



Information Commissioner's Office
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Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 26 May 2006

Public Authority: Chief Officer of Sussex Police

Address: Sussex Police
Church Lane
Lewes
East Sussex BN7 2DZ

Summary Decision and Action Required

The Commissioner's decision in this matter is that the Public Authority has not dealt with the Complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under Section 1(1).

The Commissioner requires the Public Authority to disclose the requested information to the Complainant within 30 days of the date of service of this Notice.

- 1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner**
 - 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000.
 - 1.2 Where a complainant has made an application for a decision, unless:
 - a complainant has failed to exhaust a local complaints procedure, or
 - the application is frivolous or vexatious, or
 - the application has been subject to undue delay, or
 - the application has been withdrawn or abandoned,the Commissioner is under a duty to make a decision.
 - 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

2.1 The Complainant has advised that on 2 January 2005 the following information was requested from the Public Authority in accordance with section 1 of the Act:

- “a) The exact numbers of people in the Sussex Police Authority area that are subject to the requirements of the Sex Offenders’ Act; and
- b) a geographical breakdown of where these individuals are within the county”

2.2 The Public Authority provided a preliminary response to the request on 12th January 2005. On 27th January 2005 the Public Authority wrote to the Complainant and provided the information in part (a) of his request but formally refused to provide the information in part (b) of the request. The Public Authority stated that the exemptions contained in section 31 (Law Enforcement) and section 38 (Health and Safety) of the Act applied to the part (b) information and asserted that it need not be disclosed because, in its view, the public interest in maintaining both of these exemptions outweighed the public interest in disclosing the requested information.

2.3 The Public Authority stated that the exemptions applied as the information in question -

“may prejudice the prevention and detection of crime and the apprehension and prosecution of offenders. Also, the information may potentially cause physical or mental harm to any person.”

3. Relevant Statutory Obligations under the Act

3.1 Section 1(1) provides that –

“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.”

4. Review of the case

4.1 The Complainant requested information as to the total number of Registered Sex Offenders in the Sussex Police Authority area and also a geographical breakdown of those numbers. He suggested that this number be broken down by policing district.

4.2 The Public Authority provided the Complainant with the total number of Registered Sex Offenders for the Sussex Police Authority area as requested but refused to

provide a geographical breakdown beyond police authority area level, citing the exemptions from the duty to disclose requested information set out in Section 31 (Law Enforcement) and Section 38 (Health and Safety) of the Act.

- 4.3 In the course of his investigation into this matter the Information Commissioner has learned that there are 16 policing districts in Sussex. The Public Authority has advised the Commissioner that it does not hold the requested information by policing district as suggested by the Complainant but it does hold the information by police division. Upon request, the Public Authority forwarded to the Commissioner a copy of RSO numbers for each division as at 26 April 2005. The Commissioner's investigation is based on analysis of these figures.
- 4.4 At the time the Complainant made his request there were 6 police divisions in the Sussex Police Authority area as follows:
- Hastings and Rother
 - East Downs
 - Brighton and Hove
 - West Downs
 - North Downs
 - H M Prisons (The Commissioner understands that HMP Ford and HMP Lewes are within the Sussex Police Authority area).

On 4 May 2006, the Public Authority advised the Commissioner that it has recently merged Hastings and Rother and East Downs to form East Sussex Division.

- 4.5 The Public Authority has argued that its overriding responsibility is to maintain public safety. In view of this responsibility, the Public Authority maintains that decisions about releasing sex offender information should err on the side of caution because misjudgment about the level of detail to be released may have serious public safety consequences.
- 4.6 In the course of his investigation the Commissioner has noted the following information:
- A Registered Sex Offender ("RSO") is a person over the age of 10 (male or female) who is required to register with the Police under the terms of the 1997 Sex Offender Act (the "1997 Act"). Registration is for a minimum of five years and individuals are generally registered for a longer period than the minimum. An RSO is not necessarily a person who has committed a sexual offence against a minor. A person who commits a sexual offence against an adult may also be required to register under the terms of the 1997 Act. An RSO is not necessarily an adult. Persons above the minimum age of criminal responsibility (10 years old) yet below the age of 18 who commit a sexual offence against another minor or an adult may also be required to register under the terms of the 1997 Act. RSOs are therefore not exclusively adult male convicted paedophiles as is widely assumed.
- 4.7 The monitoring and management of RSOs in the community is undertaken via a local Multi Agency Public Protection Arrangement ("MAPPA"). Local police forces

are closely involved in this work. Each MAPPA publishes an annual report. These reports can be accessed locally or via the National Probation Service web pages on the Home Office's website

<http://www.probation.homeoffice.gov.uk/output/page30.asp>. The MAPPA report for Sussex already provides information about the number of RSOs in the Sussex Police Authority area. However, in common with other MAPPA reports, it does not break this down below that level (police authority area) as has been requested by the Complainant.

<http://www.probation.homeoffice.gov.uk/files/pdf/sussex%202005.PDF>. Also in common with other MAPPA reports, the Sussex report states the average number of RSOs per 100,000 people in the Police Authority area in question. For the period 2004/5, this figure was 49 RSOs per 100,000 people in the Sussex Police Authority area.

- 4.8 The Commissioner also notes that the question of what to do with those who have been convicted of a sexual offence is regularly and widely discussed. This question often prompts an understandably emotive response given the nature of the crime that offenders have committed. There is little sympathy for such offenders and even less enthusiasm for spending public money to attempt to rehabilitate them or contain them in the community. However, general prisoner numbers are increasing year on year and there is considerable pressure to release convicted offenders under supervision orders to alleviate the problems caused by the growing prisoner population. Shorter sentences with community supervision provisions are also becoming more common. There is public pressure to access relevant information to inform debate of this difficult issue.
- 4.9 The Commissioner has considered the exemptions claimed by the Public Authority as set out below. Each is considered separately in turn.

4.10 **Section 31 (Prejudice to Law Enforcement)**

Section 31 states that:-

“(1) Information which is not exempt information by virtue of section 30 [Investigations by public authorities] is exempt information if its disclosure under this Act would, or would be likely to, prejudice -

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders ...”

- 4.11 Subsection (1) of Section 31 goes on to list seven other areas of law enforcement that may be prejudiced by the disclosure of information. As indicated in 2.2 above, the Public Authority has identified paragraphs (a) and (b) of subsection 31(1) as being the key areas where law enforcement could be prejudiced by the disclosure of the requested information.
- 4.12 The Public Authority has indicated a number of offences which it believes would be likely to arise were the requested information to be released:

1. RSO failing to maintain contact with Public Protection Officers who monitor their behaviour and assess their likelihood of re-offending;
 2. RSO failing to register within 3 days of an order for registration being given;
 3. RSO re-offending where that person had severed links with Public Protection Officers as outlined in 1 and 2 above;
 4. Public disorder and vigilante attacks on individuals presumed to be or identified as RSOs because of irresponsible and inflammatory reporting following the release of the requested information.
- 4.13 The Commissioner does not dispute that some individuals may seek to act illegally upon information which tells them, or which they believe tells them, who is an RSO and/or where that person lives. They may gather this information from a number of sources, e.g., from contemporaneous and subsequent newspaper coverage of a particular case, from their own experience or knowledge of that person, from their family's/friends' experience or knowledge of that person.
- 4.14 The Commissioner also accepts that irresponsible media coverage can agitate strong feelings within a community and potentially drive an RSO "underground" or even overseas. The Commissioner recognises that when an RSO is "driven underground" this may be due to an increased fear of attack. It may also be due to a desire to disengage with community rehabilitation and resume offending behaviour.
- 4.15 The Public Authority has provided the Commissioner with examples of incidents of public disorder and attacks on individuals that have occurred as a result of detailed information about RSOs being released. It has also provided examples of attacks on individuals who were widely known in the community to be RSOs. The Commissioner accepts that there is a likelihood of attacks on individuals where their names and addresses and/or photographs are published. However, the Commissioner notes that courts do not normally impose restrictions on the reporting of a defendant's name and address in cases regarding sexual offences even though the release of this detailed information could lead to a violent reaction in the community against that person's home and/or his or her family. Detailed information, including information enabling individual RSOs to be identified, has not been requested in this case.
- 4.16 **Likelihood of prejudice**

The Commissioner acknowledges it is conceivable that the disclosure of the requested information could have a prejudicial effect on law enforcement as outlined by the Public Authority. The Commissioner has considered whether the likelihood of such prejudice occurring is substantially more than a remote possibility. In doing so, he has taken into consideration the case of R (on the application of Alan Lord) and The Secretary of State for the Home Department, although this case concerns the Data Protection Act. The judgment reads:

“Likely connotes a degree of probability where there is a very significant and weighty chance of prejudice to the identified public interests. The degree of risk must be such that there “may very well” be prejudice to those interests, even if the risk falls short of being more probable than not.”

- 4.17 In determining the degree of risk associated with the disclosure of the requested information the Commissioner has considered whether it would be possible to identify individual RSOs from the requested statistics. In doing so, he has referred to 2001 census figures for Sussex which are published on the website of the Office of National Statistics <http://www.statistics.gov.uk/census2001/profiles/j.asp>.
- 4.18 The Commissioner has calculated the population figures for each police division at the time of the request within the Sussex Police Authority area (excluding HM Prisons) for 2001. Given that the requested information related to 2005 and not 2001, he also collated published local government estimates (where available) for population numbers for each division that were more up-to-date. Having analysed the requested information supplied by the Public Authority in conjunction with publicly accessible population information, he concluded that it would be impossible to identify individual RSOs living in Sussex from the requested divisional level statistical information.
- 4.19 Given that the information requested in this case is generic and does not identify individuals, the Commissioner has concluded that the likelihood of incidents of public disorder or attacks on individuals (in other words, the likelihood of prejudice to law enforcement) is considerably less than it would be where individuals were named in or easily identified from published information.
- 4.20 **Likelihood of prejudice - Media coverage**

The Public Authority has argued that the disclosure of the requested information would be likely to prejudice law enforcement as frequent cases of irresponsible reporting concerning RSOs can agitate community feeling and undermine the delicately balanced monitoring programmes in operation to manage RSOs in the community.

- 4.21 The Commissioner is not persuaded in this case that the occurrence of frequent cases of irresponsible reporting concerning RSOs is sufficient to demonstrate that the disclosure of the requested information would be likely to prejudice law enforcement. It is far from inevitable that the release of the requested information will be reported in an irresponsible manner. Even if the requested information were to be used to inform media reports of the irresponsible nature identified by the Public Authority, there is not sufficient detail in the requested information to identify a potential target for vigilante attack and thereby cause the likely prejudice to law enforcement claimed by the Public Authority.
- 4.22 The Commissioner accepts the Public Authority’s argument that prevalent unsubstantiated rumour or misunderstanding may lead to attacks on individuals who are not RSOs – there was a well-publicised attack on a paediatrician by individuals who apparently assumed that the prefix “paed-” was always used in

connection with a person who has a sexual interest in children. The Public Authority has provided further examples of individuals who were attacked by others who incorrectly believed the targeted individuals to be RSOs. However, the Commissioner does not accept that such cases would be more likely to occur were the requested information to be released. The Public Authority has not explained how individuals could be identified from the requested information and none of the evidence submitted by the Public Authority concerns attacks on individuals prompted by the release of information at the level of detail requested.

4.23 **National policy on disclosure or case by case disclosure**

The Public Authority has indicated that, in determining whether or not to disclose the requested information, it has referred to the jointly expressed view of a variety of national bodies (such as the Association of Chief Police Officers, the National Probation Service and MAPPA) that disclosure of RSO information for geographical areas below Police Force area may jeopardise the placement of RSOs in the community and could pose threats to their safety. The Public Authority has suggested that this view supports the development of a generally applicable policy on the disclosure of RSO information. In its discussions with the Commissioner, the Public Authority has acknowledged the public interest in transparency but is concerned that the Information Commissioner's case-by-case approach to the disclosure of this sort of information might have a wider detrimental effect.

4.24 The Public Authority argued that where a police force was not required to release such requested information (where the circumstances of that case differed from the circumstances in this case), residents in the area to which the information relates might assume that there was a higher concentration of RSOs living in that area and that this was the reason for withholding such information.

4.25 The Public Authority has suggested that a map could be created following a series of nationwide FOI requests showing which police forces did release information of at the level of detail requested in this case and which did not. From that map the deduction may be made, correctly or incorrectly, that those areas which did not release divisional-level information had a higher concentration of RSOs per head of population. This, the Public Authority believed, would have a negative impact on those communities which assumed they had a higher concentration of offenders living there. For this reason, the Public Authority argued, information with this level of detail requested in this case should never be released by any force.

4.26 The Commissioner maintains that each case must be considered on its own merits and recognises that in other circumstances the disclosure of the information requested here may have the prejudicial effects that have been identified. The Public Authority has argued that information about RSOs expressed by reference to police divisions is information of a "type" or "class" that should not be released. However, the exemptions claimed by the Public Authority in this case are "prejudice-based" not "class-based" exemptions. In other words, the exemption does not apply simply because the requested information falls within a particular designated type or class of information. However, the exemption in section 31 can only apply where there is a persuasive argument of likely prejudice. The

Commissioner is not persuaded by the Public Authority's arguments as to the likelihood of disclosure of the information in question being prejudicial to the prevention or detection of crime.

- 4.27 The Commissioner recognises and, indeed, shares the Public Authority's strongly felt concerns about the serious consequences of irresponsible media coverage of this issue. However, he believes that, in the circumstances of this case, such concern is not sufficient for the purposes of demonstrating prejudice to law enforcement. An evaluation of the examples provided by Sussex Police reveals that the attacks in those examples were as a result of either specific public knowledge about individuals or the agitation of the "rumour mill". In the Commissioner's view, such attacks could occur irrespective of the release of the information requested in this case. At the heart of this decision is the Commissioner's view that it is impossible to identify individual RSOs from the requested information. No individual could be therefore singled out for a retaliatory attack on the basis of this information.
- 4.28 The Act does not prevent the Public Authority from putting the requested information in context (for example, by explaining in more detail how RSOs are managed in the community or outlining Sussex's MAPPA programme) in order to increase public understanding and in order to counter any prurient sensationalism that irresponsible media outlets may choose to adopt when reporting on the disclosed information.
- 4.29 The Commissioner believes that it would benefit the public interest to inform and encourage reasonable debate around the question of the management of RSOs and that the release of the information requested in this case would contribute to this debate.
- 4.30 **Section 38 (Prejudice to Health and Safety)**
Section 38 states that:-
- “(1) Information is exempt information if its disclosure under this Act would, or would be likely to-
- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual ...”
- 4.31 The Public Authority has identified a number of sets of individuals whose physical and/or mental health and general safety could potentially be put at risk by the release of the requested information:
1. Members of the community targeted by RSOs (where those RSOs resume offending behaviour having been driven underground);
 2. Individuals who are mistaken for RSOs and become targets for vigilante attack;

3. Family members of those individuals referred to in 1. and 2.;
4. Police officers tackling public disorder;
5. RSOs against whom retaliatory action is taken;
6. Family members of those individuals referred to in 5.;
7. The wider community who may experience increased anxiety about living alongside RSOs.

4.32 The Commissioner believes that the likelihood of prejudice to law enforcement and the likelihood of endangering health and safety are closely linked in this case. For the reasons given in 4.10 – 4.29 of this notice, the Commissioner does not accept that law enforcement would be likely to be prejudiced by the release of the requested information. For the same reasons (in particular, those reasons outlined in 4.19, 4.22 and 4.26) he does not accept that the potential risks to health and safety identified by the Public Authority in 4.31(1-6) above would be more likely to occur if the requested information were to be released.

4.33 In considering the final potential risk identified by the Public Authority (anxiety in the wider community), the Commissioner recognises that press coverage of RSOs resident in a community can raise anxiety among local residents, particularly where there have been notorious local cases and even where that coverage is reasonable and well-considered. However, increased community anxiety does not, in the Commissioner's opinion, amount to endangering the mental health of members of the community such that the exemption from disclosure set out in Section 38 would apply.

4.34 Furthermore, the Commissioner is not satisfied that the release of the requested information may endanger the health and safety of any identifiable individual. He is, therefore not satisfied that Section 38 applies.

4.35 The Commissioner acknowledges the weight of the concerns of the Public Authority but he is, nonetheless, not persuaded that the release of the requested information would be likely to have the prejudicial effects that the Public Authority has suggested may result.

5. The Commissioner's Decision

5.1 The Commissioner's decision in this matter is that the public authority has not dealt with the Complainant's request in accordance with the following requirements of Part I of the Act:

Section 1(1) – in that it failed to communicate to the Complainant such of the information specified in his request as did not fall within any of the absolute exemptions from the right of access nor within any of the qualified exemptions under which the consideration of the public interest in accordance with section 2 would authorise the public authority to refuse access.

6. Action Required

6.1 The Commissioner requires the Public Authority to disclose to the Complainant the numbers of registered sex offenders in each of the police divisions in the Sussex Police Authority Area as at 26 April 2005.

7. Right of Appeal

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 26th day of May 2006

**Signed Graham Smith
 Deputy Commissioner**

**Information Commissioner
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF**