

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

DATED: 14 February 2024

To: Chief Constable of South Yorkshire Police

**Of: South Yorkshire Police Headquarters
Carbrook House
Carbrook Hall Road
Sheffield
S9 2EH**

1. The Chief Constable of South Yorkshire Police ("SYP") 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. SYP'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 SYP with an Enforcement Notice (the "Notice") under section 52 FOIA. The Notice is in relation to SYP'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 SYP 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 them, 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. Through most of 2022, SYP was complying with over 90% of FOI requests within 20 working days. In some months it even hit 99% compliance.
11. However, in the last few months of that year, SYP's compliance dropped alarmingly: to 51% in October; 47% in November and 28% in December.
12. Not only did 2023 not see any improvement in compliance, in fact SYP's performance got worse: SYP has, on average, responded to fewer than 18% of requests within 20 working days.
13. Not since 2022 has SYP been able to respond to more requests than it received in any given month – despite volumes being only marginally higher than 2022, when SYP was averaging 90% compliance.
14. In Summer 2023, the Commissioner carried out a [consensual audit of SYP's FOIA practices](#). He concluded that there was only limited assurance that SYP was complying with the Codes of Practice issued

under section 45 (request handling) and section 46 (records management) of FOIA.

15. Some key areas of concern that were identified in the audit included:

- Inadequate staffing levels to deal with requests.
- Inadequate central oversight of and accountability for, compliance rates in individual areas of the organisation.
- Inadequate staff training in FOI in some areas of the organisation.
- Inadequate awareness of organisational FOI policies.

16. An executive summary of the audit report was published in August. SYP responded to 19% of requests received in September 2023 within 20 working days. Since then its monthly figures have been 12% (October), 14% (November) and 10% (December).

17. As of January 2024, SYP had a backlog of 390 overdue requests. The vast majority of these requests were under six months old. The oldest overdue request is around a year old.

The Contravention and Reasons for this Notice

18. The Commissioner accepts that SYP has had and continues to have, issues recruiting and retaining appropriately qualified staff. This is an issue across the public sector, but is particularly acute amongst police forces as new recruits must also gain a security clearance – elongating the recruitment process.

19. That being said, responding to requests for information is a statutory duty. It is imperative that SYP recognises the importance of responding

to requests in a timely fashion and the legal implications of failing to do so. It is important that it has proper plans in place to reach and to maintain, high levels of compliance with FOIA.

20. SYP's compliance rate over the period outlined is unacceptable on any level.
21. SYP's backlog of information requests is already significant. In the last six months it has more than doubled in size and the number of requests over six months old has quadrupled. Given SYP's current response rates, without significant change, both the size and age profile of that backlog will continue to get worse.
22. The Commissioner is not aware of any realistic action plan SYP has in place that would enable it to **either** clear its backlog **or** bring its compliance rate up to a reasonable level – never mind both.
23. Finally, the Commissioner notes that SYP had the benefit of a consensual audit, highlighting areas that required improvement, yet has been unable to demonstrate any improvement since.
24. In the circumstances, the Commissioner considers that an Enforcement Notice is necessary and proportionate in order to bring SYP's compliance with FOIA up to an acceptable standard.
25. 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.
26. Given the scale of the issue and the lack of any plan to tackle it, the Commissioner considers it a proportionate regulatory step to issue an

Enforcement Notice requiring SYP to comply with section 1(1) of FOIA in respect of all its outstanding requests. The steps outlined in Annex 1 provide an enforceable means of holding SYP to account.

Other Matters

27. The Commissioner notes that SYP still does not publish timeliness statistics. The Commissioner cannot require this as part of an enforcement notice under FOIA, but reiterates that SYP should do this in line with the section 45 Code of Practice. He would also recommend that SYP publishes, on a monthly basis, its progress in clearing its FOIA backlog in line with the updates it gives the Commissioner about its compliance with this notice.
28. The Commissioner would draw SYP's attention to his recent guidance on [publishing FOI compliance data](#) and recommends this approach is taken.

Terms of this Notice

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

30. 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, SYP may be dealt with as if it had committed a contempt of court.

Right of Appeal

31. 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.

32. 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

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

Warren Seddon
Director - FOI and Transparency
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

TERMS OF THE ENFORCEMENT NOTICE

THIS NOTICE REQUIRES SYP TO TAKE THE FOLLOWING STEPS BY THE DATES SPECIFIED BELOW:

By 31 August 2024, SYP shall:

- (i) in respect of each information request where the response is outside of 20 working days as at the date of this 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 FOIA, unless section 17(6) FOIA applies.

Within 35 calendar days of this notice, SYP shall:

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