within the statutory period and budget allowed for manual FOI searches.

7. Sussex Police responded to the request on 6 January 2021. It disclosed an amended version of the spreadsheet that it had previously disclosed. For each case number identified by the complainant, it provided the amount paid out in respect of any civil claims made against it. However, it did not include any details of the criminal offence being investigated by Sussex Police when the incident giving rise to each claim occurred.
8. The complainant wrote to Sussex Police on 6 January 2021, expressing dissatisfaction that he had not been provided with this information. He said:

"This specific FOI request, which has also been made over a number of months, has again been completely ignored. [OSPCC staff member] told me that he didn't have the information as to which alleged crimes were being investigated, however Sussex Police obviously must have this. I am disappointed and concerned that the OSPCC do not have this information as it seems an obvious question to ask, in view of the fact that several people have approached [OSPCC] for help in dealing with their complaints against Sussex Police, many of which have led to legal action. It is the clearest way to establish a pattern of behaviour, so it concerns me that this information has still not been released to me".

9. Sussex Police carried out an internal review and it responded on 6 February 2021, referring the complainant to columns C and G of the spreadsheet, which it believed contained the information he had asked for. While column G contained the settlement figures he had requested, column C only contained the nature of the claim against Sussex Police, and not the criminal offence it had been investigating when the incident giving rise to the claim occurred.
10. The complainant wrote again on 6 February 2021, referring Sussex Police to the particular wording of his request, and stating that it had not provided what he had asked for.

11. Sussex Police reviewed the case again and responded on 4 March 2021. It said that it could not provide information on the criminal investigations to which the claims related:

"I have made further enquiries into whether it is possible to provide for your request for the 'type of crimes being investigated' and have been informed that it is not. The Civil Claims Unit do not record information which links a compensation request to the Force's Crime Recording database (Niche). The two databases are not compatible and therefore, we cannot produce a report including this data. We are not required under Civil Procedure Rules (CPR) to link claims to the Criminal Investigation and it is not a practice we will be adopting. The recording and investigation of misconduct and civil claims is a specialist area dealt with by the Professional Standards Department and is a separate process to the recording and investigation of crimes dealt with by the wider organisation.

Therefore we are unable to disclose this information as it is not held in a retrievable format and it would require the manual search of all related offences to establish the circumstance and the creation of new data which is not the requirement of a public authority under the FOI act, I have therefore determined the information not disclosed as it is not held by Sussex Police."

Scope of the case

12. The complainant contacted the Commissioner on 5 March 2021 to complain about the way his request for information had been handled. He considered that Sussex Police should have the information he requested 'to hand' for reporting purposes and he therefore disagreed that it would be burdensome for it to provide it.
13. During the investigation, Sussex Police argued that it was not required to comply with the remaining part of the request on costs grounds. The Commissioner has treated this as a claim that section 12 (Cost exceeds appropriate limit) of the FOIA applies.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

14. Section 12(1) of the FOIA states:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

15. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004¹ (the Fees Regulations) at £450 for police forces. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25 per hour. This means that Sussex Police may refuse to comply with a request for information if it estimates that it will take longer than 18 hours to comply.
16. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that a public authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information, or a document containing it.
17. Section 12 states that public authorities are only required to estimate the cost of compliance with a request, and are not required to give a precise calculation. However, the Commissioner considers that the estimate must be reasonable. The Commissioner follows the approach set out by the Information Tribunal in the case of *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency (EA/2007/0004, 30 October 2007)* which stated that a reasonable estimate is one that is *"...sensible, realistic and supported by cogent evidence"*.

The complainant's position

18. The complainant considered that it would not be an onerous job to provide the information he has asked for:

"All they have to do is add the nature of the alleged crime that the Police were investigating, to a separate column on the excel sheet, related to the specific crime numbers I have enquired about (please see excel sheet attached, 2017 onwards). This information should be

¹ <https://www.legislation.gov.uk/uksi/2004/3244/contents/made>

held by the Professional Standards Department of Sussex Police as well as their litigation department. It should not take long to add this information to the existing excel sheet by cross referencing and once the system was in place, it would just require filling in one extra column going forward."

19. The complainant said he had made enquiries of other police forces and had found that some do routinely collate the type of information he had asked for. They use it for reporting purposes and for trend analysis. He believed that Sussex Police might do so too. He referred the Commissioner to another request which he recently submitted, for the total amount of money paid out in compensation and total legal costs incurred by Sussex Police since 2017. Sussex Police had refused that request, citing section 12 of the FOIA. The complainant said he subsequently obtained the requested information from the Sussex Police and Crime Panel (SPCP). Due to the nature of the information, he believed SPCP would have obtained it from Sussex Police, and that it therefore must be reasonably retrievable, thus calling into question Sussex Police's claim that section 12 was engaged. He felt that by extension, this raised questions about its application of section 12 in this case.

Sussex Police's position

20. Sussex Police maintained its position that it did not hold the requested information in a way which would allow it to be retrieved within the cost limit. It said that the requested information is held on two systems which are not compatible and therefore that it would require a manual search in order to complete the task
21. Sussex Police explained that information in relation to crimes is held on a crime recording database called 'Niche'. Information in relation to civil claims is held on a standalone database called 'Centurion'. The two systems are not compatible and they do not interact electronically.
22. Sussex Police explained the process for logging and processing civil claims as follows:

*"...a Letter of Claim is received from a Litigant in Person, or via their nominated Solicitor. That letter **should** outline what the claim is for and the reasons for the claim/why they allege Sussex Police has a liability. This information is not always forthcoming from a Litigant in person – often they state they want compensation for their arrest (for example), as they didn't commit any crime – this is a generalised example.*

The new claim is recorded on Centurion with the following information:

- *Details of claimant – name, contact details provided ...*
- *Details of the claim they are bringing – for example, Unlawful Arrest, False Imprisonment, Breach of Human Rights, Damage to property, Loss of Property, Damage to Buildings, Personal Injury, Assault etc.*
- *If it is provided, we record the incident date and brief circumstances of the claim for example – claimant states their arrest was unlawful; claimant states their phone has been damaged whilst in the possession of Sussex Police etc.*
- *If the claimant is legally represented, the details of the Solicitor are added to Centurion.*
- *If there has been a Complaint on the matter, the Complaint and the claim are linked on Centurion.*
- *Further Administrative tasks are then carried out – such as sending an acknowledgement letter to the Claimant or their Solicitor. A date is then added to Centurion which acts as a reminder to keep on top of progress and to ensure that a liability response is provided within the timescales allowed by the Civil Procedure Rules (CPR).*
- *The Administrator does not carry out any investigation into the circumstances of the claim, so no additional information such as the Niche Crime Reference are recorded on Centurion.*
- *The claim is then added to an allocation spreadsheet – which is essentially a queue of jobs awaiting allocation to a Civil Claims Investigator.*
- *Once a new claim is allocated to an Investigator that is when they start researching systems such as Niche to start gathering information into the background of the claim. Reports from Niche are usually saved to a separate electronic file on a Sussex Police Drive, if they hold any relevance to the claim.*
- *During an Investigation, we use a Word Document to record what enquiries have been made, keep a track of progress and it may or may not record details of the Niche Reference Number. Each Investigator works in a slightly different way.*
- *Once all the information is gathered, a decision is made regarding liability and this is communicated to the Claimant or their Solicitor.*

- *Letters and documents, including the Word Document recording the Investigation Progress is then uploaded to Centurion on the "Documents Tab".*
 - *No details from the investigation are added to Centurion Database Fields – such as the Crime Reference Number from Niche, as there is no requirement to record this information on Centurion and usually it is recorded on a Word Document or on the Niche Reports."*
23. Sussex Police said that information is extracted from Centurion using report writing software called Crystal Reports. Crystal Reports can only extract information which is recorded in one of the predetermined fields on Centurion. Any additional information, such as documents which have been uploaded, cannot be reported on automatically. As mentioned before, information about the original criminal offence being investigated is not a predetermined field.
24. To put this into context, Sussex Police said that for each of the years specified in the FOIA request there were:
- 2017 – 17 cases
 - 2018 – 19 cases
 - 2019 – 48 cases
 - 2020 – 16 cases
 - Total: 100 cases
25. Sussex Police set out the tasks necessary to fulfil the remainder of the request as follows:
- Read through the Word Document which records the claim investigation for each case, to check whether there is a Niche number on the report. Alternatively, check the electronic file held on the Sussex Police drive to check if there is a Niche report.
 - If there is a Niche report, read through the report to establish the reason for police involvement.
 - If there is no Niche report, conduct a manual search on Niche to locate the Niche report and then read through the report to establish the reason for police involvement.
 - This information would then need to be added to the spreadsheet supplied to the complainant manually, for each case he has requested further details of since 2017.

26. Therefore, 100 Niche reports would need to be consulted to provide a summary of the crime type to add to the spreadsheet for the complainant. (This is in addition to the work already done in cross referencing the spreadsheet provided to the complainant.)
27. As regards the impact on Sussex Police of the work that would be required, its Civil Claims Unit comprises 3 full time staff and 3 part time staff. However, in practice, only one member of staff has sufficient experience with Crystal Reports to deal with requests of this nature.
28. Sussex Police estimated that the work involved in manually consulting 100 Niche reports and cross referencing them to the spreadsheet with claim reference numbers would take approximately four days.
29. It said that this work could not be absorbed by it without having a detrimental effect on other service provision. Its claim numbers have risen at a rapid rate and it currently has a backlog of claims which are waiting to be investigated. It simply does not have the available resources – in staff, time, or budget - to devote four days on doing this manual Niche record check to be able to provide a response to the request.

The Commissioner's decision

30. The complainant says he has been able to obtain the requested information from some other police forces. However, it is important to note that not all forces have the same IT systems and they do not all store their information in a comparable way. Therefore, although other forces may have been able to provide some information within the cost limit, it does not follow that every force can also do so.
31. As to the complainant's concerns, expressed at paragraph 19, regarding the validity of Sussex Police's application of section 12 to a previous request, the Commissioner did not receive a complaint about that request and so he has no information as to the source of the information in question, and he has not investigated whether section 12 was appropriately applied in that case.
32. The issue here is the way in which Sussex Police chooses to store its information about civil claims and the work involved in cross matching it against its crime database. It has told the Commissioner that it has not previously received a request for this sort of information and therefore that it considers demand for it to be low. The Commissioner acknowledges that point, but he also recognises that the complainant has expressed a legitimate interest in having the information. He believes that police forces should record this data in order to identify

any trends which suggest certain types of criminal investigation tend to incur more civil claims.

33. When dealing with a complaint to him under the FOIA, it is not the Commissioner's role to make a ruling on what information a public authority *should* hold, or how it *should* hold it. He is not concerned with how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requestor within the appropriate cost limit. On that point, the Information Tribunal in the case of *Johnson / MoJ (EA2006/0085)* has commented that the FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".

34. The Commissioner notes that the complainant has expressed the view that all that is needed is for the crime type to be added into the spreadsheet Sussex Police has already collated. However, it is apparent from Sussex Police's response that this is not as straightforward a task as the complainant believes. It is clear that this would involve considerable 'drilling down' through Centurion and its associated documents and then, possibly, cross-referencing to the Niche system if the required information was not contained in the documents uploaded to Centurion. It is not possible to gauge what level of work is required without consulting each individual case.
35. Sussex Police has estimated that it would take four days to complete these tasks. Assuming one day comprises 7 hours, this would involve around 28 hours work, at a case rate of around 3.5 per hour. This is considerably more than the upper limit of 18 hours work which section 12 of the FOIA allows for.
36. Having considered the explanation and estimate provided, the Commissioner finds that they are realistic and reasonable. He therefore accepts that for Sussex Police to comply with the request would exceed the appropriate limit. It follows that Sussex Police was entitled to rely on section 12(1) of the FOIA to refuse the request.

Section 16 – advice and assistance

37. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information

request where it would be reasonable to do so. In general, where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.

38. In this case, the Commissioner recognises that Sussex Police took considerable time to understand and respond to what the complainant was actually asking for in his request, despite him explaining it several times. However, once it did understand, it simply told the complainant that it would be too costly to comply with that portion of the request and it did not offer any explanation as to how it might be refined.
39. The Commissioner considers that Sussex Police could have advised the complainant that submitting a refined request with a reduced timescale might bring it within the costs limit. He therefore considers that it did not comply with its duty under section 16(1) of the FOIA.
40. Since this decision notice contains information which would help the complainant to refine his request in that way, the Commissioner does not require Sussex Police to take any further action in that regard.

Right of appeal

41. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

42. 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.
43. 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
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