

**FREEDOM OF INFORMATION ACT 2000 (SECTION 52)
ENFORCEMENT POWERS OF THE INFORMATION COMMISSIONER
ENFORCEMENT NOTICE**

DATED: 20 June 2024

To: Chief Constable of South Wales Police

**Of: Police Headquarters
Cowbridge Road
Bridgend
CF31 3SU**

1. The Chief Constable of South Wales Police ("**SWP**") is a "public authority" listed in Schedule 1 and defined by section 3(1)(a)(i) of the Freedom of Information Act 2000 ("**FOIA**"). FOIA provides public access to information held by public authorities.
2. SWP's obligations as a public authority under FOIA include –
 - a. Being obliged to publish certain information about its activities;
 - b. Responding to requests for information from members of the public.
3. The Information Commissioner (the "**Commissioner**") hereby issues SWP with an Enforcement Notice (the "**Notice**") under section 52 FOIA. The Notice is in relation to SWP's:
 - a. Continuing non-compliance with section 1(1) FOIA and;
 - b. Continuing breaches of section 10(1) FOIA.

4. This Notice explains the Commissioner's decision to take enforcement action. The specific steps that SWP is required to take are set out in **Annex 1.**

Legal Framework for this Notice

5. A person requesting information from a public authority has a right, subject to exemptions, to be informed by the public authority in writing whether it holds the information, and to have that communicated to him, if the public authority holds it. This is set out in section 1(1) FOIA–

“(1) Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

6. Section 10(1) FOIA specifies that public authorities must respond to requests within 20 working days:

“... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following receipt.”

7. There is provision under FOIA for a public authority to claim a reasonable extension to this limit in certain circumstances, but in all cases, the public authority must give the requestor a written response within the standard time limit for compliance.

8. The Commissioner has various powers under FOIA. One of these is the issuing of an Enforcement Notice. Section 52(1) of FOIA states –

“If the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I, the Commissioner may serve the authority with a notice (in this Act referred to as an “enforcement notice”) requiring the authority to take within such time as may be specified in the notice, such steps as may be so specified for complying with those requirements.”
9. Section 52 FOIA has effect subject to section 53 FOIA, which provides details of the exceptions from the duty to comply with a decision notice or enforcement notice.

Background

10. In 2023, the Commissioner’s routine monitoring revealed that there had been a significant fall in SWP’s compliance rate from 74% in April 2023 to just 45% in July 2023.
11. Data provided by SWP indicates that its timeliness is improving in respect of new requests. Statistics from the previous quarter (January to March 2024) show that the compliance rate had risen to 65%.
12. As of 31 April 2024, SWP had 294 open requests, of which 167 were overdue, a figure that has increased throughout the year. SWP informed the Commissioner that the age of its oldest case is 122 days.

The Contravention and Reasons for this Notice

13. FOIA requires a public authority to inform people whether it holds the information they have requested and to communicate it to them within 20 working days of receipt of their request.
14. SWP has explained that since COVID, it has struggled with its ability to recruit and train staff, whilst responding to an increase in the volume and complexity of the requests received.
15. The Commissioner accepts that SWP has had and continues to have, issues recruiting and retaining appropriately qualified staff. This is an issue across the public sector, but it is particularly acute amongst police forces as new recruits must also gain a security clearance, elongating the recruitment process.
16. SWP has tried to assure the Commissioner that it has an action plan in place to improve its FOIA processes, and the Commissioner welcomes the engagement he has had from SWP, throughout this process.
17. However, whilst the Commissioner recognises that a plan has been drawn up and contains measurable actions to improve FOIA performance, in the longer term, he feels that the plan could include clearer deadlines to reduce the backlog and improve the timeliness of current request handling.
18. Furthermore, the Commissioner notes that the action plan SWP wishes to rely upon, mentions that potential additional resources will be available to help it reduce its backlog. However, the Commissioner is not aware of any guarantee that these sufficient resources will be available to SWP to enable it to deliver on its plan.

19. Responding to requests for information is a statutory duty. Therefore, it is imperative that SWP recognises the importance of clearing its backlog and the legal implications of failing to do so. Imposing a legally enforceable deadline makes clear the priority that the Commissioner considers this task should be given. He has taken into account the scale of the backlog and the timing of this notice when setting the timeframe by which he expects compliance.
20. The Commissioner considers it a proportionate regulatory step to issue an Enforcement Notice requiring SWP to comply with section 1(1) of FOIA in respect of all its outstanding requests. It is essential that the assurances provided to the Commissioner are translated into actions and the steps outlined in **Annex 1** provide an enforceable means of holding SWP to account.

Other Matters - Internal Review

21. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in an enforcement notice because such matters are not a formal requirement of FOIA. Rather they are matters of good practice which are addressed in the Code of Practice issued under section 45 of FOIA.
22. Sections 5.4 and 5.5 of the Code set out that a reasonable time for the completion of an internal review is 20 working days following the receipt of the request for review, and that, usually, no more than 40 working days will be required.
23. The Commissioner is satisfied that SWP failed to conform with the Code and recommended best practice in relation to the reviews it has failed to complete within 40 working days.

24. However, he is aware that SWP's handling of internal reviews, in relation to timeliness, has improved recently. Therefore, SWP should ensure that any steps taken, in response to this notice, do not cause it to lose momentum on this part of the request handling process.

Terms of this Notice

25. The Commissioner therefore exercises his powers under section 52 of FOIA to serve an Enforcement Notice requiring SWP to take specified steps to comply with FOIA. The specified steps are set out in **Annex 1** of this Notice.

26. The consequence of failing to comply with an Enforcement Notice is that the Commissioner may make written certification of this fact to the High Court pursuant to section 54 of FOIA. Upon consideration and inquiry by the High Court, SWP may be dealt with as if it had committed a contempt of court.

Right of Appeal

27. By virtue of section 57 of FOIA there is a right of appeal against this Notice to the First-tier Tribunal (Information Rights). If an appeal is brought against this Notice, it need not be complied with pending determination or withdrawal of that appeal.

28. 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 9368963

Email: GRC@justice.gov.uk

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

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

Phillip Angell
Head of Freedom of Information Casework
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

TERMS OF THE ENFORCEMENT NOTICE

THIS NOTICE REQUIRES SWP TO TAKE THE FOLLOWING STEPS BY NO LATER THAN SIX MONTHS FROM THE DATE OF THIS NOTICE:

By 20 December 2024 SWP shall:

- (i) in respect of each information request where the response is outside of 20 working days as at the date of the notice, and where a permitted extension has not been applied, comply with section 1(1)(a) of FOIA and, if information of the description specified in the request is held, either:
- (ii) communicate that information pursuant to section 1(1)(b) FOIA; or issue a valid refusal notice under section 17, unless section 17(6) FOIA applies.

THIS NOTICE REQUIRES SWP TO TAKE THE FOLLOWING STEPS BY NO LATER THAN 35 CALENDAR DAYS FROM THE DATE OF THIS NOTICE:

- (iii) devise and publish an action plan formalising the measures it will take to ensure it complies with its legal duties under Part 1 of FOIA to respond to information requests in a timely fashion, while also clearing its backlog of requests as required by this notice.