

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 August 2012

Public Authority: The Chief Constable
Address: Essex Police Headquarters
PO Box 2
Springfield
Chelmsford
CM2 6DA

Decision (including any steps ordered)

1. The complainant requested information from Essex Police about the location of automatic number plate recognition (ANPR) cameras, including CCTV cameras with ANPR functionality, in and around Brentwood. Essex Police refused to disclose the location of the cameras, citing national security and law enforcement reasons (sections 24(1) and 31(1)(a), (b) and (c)).
2. The Information Commissioner's decision is that Essex Police was entitled to rely on section 31 as its reason for withholding the requested information.
3. The Information Commissioner does not require Essex Police to take any steps as a result of his decision.

Request and response

4. On 9 November 2011, the complainant wrote to Essex Police and requested the following information:
 - "1. The location of fixed, operating automatic number plate recognition cameras operated by Essex Police or its Agencies including Essex County Council in and around Brentwood, Essex.
 2. The location of CCTV cameras with ANPR functionality in and around Brentwood, Essex."

5. Essex Police responded on 25 November 2011. It stated that the information requested was exempt from disclosure, citing national security and law enforcement reasons (sections 24(1) and 31(1)(a), (b) and (c)).
6. Following an internal review Essex Police wrote to the complainant on 9 December 2011. It upheld its refusal to disclose the requested information.

Scope of the case

7. The complainant contacted the Information Commissioner (the 'Commissioner') to complain about the way his request for information had been handled. He referred the Commissioner to his detailed submissions for an internal review as his reasons for complaining.
8. The Commissioner considers the scope of his investigation to be the application of sections 24 and 31 to the request, namely the geographical location of the ANPR cameras, including CCTV cameras with ANPR functionality, used by Essex Police. All references to 'ANPR cameras' in this notice concerning the request made to Essex Police incorporate CCTV cameras with ANPR functionality.

Reasons for decision

9. In reaching his decision in this case, the Commissioner has considered a previous case about a similar request for information, involving Devon and Cornwall Police. The Commissioner issued a decision notice in that case (*reference FS50270424*), in favour of withholding the requested information. That decision was appealed to the First-tier Tribunal (Information Rights) which, although agreeing that the exemption at section 31 was engaged, concluded, contrary to the Commissioner's decision, that the balance of the public interest favoured disclosure (EA/2010/0174). That decision has in turn been appealed by Devon and Cornwall Police and is due to be heard by the Upper Tribunal in 2013.
10. He has also considered another similar case involving Kent Police (*reference FS50416596*) in which an element of the decision not to disclose the requested location of ANPR cameras in Kent was upheld, in part due to the complex crime picture associated with Kent Police.
11. Section 31 of the FOIA creates an exemption from the right to know if the effect of disclosure would, or would be likely to, prejudice any of a range of law enforcement functions and activities listed in the

exemption. During the Commissioner's investigation, Essex Police confirmed that it no longer wished to rely on section 31(1)(c) because disclosure of the information could not be said to prejudice the administration of justice, but that it was still relying on sections 31(1)(a) and (b) to withhold the information. Those subsections provide an exemption from disclosure if release of the information at issue would, or would be likely to, prejudice, respectively, the prevention or detection of crime, or the apprehension or prosecution of offenders.

12. Addressing the question of the likely harm of disclosure, Essex Police told the complainant that disclosing the location of ANPR cameras:

"would compromise any ongoing criminal investigations, or proceedings, which make use of the data produced by the camera. In addition, the technology can be used in combating acts of terrorism but also in the prevention and detection of crime and in the reduction of death and injury on the roads. Therefore, if the locations of the camera were disclosed their capability to prevent such activity would be compromised."

13. It also argued that, by knowing the location of cameras, the criminal fraternity could bypass them, and effectively build up a picture of 'safe areas' where they may more successfully operate.

14. The complainant submitted that information about the location of some ANPR cameras is already in the public domain; however, Essex Police argued that whilst this may be the case through disclosures at court for example, it is unable to confirm whether such material represents a totality of the information held, or whether such information continues to be current for the reasons already outlined.

15. Essex Police argued that it is clear that the disclosure of the complete information would enable criminals and terrorists to escape detection and assist them in the commission of serious offences, quoting the following paragraphs from the decision notice issued in *FS40416596* concerning a similar request made to Kent Police:

"32. However, in favour of the maintenance of the exemption is the undoubted public interest in avoiding prejudice to the ability of the police to prevent and detect crime and to apprehend and prosecute offenders.

33. In this case, the Commissioner considers the public interest in avoiding the prejudice, together with the fact that, for geographic reasons, there is a complex crime picture associated with Kent Police, leads him to conclude the public interest in the

maintenance of the exemption outweighs the public interest in disclosure."

16. Essex Police confirmed that it had recently combined its resources with Kent Police into a single Serious Crime and Organised Crime Directorate, the joint 'SCD', devoted to combating serious and organised crime in the respective areas. Essex Police argued that whilst it acknowledges crime patterns may vary between the geographical areas in question, it cannot see why it would be appropriate to refuse to disclose the location of ANPR cameras in one area while releasing them in another area situated very close by. To do so would simply assist the criminal fraternity in determining the 'safe areas' in which to operate since they will either know that there is no ANPR coverage, or at least how best to avoid detection by the cameras.
17. In this case, the complainant has asked for information about ANPR cameras within a limited area. Essex Police has argued that disclosure of just the numbers of ANPR cameras in the Brentwood area would be likely to assist those planning criminal offences.
18. It explained that Brentwood is an area positioned close to the capital of London at the junction of the M25 motorway, adjacent and connected to the M25 via junction 28 and the A12, which is a major trunk road; this is one of the most important routes in the country stretching from central London to Great Yarmouth in Norfolk, via the environs of the ports of Felixstowe and Ipswich and the port of Lowestoft. Essex Police submitted that the geographical policing issues and concerns highlighted in the Kent decision are analogous to those in Essex.
19. Having considered the withheld information the Commissioner is satisfied that it provides information about the location of ANPR cameras used by Essex Police. He is also of the view that the withheld information, detailing as it does the location of the ANPR cameras, would provide sufficient knowledge of the location of the cameras to enable someone wishing to avoid the ANPR camera network to do so.
20. It follows that the Commissioner accepts that the outcome of disclosure predicted by the public authority is possible and he is therefore satisfied that the exemptions provided by sections 31(1)(a) and (b) are engaged.

The public interest

21. Having concluded that sections 31(1)(a) and (b) are engaged, the Commissioner has gone on to consider the balance of the public interest.

Public interest arguments in favour of disclosing the requested information

22. Essex Police acknowledges that there is information in the public domain confirming that the police use ANPR in relation to the prevention and detection of terrorism, serious crime, volume crime and fatal and serious injury road traffic incidents. It accepted that disclosure would enhance the public's knowledge about how ANPR is used by Essex Police and the specific nature of the technology. Disclosure would aid the public's understanding of how ANPR operates and for what direct purpose, stopping any incorrect rumours or falsehoods that may already exist. This is a significant public interest argument as it would enable the public to better debate the privacy and surveillance implications of ANPR.
23. The complainant's submissions in favour of disclosure centre on his belief that he has been unfairly convicted and imprisoned as a result of ANPR evidence as opposed to any generic public interest considerations.

Public interest arguments in favour of maintaining the exemption

24. Arguing against disclosure, Essex Police brought to the complainant's attention the contribution ANPR cameras make to intelligence gathering, and therefore to the prevention and detection of crime and the apprehension and prosecution of offenders. It argued that disclosure of the withheld information in this case would compromise any ongoing criminal investigations, and also that to weaken a mechanism used to monitor criminal activity would not be in the public interest.
25. In its submissions to the Commissioner, Essex Police emphasised the effect of disclosure in this case, including the advantage that would be afforded to criminals as a result of them being able to evade routes monitored by ANPR cameras. It argued that this would impact the operational effectiveness of the cameras and the ability of the police to capture information for intelligence purposes.
26. The Commissioner considers these arguments are strengthened by virtue of the geographical area Essex Police is responsible for policing, as described in paragraph 18 of this notice. Given its proximity to the capital and to a number of ports, not only will the police have to deal with burglary, violence and vehicle crime, crimes which all police forces deal with, but smuggling and people trafficking.
27. During the course of the Commissioner's investigation, Essex Police made reference to both the Devon and Cornwall tribunal and the Kent case and the evidence submitted in these cases. The Commissioner considers that the public interest arguments and evidence supplied in

that case are also relevant in this case and add weight to the arguments in favour of maintaining the exemption.

Balance of the public interest arguments

28. When balancing the opposing public interests in a case, the Commissioner is deciding whether it serves the public interest better to disclose the requested information or to withhold it because of the interests served by maintaining the relevant exemption. If the public interest in the maintenance of the exemptions does not outweigh the public interest in disclosure, the information in question must be disclosed.
29. In the Commissioner's view, the existence and extent of the ANPR network both within Brentwood, Essex and nationwide is of considerable significance to the balance of the public interest in this case. This network enables the monitoring of many of the road journeys undertaken nationwide, regardless of the purpose of those journeys or whether they are being undertaken in vehicles suspected of being associated with criminal activity or that have been linked to known criminals or to crime.
30. The Commissioner acknowledges that disclosure of the information in question would contribute substantively to the debate about the ANPR network by adding to public knowledge about the implementation and geographical extent of this network. The Commissioner considers this to be a public interest factor in favour of disclosure which has significant weight.
31. However, in favour of maintenance of the exemption is the undoubted public interest in avoiding prejudice to the ability of the police to prevent and detect crime and to apprehend and prosecute offenders.
32. In this case, the Commissioner considers that the public interest in avoiding that prejudice, together with the fact that, for geographic reasons, there is a complex crime picture associated with Essex Police, means that the public interest in the maintenance of the exemption outweighs the public interest in disclosure.

Section 24 National security

33. As the Commissioner has reached the conclusion above on sections 31(1)(a) and (b), he has not gone on to consider Essex Police's citing of section 24(1).

Right of appeal

34. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

35. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
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