

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2022

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

Decision

1. The complainant requested information from Sussex Police ("the Police") about the legality around the use of drones. The Police provided some guidance and links and stated that it did not hold any further information in scope of the request. The Commissioner's decision is that only two parts of the request were valid and that on the balance of probabilities, the Police did not hold any further information within the scope of these two parts. However, the Police breached section 10 and section 17 of FOIA as they failed to issue their response within 20 working days.

Request and response

2. The complainant made the following information request to the Police on 27 January 2022:

"I would like to know the following by the police with regards to:

1. The legal basis to stop UAV'S flying above private land from public land without the landowners permission. (TOLP)

2. The legal basis to stop UAV's from flying above private land from a public right of way/bridle path that passes over that land
 3. Do police officers who attend such incidents understand the law on UAV'S , the requirements for flying in the open and specific category's and CAP722 and CAP722C.
 4. Do Police officers understand that filming/photography in public is not an offense [sic], weather that be from traditional camera/smart phone or drone
 5. Do police officers understand that "Airspace is a state asset" and not a landowners asset as per CAA ANO 2016 (CAP722C 4.3 - 4.3.2)
 6. If the police were to attend an incident do the police understand that they are responsible for following the UAV Pilots instructions of "Standing back until the aircraft has landed and been stowed safely."
3. The Police explained that the information was available publicly for questions 1 and 2 citing section 21 of FOIA and providing links to external resources. It also stated that for questions 3,4,5 and 6 it does not hold information in relation to the described scenarios.
 4. The complainant set out the grounds for internal review. The final position of the Police is that it does not hold information relating to the request and that the Act concerns requests for information "held" as opposed to answering questions generally and does not extend to providing explanations unless the answers are already held in a recorded form.

Reasons for decision

5. The Commissioner does not consider that questions 3, 4, 5 or 6 are valid requests for information as they do not seek information held in recorded form.
6. FOIA extends to information held in may forms including documents, emails, videos or audio recordings. However it does not extend to what may or may not be in a particular person's head. Nor does it cover opinions or interpretations – unless these exist in recorded form.
7. These four questions ask whether the police "understand" certain concepts. That is seeking information that would be in someone's head. It is not seeking recorded information.

8. In relation to questions 1 and 2, the Commissioner accepts that these two elements do seek recorded information, but the Police has provided the information it holds. The complainant may not consider that this information is adequate, but it is what the Police holds in recorded form. The Police is not required to further interpret the guidance or provide legal advice to the complainant.
9. There is no requirement for the Police to create information in order to answer the requesters questions, their obligation is to supply information they held at the time of the request. The Commissioner is therefore satisfied that, on the balance of probabilities, the Police supplied all the relevant information to the requester and did not hold the information in scope of the request.

Procedural matters

10. Section 10 of FOIA requires a public authority to confirm whether or not it holds the requested information and to communicate any non-exempt information within 20 working days of receiving an information request.
11. Section 17 of FOIA requires a public authority that wishes to rely on an exemption to either withhold information or to neither confirm nor deny that any information is held, to issue a refusal notice within 20 working days.
12. In this case, the Police did not confirm whether any information was held and did not issue a refusal notice specifying the exemption on which it was relying to withhold the requested information within 20 working days. The Police therefore breached both section 10 and section 17 of FOIA in responding to the request.

Right of appeal

13. 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

14. 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.
15. 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

Roger Cawthorne
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