



**Kent
Police**

OFFICIAL

**Publication of Force FOI/SAR
Performance
January 2020**



Introduction:

The NPCC National Data Protection/FOI Lead (ACC Nick Bailey) wrote to all forces at the end of last year, indicating that the Information Commissioner's Office (ICO) had taken the decision to publish performance data regarding compliance, in relation to Freedom of Information Act (FOI) and Subject Access Requests (SAR). This paper seeks to brief Chief Officers in relation to the potential implications for Kent Police.

Essential Background:

The ICO have been engaged with ACC Bailey over the latter half of 2019 regarding the perceived lack of compliance with requests from the public under the Freedom of Information Act (FOIA) and the Data Protection Act (SARs). The ICO expectation is that FOI compliance is 90% but there is no similar SAR performance expectation, other than comply with the legislative requirement of providing a substantive response within 30 days (which is hugely challenging and, in many cases, unachievable given the complexity of the material held). Many forces find themselves failing to comply with this and some by considerable margins, with some subject to improvement plans from the ICO (the ICO have been 'monitoring' our compliance through a monthly update process). Whilst ACC Bailey is working with the ICO to ensure this is a fair reflection of the data, it is conceivable that this will be represented in a format which compares forces against each other.

ACC Bailey states 'The level of compliance remains an individual matter for each Chief Constable, as the Data Controller. However, there is a growing acceptance that general performance levels are influenced, as you might expect, not through process (as most teams have effective procedures), but through the levels of resourcing committed to these functions.'

The ICO accept the position forces find themselves in, regarding budgets and austerity, and are keen to see voluntary improvement through the publication of the data. But they also maintain the option to use their statutory powers to fine those bodies who they feel are not seeking to comply.'

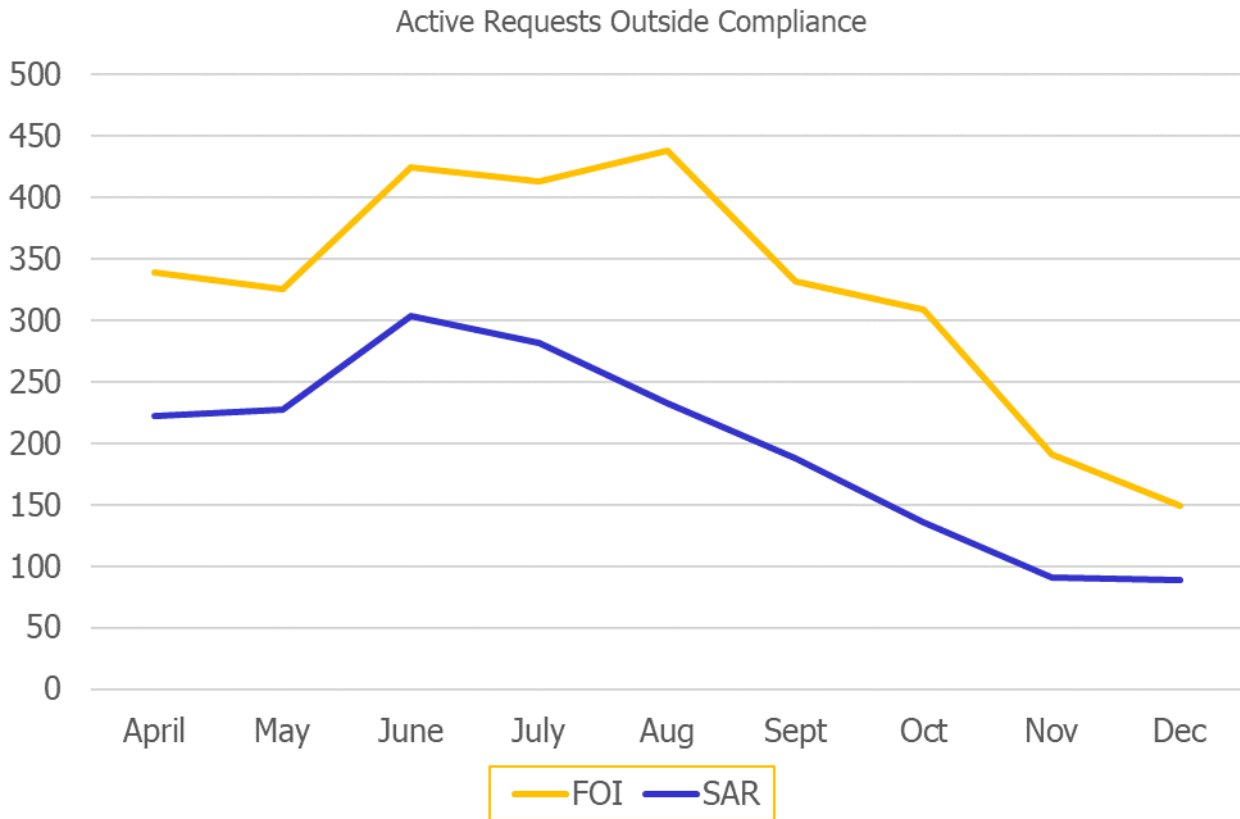
For this reason, I am working on behalf of NPCC to provide levels of assurance to the ICO that police forces are working toward compliance and would encourage you to be sighted on your levels of compliance and satisfy yourself that you can justify the levels of performance'.

Kent Position:

The emerging strategic risk was recognised early last year given the challenges the Force had around compliance around FOI/SAR but also the wider aspects of civil disclosure. As a result, several actions were implemented as summarised below:

- Chief Officer agreement to streamline FOI authorisation process
- 'Lean Events' to identify efficiencies.
- Robotics considered for SAR but discounted for initial pilot
- Follow up letters for older applications
- April '18 – agreement to create a Public Disclosure Department, realised in September '18
- March '19 – agreement to invest £351k to uplift capacity and restructure with new staff starting to arrive at end of September.
- August '19 - Dedicated SAR Supervisor put in place and triage process implemented for new requests.

Whilst it was hoped to address the growing backlog of demand earlier through additional 'fixed term contracts' and the use of overtime, we were unable to get traction until the permanent positions started to be filled in September last year. The graph below shows the positive impact the additional resources have been able to make. It was estimated in March '19 that the Force would reach 'business as usual' by summer 2020 and fully meet the ICO expectations.



The interim levels for published performance data have been sent out to all forces via the National Freedom of Information and Data Protection Unit (NFDPU) and provide some indications of performance at a moment in time. The provisional data sets are presented in a format suggested by the ICO. However, whilst a range of indicators are reflected, the Head of Information Security and Governance has raised concerns about one indicator, that being '% closed in time'. Whilst there is an intention to add some explanatory notes to the data, the measure '% closed in time' will be the headline figure that the public/media will probably focus on.

Our FOI compliance has moved from consistently around 40% for the months prior to October, to 70% in October and 80% in November (December figure will not be known early February as we need a clear month to respond to the requests received in the preceding month). In the six months prior to October we completed on average 166 FOI requests per month, which grew to an average of 214 for the following two months.

In contrast the National Team, using the same data, calculate Kent's compliance as 38% in October and 37% in November. The reason being they calculate the total number of requests closed in the month (irrespective of when they were received) against how many were in time, therefore the more 'older' requests that are closed in the month, the greater impact on this performance measure. As the 'backlog' is reduced still further, our performance calculated in this way will continue to increase.

The same issue is replicated in terms of SAR performance. Our reporting shows a current compliance rate of 81% in October and 95% in November (generally we were around 35% prior to

that point) and have almost doubled our volume of responses per month. In contrast the national way of reporting shows 49% for October and 38% for November.

Our emphasis on tackling our 'back log' whilst also complying with new requests is detrimentally impacting on this measure. Representations have therefore been made to both to the NFDPU and then to the ICO directly that the measure '% closed in time' and the way it is calculated doesn't reflect current compliance and in fact could see an adverse consequence with forces placing less focus on dealing with the 'backlog' in favour of ensuring a more positive headline figure.

At the time of writing the ICO are considering the points but the tone suggests they are unlikely to change their position.

Risk

It is not yet clear when the data will be first published on the NPCC website. Should nothing change and the data is presented as already shared, Kent would appear as below based on the last comparative data available, i.e. November, at the time of this report. Adverse media criticism may follow, along with further ICO interest, albeit we would want to point to strong and sustained improvement.

FOI – Percentage of Requests Completed On Time 37% (6 forces lower)

SAR - Percentage of Requests Completed On Time 38% (6 forces lower)

Conclusions

It is thought unlikely the National Team/ICO will amend their reporting criteria following representations from a single force. Whilst it is unfortunate that the data may be published this way, there is certainty that Kent's position will continue to improve. The risk of formal ICO intervention is assessed as low given our direction of travel, regular engagement with them and the position they have adopted in relation to the public sector more generally.

Recommendation

1. The Force publishes it's own data with appropriate explanation on our own web site.
2. Whilst the PCC was briefed by the DCO and the Head of Information Security and Governance on the 26th November and was content with the Force position and direction of travel, a further update should be given to the PCC's Chief Executive in relation to the impending publication of national performance data.
3. The Head of Information Security and Governance works with the Press Office to ensure there is an appropriate 'if asked' response should media queries follow.