

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 8 December 2022

**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)**

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1. The complainant has requested to know the identity of the person who asked the police to conduct a welfare check on his late wife. Sussex Police refused the request, citing section 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that Sussex Police was entitled to rely on section 40(2) to refuse the request. However, it breached sections 10(1) and 17(1) of FOIA by failing to respond to the request within 20 working days.
3. The Commissioner requires no steps as a result of this decision.

#### **Request and response**

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4. On 24 March 2022, the complainant wrote to Sussex Police and requested information in the following terms:  
  
"I require the name of whomsoever your force alleges recommended some time before or on [date redacted] that policemen attend for the supposed safety and wellbeing of my late wife, [name redacted], at this address."

5. Sussex Police did not respond to the request and so the Commissioner intervened, asking it to. On 22 September 2022, Sussex Police wrote to the complainant. It refused to disclose the requested information on the grounds that it was exempt under section 40(2) of FOIA. It maintained this position following an internal review.

## **Reasons for decision**

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6. The complainant said that he had twice before requested to know who had asked the police to conduct the welfare check (in July 2021, and again, in November 2021). The Commissioner understands that the complainant had made a formal complaint to Sussex Police about the welfare check, and that when responding to that complaint, Sussex Police had told him it was unable to share with him who had asked the police to visit.
7. The only request for information which the Commissioner has been provided with is the request dated 24 March 2022. This decision notice therefore confines itself to considering Sussex Police's compliance with that particular request.

## **Section 40(2) – Personal information**

8. Section 40(2) of FOIA says that information is exempt from disclosure if it is the personal data of another individual and disclosure would contravene a data protection principle<sup>1</sup>.
9. The withheld information in this instance is the name of the person who asked Sussex Police to conduct the welfare check, which Sussex Police has confirmed it holds. The Commissioner is satisfied that the withheld information is the personal data of an identifiable individual ('the data subject') as defined in section 3(2) of the Data Protection Act 2018.
10. The most relevant data protection principle in this case is principle (a), which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".
11. In the case of an FOIA request, personal data is "processed" if it is disclosed in response to a request. This means that personal data may

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<sup>1</sup> The data protection principles are set out under Article 5(1) of the UK General Data Protection Regulation

only be disclosed if to do so would be lawful (ie it would meet one of the conditions of lawful processing listed in Article 6(1) UK GDPR), fair and transparent.

12. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f), which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.
13. The complainant has a legitimate interest in the requested information. He wishes to know who told Sussex Police to check on his late wife, as he believes that the visit was not reasonable in the circumstances, and that the stress of it exacerbated her poor health, leading, unfortunately, to her premature death. The complainant has said that he believes he knows the data subject’s identity and wants official confirmation of it. Disclosure of the data subject’s identity would assist him to pursue his concerns about this, across multiple agencies.
14. However, disclosure under FOIA is to the world at large. The Commissioner is of the view that data subjects have a clear and strong expectation that their personal data will be held in accordance with data protection laws. The Commissioner considers that the data subject in this case would have a reasonable expectation that their identity, as the person recommending a welfare check, would not be released to the world at large by means of an FOI request. The Commissioner considers that it would be an intrusion of privacy and could potentially cause unnecessary and unjustified distress to the individual.
15. Furthermore, while the Commissioner accepts that the complainant is pursuing a legitimate interest, he does not consider that, in this case, disclosure of the withheld information is necessary to meet that legitimate interest. There are other formal channels through which the complainant could pursue his concerns, which would not necessitate the disclosure of the data subject’s identity to the world at large.
16. Having exhausted Sussex Police’s complaints mechanism, the complainant may complain to the Independent Office for Police Conduct (‘the IOPC’). The IOPC is responsible for investigating “the most serious and sensitive incidents and allegations involving the police”<sup>2</sup>. The

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<sup>2</sup> <https://www.policeconduct.gov.uk/>

Commissioner does not consider that any such complaint would be disadvantaged by the complainant not having had access to the withheld information; he can make a complaint regardless of whether or not he knows the data subject's name.

17. The complainant may also invoke the complaints mechanism for the particular agency or public authority in which he believes the data subject works if he considers that their behaviour in making the welfare check request was unreasonable. He may also apply for a court order, requiring that the information be disclosed to him, if he wishes to take legal action.
18. The Commissioner considers these to be the appropriate avenues for the complainant to pursue his concerns, rather than trying to access this information via FOIA, which, as stated above, involves the publication of information to the world at large; it is not a private disclosure to the requester alone.

### **The Commissioner's decision**

19. The Commissioner considers that while the complainant has a legitimate interest in the withheld information in this case, its disclosure is not necessary to meet that legitimate interest. The data subject has a strong expectation of privacy relating to the requested information and as disclosure is not necessary, the data subject's consequent loss of privacy would be disproportionate and unwarranted.
20. The Commissioner has therefore determined that disclosure of the data subject's personal data would be unlawful and in contravention of data protection principle (a), as set out under Article 5(1)(a) of the UK General Data Protection Regulation.
21. As disclosing the data subject's personal data would be unlawful, section 40(2) is engaged. The Commissioner's decision is therefore that the Constabulary was entitled to apply section 40(2) of FOIA to withhold the requested information.

### **Procedural matters**

22. Sussex Police exceeded the statutory 20 working day time for complying with the request. It therefore breached sections 10(1) (Time for compliance) and 17(1)(Refusal of request).
23. The Commissioner has made a note of these issues for monitoring purposes.

## Right of appeal

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24. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

25. 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.

26. 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**