

Sussex Police Headquarters  
Church Lane  
Lewes  
East Sussex  
BN7 2DZ

27 February 2018

Dear Sirs

1. I refer to your letter dated 12 February 2018, by which my Request FOI 1309/17 (the “**Request**”), which was made pursuant to the Freedom of Information Act 2000 (the “**Act**”), was refused by the Sussex Police (the “**Decision**”).
2. In summary, it is my position that Sussex Police has, by its refusal of the Decision, either erroneously applied exemptions under the Act to resist disclosure of the information requested by the Request and/or failed properly to consider various material public interest arguments and factors in favour of disclosure.
3. There is a significant public interest in the information requested being released to the public and the Decision was wrong to have refused disclosure. Had the exemptions under the Act and/or the public interest factors in favour of disclosure been properly considered by the Sussex Police, the Decision would in fact have disclosed all the information requested by the Request.
4. Accordingly, this letter should be construed as a request for the immediate re-examination of the Decision by the Sussex Police for the reasons set out below.

### The Request

5. The Request was made by two emails sent by me to the Sussex Police dated 7 December 2017 (the “**7 December Email**”) and 8 December 2017 (the “**8 December Email**”) requesting various information (the “**Information**”) pursuant to the Act. The text of the 7 December Email and the 8 December Email are appended to this correspondence for ease of reference.
6. A summary of the relevant facts which preceded the Request, and which ought to have been considered for the purposes of the Decision, are set out below at paragraphs 7 to 32.

### The Match

7. As you know, the Request was made following the match between Brighton and Hove Albion FC (“**BHAFC**”) and Crystal Palace FC (“**CPFC**”) at the American Express Community Stadium (the “**Amex**”) on 28 November 2017 (the “**Match**”).
8. Fixtures between BHAFC and CPFC are, due to the history between the two clubs, typically subject to a significant police presence, police-imposed ticketing restrictions upon supporters, and special security measures by the relevant local police force. In the past these special security measures have included the deployment of ‘kettling’ tactics, temporary physical barriers, and police dog units.

9. The Match was treated in line with certain of the practices described immediately above, presumably because its risk designation by the Sussex Police. Tickets for entry to the Match were required to be allocated to specific named CPFC supporters, with each supporter being required to bring their CPFC Season ticket as proof of identity, and a significant number of officers from Sussex Police were deployed on the day of the Match in the area surrounding the Amex.
10. Further, as part of the policing operation surrounding the Match, various CPFC supporters who had congregated in the City Centre on the afternoon of 28 November 2017 were required and directed by the Sussex Police to walk through Brighton City Centre in convoy fully surrounded by the Sussex Police for a prolonged period in the afternoon preceding the Match. These supporters, who were prohibited from exiting the convoy, were subsequently escorted to the Amex by the Sussex Police arriving immediately before the kick-off to the Match.
11. Several hundred CPFC supporters remained congregated outside the Amex immediately prior to the kick-off to the Match. This crowd congestion is likely to have been caused at least in part due to the late arrival of the significant number of CPFC supporters who had been escorted and directed by the Sussex Police in the circumstances described immediately above.
12. Given the extent of supporters who remained outside the gates of the Amex close to the kick-off time of the Match, a decision was taken, presumably by BHAFC, at around 19:45 to prevent the further admittance of supporters of CPFC into the Amex for the Match. At this point, various supporters of CPFC rushed through the turnstiles to gain entry to the Match without having their tickets checked by either the Sussex Police or the staff of BHAFC.
13. The remaining CPFC supporters who had not been able to gain admittance to the Amex were held in a 'kettle' in the immediate perimeter surrounding the Amex by the Sussex Police while the first half of the Match was ongoing. A significant proportion of these fans held their tickets for the Match above their heads to demonstrate that they were not seeking to gain entry to the Match without being entitled to do so.
14. Despite the decision at around 19:45 to close the gates to the Amex to CPFC Supporters, one turnstile to the Amex was subsequently re-opened to allow the admittance of a select number of CPFC supporters who were either (i) not being held within the 'kettle' referred to immediately above; and/or (ii) specifically selected for entry to the Amex.
15. Those CPFC supporters who had been summarily refused admittance to the Amex were subsequently escorted in convoy by the Sussex Police back to Falmer Station at around 20:30. These supporters were required to board a train back to East Croydon Station, notwithstanding that certain supporters indicated to the Sussex Police that they had parked their cars in the area surrounding, or lived locally to, the Amex.
16. Immediately after the Match, CPFC supporters who had been admitted to the Match were subject to 'kettling' tactics by the Sussex Police outside the Amex, preventing any CPFC supporters from leaving the area for a period of around 40

minutes. By the time the line of Sussex Police withdrew, the area surrounding the Amex was substantially free of any supporters of BHAFC. Indeed, the crowd of BHAFC supporters had dissipated around the Amex quickly following the Match, such that the area surrounding the Sussex Police kettle had been quiet for at least 15 minutes prior to the outward escort of CPFC supporters.

17. The CPFC supporters were subsequently escorted to Falmer Station to board trains back to East Croydon at around 22:20.

### Events following the Match

18. At around 00:20 of 28 November 2017, BHAFC released a public statement relating to disorder at the Match (the “**BHAFC Statement**”). The BHAFC Statement indicated the following:

*“A number of Crystal Palace fans travelled to the stadium without tickets, arriving after kick-off some with the aim of forcing entry into the away end...”*

19. Later on 29 November 2017, the Sussex Police issued a statement at 13:33 in respect of the policing operations they had overseen at the Match (the “**Original Statement**”). The Original Statement included the following direct quotes from then Detective Inspector Simon Nelson of the Sussex Police (“**DI Nelson**”):

*“We are aware that a significant number of people attempted to enter the ground with pyrotechnics, knives and knuckledusters, which were found following efforts to gain access through fire exit doors in the south stand.”*  
(the “**Knives and Knuckledusters Allegation**”).

20. The Knives and Knuckledusters Allegation was reported widely in the national media, being repeated in several prominent newspaper stories relating to the Match and the policing of it.

21. By way of example, the Telegraph article of 29 November 2017 published at 15:38 entitled ‘*Brighton steward suffers broken ribs in violence at Crystal Palace match involving fans ‘with knives and knuckledusters’*’ included a verbatim excerpt of the Knives and Knuckledusters Allegation.

22. On 7 December 2017, following questions put to DI Nelson on Twitter by me from Five Year Plan Fanzine (@FYPFazine), which requested an explanation of the basis of the Knives and Knuckledusters Allegation, DI Nelson sent the following tweet at 11:33 (the “**DI Nelson Tweet**”):

*“Please contact @OfficialBHAFC as it was their staff who found those items in the away end of the stadium.”*

23. In light of the DI Nelson Tweet, I submitted the 7 December Email, which made the first four of my requests for information under the Act, requesting disclosure of information on the number of recoveries of knives and knuckledusters (together “**Weapons**”) and arrests at the Match related to the possession of Weapons. Since DI Nelson had, by the DI Nelson Tweet, alleged in the public domain that the basis for the Knives and Knuckledusters Allegation had been recoveries (and presumably consequential reports to the Sussex Police) of

Weapons by staff of BHAFC, I also requested disclosure of information on whether BHAFC and the Sussex Police had in fact been in contact in relation to the Knives and Knuckledusters Allegation. This element of the 7 December Email was intended to test the validity of the claims made by DI Nelson in the DI Nelson Tweet.

24. Following my submission of the 7 December Email, the Sussex Police issued a public apology on 7 December 2017 at 16:50 (the “**Apology**”) in the following terms:

*The reference to weapons being found discarded at the stadium following the Brighton v Crystal Palace match on November 28 was based on information logged by our officers on the night and done so in good faith.*

*Subsequently, it has been established that no such items were physically recovered at the stadium or in the city. We accept that this information was incorrect and the tweet published earlier today (December 7) by one of our officers was wrong.*

*Sussex Police apologises to both clubs and their supporters.*

25. At some point on 7 December 2017 on or around the time of the Apology, the Sussex Police also edited the Original Statement to remove the Knives and Knuckledusters Allegation (the “**Amended Statement**”). The Amended Statement was published at the same URL and with the same time stamp as the Original Statement, which is now consequently not freely available online.

26. Although that the Knives and Knuckledusters Allegation had been removed from it, the Amended Statement contained the following wording:

*“At one stage, a large number of people, who are believed not to have had tickets, overran the turnstiles in the south stand to gain access to the away supporters’ section, where several pyrotechnic devices were discharged throughout the match. Stewards were successful in preventing greater numbers entering in this manner.”*

(the “**Ticketless Fans Allegation**”)

27. Following the Apology and the publication of the Amended Statement, I submitted the 8 December Email.

28. By the 8 December Email, I sought clarification (under Requests 1 to 4) of the basis for the statement within the Apology that information had been logged by Sussex Police officers relating to the Knives and Knuckledusters Allegation. I requested that any information be anonymised for data protection reasons and to protect the identities of any confidential sources, but that the nature of the information purportedly logged by Sussex Police officers relating to the Knives and Knuckledusters be provided.

29. The 8 December Email also sought information relating to the Ticketless Fans Allegation, which had first appeared in the BHAFC Statement prior to the publication of the Original Statement. Neither the Amended Statement nor the

Apology had included any explanation of the basis for the Sussex Police's belief that CPFC supporters had sought entry to the Amex without tickets.

30. Further, given the BHAFC Statement had predated the Original Statement in publishing the Ticketless Fans Allegation, I considered it at least possible that the BHAFC Statement may have been published following specific reports of the Ticketless Fans Allegation being provided to BHAFC by the Sussex Police.
31. Finally, the Ticketless Fan Allegation was directly contradicted by evidence (referred to at paragraph 13 above) of CPFC supporters holding their tickets in the air outside the Amex. As such, I submitted Requests 5 and 6 of the 8 December Email seeking to clarify the basis of the Ticketless Fans Allegation.
32. Following the submission of the Request I waited a significant period for a substantive response from the Sussex Police, which was ultimately provided on 12 February 2018 by the Decision.

## **The Decision**

33. The Decision relies upon the qualified exemption at Section 30 of the Act in refusing to confirm or deny the existence of the Information, and thereby resists the consequential disclosure of any of the Information which the Sussex Police holds that is responsive to the Request.
34. Section 30 of the Act provides public authorities with a qualified exemption entitling them to refuse disclosure of information requested pursuant to the Act (a) under s30(1) if that information has at any time been held for the purposes for particular investigations and proceedings which the authority has the power or duty to conduct; and/or (b) under s30(2) if the information relates to confidential sources.
35. I note that your letter does not indicate which subsection of s30 the Sussex Police relies upon, which is unhelpful. However, I have assumed for the purposes of this letter that you rely upon s30(1) for the purposes of the requests in the 7 December Email, since the DI Nelson Tweet in fact named BHAFC as the source of the Knives and Knuckledusters Allegation, and both elements of the s30 exemption in respect of the requests in the 8 December Email.

## **Arrest and reporting statistics**

36. It is extremely surprising that the Sussex Police seeks to rely upon the s30 exemption in respect of Request 1 and 2 of the 7 December Email and Request 1 of the 8 December Email. These requests sought disclosure of information relating to the outcome and origin of investigations relating to Weapons at the Match, specifically the number of arrests made and reports received by the Sussex Police relating to Weapons.
37. I note that, by the Apology, the Sussex Police admitted that no recoveries of Weapons had been made at the Match. Request 2 of the 7 December Email therefore relates to information now in the public domain, although the specific public domain exemption under the Act has not been relied upon by you in the Decision. Presumably, the reason this information was released by the Sussex

Police in the Apology was because of the Sussex Police's acceptance that the information (i.e. that zero recoveries of Weapons were made by the Sussex Police at the Match) is not exempt from disclosure.

38. In relation to Request 1 of the 7 December Email and Request 1 of the 8 December Email, the basis for your assertion that confirmation of the number of arrests and reports that were made in relation to the possession of Weapons is exempted information is bizarre and not understood.
39. Police forces routinely release arrest statistics, including pursuant to the Act. Moreover, information of this type cannot on any reasonable interpretation be deemed information held for the purposes of an investigation. Arrest and report statistics provide information as to how many times an investigation may have been triggered, or the frequency with which a specific outcome of an investigation has been reached, but cannot be properly considered as being held for the purposes of that investigation. To follow the Sussex Police's logic on this point would mean that information relating to the number of convictions for specific offences held by a public authority would be exempt from disclosure under the Act, which is plainly absurd.
40. Considering the above, I do not accept that Request 1 and Request 2 of the 7 December Email or Request 1 of the 8 December Email fall within the s30 exemption and urge you to reconsider your position that this information is subject to any exemption under the Act.

## **Public Interest**

41. I accept that the remainder of the requests for information comprising the Request may in principle fall within the scope of the s30 exemption. However, I do not accept your determination under the Decision that the public interest in resisting disclosure outweighs the public interest in disclosing the Information for the reasons set out below.
42. First, the section in your letter entitled 'Factors favouring Disclosure' is vague, generic, and appears not to have considered any of the relevant and material factual circumstances surrounding the Match. The glib references in your letter to disclosure potentially allowing the public to understand the investigatory process and the allocation of public resources, and encouraging the provision of information to police forces by informants, may be applicable in most requests for information made to police forces under the Act, including this one. However, reference solely to these factors does not even partially, let alone adequately, capture the proper extent of public interest in the disclosure of the Information. Indeed, it is not clear based on the Decision whether you have in fact considered the specific context of the Match and its aftermath in any proper way, aside from appending various press releases relating to the Match that were already in the public domain.
43. Second, it is clearly in the public interest to understand how the Sussex Police came to consider it appropriate to release unsubstantiated, seriously egregious allegations about the conduct of supporters of CPFC who attended the Match into the public domain. DI Nelson decided of his own volition to narrow the scope of

certain of those allegations and to allege further that BHAFC had been the original source of at least one of them.

44. The Request sought disclosure of the Information to clarify the process that had led to the Knives and Knuckledusters Allegation and the Ticketless Fans Allegation being placed into the public domain. The former was subsequently retracted by the Sussex Police without proper explanation aside from the 87-word Apology. The latter remains in the public domain. Although I acknowledge that it was first published by the BHAFC Statement, the Ticketless Fans Allegation is contradicted by the extent of CPFC supporters who have subsequently obtained refunds for their ticket for the Match having been refused entry to the Amex, and the significant number of CPFC supporters who produced their tickets outside the Amex as described above at paragraph 13.
45. The seriousness of the allegations made by the Sussex Police against the supporters of CPFC should be obvious to you. The Knives and Knuckledusters Allegation on its face included a serious allegation of criminal conduct. As you are aware, the carrying of a weapon in a public place and the carrying of a knife in public without reasonable excuse or lawful authority are offences under the Criminal Justice Act 1988 and the Prevention of Crime Act 1953.
46. It is deeply unsatisfactory and insufficient that the Sussex Police has sought to explain its conduct in relation to the Knives and Knuckledusters Allegation only by reference to the Apology, which amounted to a mere 87 words. The Apology simply indicated that some information had been recorded 'in good faith' and that the information had subsequently been revealed to be incorrect. However, it is in the public interest to know whether the information as 'logged by [your] officers' was sufficient to justify the publication of the Original Statement and the circumstances in which the DI Nelson Tweet came to assert that specific intelligence as to the alleged existence of the Weapons had been provided by BHAFC.
47. While not a direct allegation of criminal conduct, the Ticketless Fans Allegation alleged that many CPFC supporters had sought entry to the Match without a valid ticket. To the extent that the BHAFC Statement was based upon incorrect information provided to BHAFC by the Sussex Police, this is also a serious matter. I am sure I do not need to remind you of the severe effects of past examples of police forces in the UK falsely alleging without a proper basis that football supporters had attempted to gain entry to stadia without having tickets entitling them to do so, nor of the consequences of such allegations if unfounded. In the circumstances, the public should be entitled to the Sussex Police's confirmation of whether it was the original source of the Ticketless Fan Allegation, as requested by Requests 5 and 6 of the 8 December Email.
48. As noted above, the DI Nelson Tweet indicated that information had been provided to the Sussex Police by BHAFC in relation to the Knives and Knuckledusters Allegation, publicly disclosing interactions that had purportedly taken place between the Sussex Police and BHAFC. It is incredulous that the Sussex Police now seeks to argue that providing information which explains how the various statements relating to the Knives and Knuckledusters Allegation entered the public domain might prejudice future investigations and prevent the co-operation of 'partners'. Indeed, it is difficult to envisage how disclosure of the

Information might prejudice any form of investigation by the Sussex Police any more than the steps already taken by the Sussex Police in relation to the Match, including by the Original Statement and the DI Nelson Tweet.

49. Third, there is also a clear public interest in ensuring that policing operations at football matches are proportionate to the risks inherent to each fixture. If this is to be the case, information relating to the frequency and severity of trouble at past fixtures should be based upon properly recorded and rigorously investigated information, rather than hearsay or reports lacking credibility. Were the allegations described in this letter to have been proven correct, it is likely that they would have been used to justify the future deployment of policing tactics of the type described at paragraph 7. There is clear public interest in disclosure of the Information to provide an explanation of the errors and omissions that led to the Sussex Police being required to issue the Apology, and whether the Sussex Police was justified in publishing the Ticketless Fans Allegation, given the harmful effect such false information can have upon future policing operations of football matches (and consequently upon supporters) if not corrected.
50. While the Request is obviously not the proper forum for a more general discussion of the adequacy or appropriateness of the policing operations at the Match, or any formal complaint relating to it, the public interest would be served in knowing whether the investigations that the Sussex Police undertook, if any, at the Match in relation to the Ticketless Fan Allegation and the Knives and Knuckledusters Allegation were properly conducted and sufficiently rigorous.
51. As established by the Information Tribunal in *Guardian Newspapers Ltd v IC and The Chief Constable of Avon and Somerset EA2006/17*, ‘any inference of a lack of vigour or proper vigilance in this investigation which might properly be drawn...is a decisive argument in favour of disclosure’. On the above facts, a clear inference can be drawn of a lack of vigour or proper vigilance in this investigation. This lack of vigour and proper vigilance is already apparent from the DI Nelson Tweet naming BHAFC as the source of the Knives and Knuckledusters Allegation, the Apology, and the Ticketless Fans Allegation being contradicted by a wealth of contemporaneous evidence. Your refusal to disclose further information to the public on how these errors and omissions arose, and to explain why the investigation lacked proper vigilance, is highly unsatisfactory.
52. Finally, there is substantial public interest in ensuring that those in public office act with integrity, competence, and honesty. There are serious questions to be answered by the Sussex Police as to whether the conduct demonstrated by DI Nelson in publishing the DI Nelson Tweet reached an adequate and appropriate standard, particularly in circumstances where DI Nelson has subsequently been promoted to a more senior public role. Disclosure of the Information will likely help to establish if that standard of conduct was adhered to in this case or whether, as seems likely, DI Nelson fell below that standard due to his publication of incorrect information of a serious nature purportedly from a specific source.
53. The balance of public interest considerations in this case are therefore in favour of disclosure of the Information, contrary to the assertions in your letter. Consequently, the Information ought now to be published by you.

## Further Requests

54. As should be clear from the above, the Request was intended at least in part to address the source of the Ticketless Fans Allegation contained within the Amended Statement, which is still available online.
55. To the extent that there is no relevant information responsive to Request 5 of the 8 December Email, I make the following additional requests pursuant to the Act, to which the above considerations on public interest continue to apply:
- a. Please confirm the basis of the Ticketless Fan Allegation as contained within the Amended Statement;
  - b. Please confirm the number of reports made to the Sussex Police of ticketless fans seeking entry to the Amex for the Match;
  - c. Please confirm the number of CPFC Supporters positively identified by the Sussex Police at the Match as being without a valid ticket for the Match;
  - d. Please confirm the steps taken by Sussex Police to deal with specific CPFC Supporters at the Match who were not in possession of tickets for the Match; and
  - e. Please confirm whether any arrests have been made by the Sussex Police in relation to the subject matter of the Ticketless Fan Allegation.
56. Each of the above requests and the requests contained within the 8 December Email or the 9 December Email should be considered separable and discrete requests under the Act. The Sussex Police asserting the relevance of an exemption under the Act in respect of one request therefore does not provide an acceptable basis for continuing to refuse disclosure all of the requests for the Information.

## Next Steps

57. As should be very clear from the above, the issues contained within this letter should now be taken seriously by the Sussex Police. Following the Sussex Police's original concerted media campaign seeking to propagate the Knives and Knuckledusters Allegation and the Ticketless Fans Allegation, your response has been insufficient and concerning.
58. The 87-word Apology, which provided little or no explanation as to how misleading and incorrect information was placed into the public domain by the Sussex Police, followed by a prolonged consideration of the Request and its refusal by the Decision, is far below the standard which should be expected of a competent police force. In circumstances where hundreds of Crystal Palace fans were refused entry to the Match and were subsequently subject to false allegations by the Sussex Police, I encourage you to reconsider your approach to the Request immediately.
59. Should you consider that a fuller explanation can be provided in respect of the Ticketless Fans Allegation and the Knives and Knuckledusters Allegation by the Sussex Police without provision of information under each of the requests for the Information made by me, I would welcome your proposals in this regard.
60. To the extent you continue to refuse the requests made pursuant to the Act by the 8 December Email, the 9 December Email, and above at paragraph 55, I intend to appeal your decision immediately to the ICO for a determination of whether you have appropriately and properly considered the public interest

factors in favour of disclosure, which I consider you have not for the above reasons.

I look forward to hearing from you.

Yours sincerely

Robert Sutherland

## APPENDIX 1 - THE 7 DECEMBER EMAIL

1. The number of arrests made by the Sussex Police at the Match relating to the possession of offensive weapons including, without limitation, knives and knuckle dusters (together "Weapons");
2. The number of recoveries of Weapons made by the Sussex Police at the Match, including, but not limited to, inside the perimeter of The American Express Community Stadium;
3. The number of reports provided to the Sussex Police by Brighton and Hove Albion Football Club (the "Club") of recoveries of Weapons by the Club at the Match; and
4. Whether any communications (whether in electronic or hard copy or oral form) have been exchanged between the Sussex Police and the Club following the Match in relation to the recovery of Weapons at the Match, whether by the Club or otherwise.

## APPENDIX 2 - THE 8 DECEMBER EMAIL

Dear Sirs

This email is sent pursuant to the Freedom of Information Act 2000 (the "Act").

We refer to the football match between Brighton and Hove Albion and Crystal Palace on 28 November 2017 (the "Match"). We also refer to the apology issued by Sussex Police dated 7 December 2017 relating to the Match (the "Apology").

The Apology asserted that reports had been provided to the Sussex Police of offensive weapons, including knuckle dusters and knives (together "Weapons") being in the possession of supporters of Crystal Palace FC at the Match (the "Reports") and that the Reports had been recorded by the Sussex Police in good faith.

Please confirm:

1. The number of individual reports comprising the Reports that were made to the Sussex Police;
2. Substantive details of the Reports including, but not limited to, (i) the time on the day of the Match at which the Reports were made; (ii) whether the Reports were made by employees or contractors, including stewards, of Brighton and Hove Albion ("BHA"); (iii) the location to which the Reports related; and (iv) anonymised descriptions of the types of individual who made the Reports; and (v) the types of Weapons alleged by the Reports to be in the possession of supporters of Crystal Palace Football Club and the circumstances in which they had been identified
3. Details of the subsequent steps taken by the Sussex Police to establish the veracity of the Reports, the credibility of those making the Reports, and the outcome of such investigations, including whether formal interviews were conducted with the individuals who made the Reports;
4. Whether the existence of the Reports was communicated to BHA by the Sussex Police in the hours immediately following the Match and, to the extent such communication did occur, whether information relating to the credibility of the Reports was also communicated to BHA.

Please also confirm the following:

5. Whether the Sussex Police communicated to BHA in the hours immediately following the Match that supporters of Crystal Palace Football Club ("CPFC Supporters") had attended the Match without being in possession of tickets for the Match;

6. To the extent such communication referred to at Request 5 was made, please provide details of:

(a) The basis for the Sussex Police's assertion that CPFC Supporters attended the Match without tickets for the Match;

(b) The number of CPFC Supporters positively identified by the Sussex Police at the Match as being without a valid ticket for the Match;

(c) The steps taken by Sussex Police to deal with specific CPFC Supporters at the Match who were not in possession of tickets for the Match.

Please provide the information requested in electronic form and within the prescribed timeframe provided for in the Act.