

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

### **Decision notice**

**Date:** 2 May 2023

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to the sighting of two drones at Gatwick Airport in December of 2018.
2. The Commissioner's decision is that Sussex Police was entitled to rely on Section 30(3) of FOIA to neither confirm nor deny if the information was held.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 8 June 2022, the complainant wrote to Sussex Police and requested information in the following terms:  
  
"According to your records, you may want to refer to the timeline in the unredacted version of the Op Trebor SDB Report for example, was the Gatwick drone specifically sighted at any time between 7:00am to 8:15am on 20/12/2018?"
5. Sussex Police responded on 13 July 2022. Under Section 30(3) of FOIA, it refused to confirm or deny whether the information was held.

6. Following an internal review, Sussex Police wrote to the complainant on 24 August 2022 and upheld its original position.

### **Reasons for decision**

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7. Section 30(1) of FOIA provides that: "Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-
  - (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
    1. whether a person should be charged with an offence, or
    2. whether a person charged with an offence is guilty of it,
  - (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
  - (c) any criminal proceedings which the authority has power to conduct."
8. Section 30(3) of FOIA provides that: "The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2)."
9. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information requested. The effect of section 30(3) is therefore that the public authority is not required to confirm or deny whether relevant information is held where the exemption in section 30(3) is applicable.
10. Given the nature of the information requested, the Commissioner is satisfied that if information falling within the scope of the complainant's request were held, it would by definition, be held for the purposes of a criminal investigation. The exemption is therefore engaged.

### **Public interest test**

11. Section 30(3) is a qualified exemption. This means that the Commissioner must consider the public interest test contained at section 2 of FOIA and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying whether the requested information is held.

12. In accordance with his guidance, when considering the public interest in maintaining exemptions, the Commissioner considers that it is necessary to be clear what they are designed to protect. In broad terms, the section 30 exemptions exist to ensure the effective investigation and prosecution of offences and the protection of confidential sources. They recognise the need to prevent disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings.

### **Factors in favour of confirmation or denial**

13. There will always be a public interest in transparency and accountability in the decision-making processes of public authorities and Sussex Police accept this.
14. The complainant has stated that similar information about this incident is already in the public domain, referring to a previous disclosure which provided a timeline of events.

### **Factors in favour of maintaining the exemption**

15. Confirming that information is held could potentially undermine what is still an unsolved investigation.
16. Confirming or denying whether relevant information is held could disclose information which may allow perpetrators to avoid discovery.

### **The Commissioner's view**

17. The Commissioner notes the complainant's counter argument that other forces have disclosed similar information in the past. The Commissioner considers that that is a choice made by those forces bearing in mind the risks such disclosures might give rise to as compared to the benefits of disclosure. For instance, informing members of the public that an investigation is ongoing may allow them to aid the police with their investigation. Alternatively, it may alert those under investigation of the likelihood of a police presence. The decision by Sussex Police must therefore be made on its own merits, based upon the individual circumstances of the case.
18. The Commissioner has considered the arguments submitted by the complainant and Sussex Police. He is satisfied that the public interest in neither confirming nor denying whether information is held outweighs that in responding to the requirements of section 1(1)(a) of FOIA.
19. The Commissioner's decision is that Sussex Police was therefore correct to rely upon Section 30(3) in this case.

## Right of appeal

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20. 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](mailto:grc@justice.gov.uk)

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

21. 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.
22. 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 .....**

**Susan Duffy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**