

Decision Notice



Decision 010/2013 Ms Sheila Stephen and the Chief Constable of Grampian Police

Speeding offences detected at a specific camera site

Reference No: 201201310

Decision Date: 24 January 2013

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Rosemary Agnew

Scottish Information Commissioner

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Summary

Ms Stephen requested information from the Chief Constable of Grampian Police (Grampian Police), including statistics relating to alleged speeding offences detected at a specific traffic camera site. Grampian Police refused to disclose this information, on the basis that (among other reasons) to do so would prejudice substantially the prevention of speeding offences. Following an investigation, the Commissioner accepted this position.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 35(1)(a) (Law enforcement)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 27 February 2012, Ms Stephen requested information which included statistics of alleged speeding offences detected by a specific fixed traffic camera on the A90 over the following periods:
 - a) 8am to 10am on 5 November 2011;
 - b) the whole of 5 November 2011;
 - c) that week;
 - d) 6 October to 5 November 2011, to include 5 November; and
 - e) as above for the period 6 November 2011 to the present day (27 February 2012)
2. Grampian Police responded on 6 March 2012. They confirmed that they held relevant, recorded information, but withheld it under exemptions which included section 35(1)(a) of FOISA.
3. On 5 April 2012, Ms Stephen wrote to Grampian Police requesting that, in the interests of justice, they review their decision.

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4. Grampian Police notified Ms Stephen of the outcome of their review on 9 May 2012, upholding their previous decision and reliance on exemptions including section 35(1)(a) of FOISA.
5. On 26 June 2012, Ms Stephen wrote to the Commissioner, stating that she was dissatisfied with the outcome of Grampian Police's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Ms Stephen had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

7. On 13 August 2012, Grampian Police were notified in writing that an application had been received from Ms Stephen and were asked to provide the Commissioner with any information withheld from her. Grampian Police responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted Grampian Police, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. They were asked to justify their reliance on (inter alia) section 35(1)(a) of FOISA.
9. Comments were received from Grampian Police. Submissions were also sought and received from Ms Stephen in relation to why she considered the public interest would favour disclosure of the withheld information.
10. The relevant submissions received from both Grampian Police and Ms Stephen will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to her by both Ms Stephen and Grampian Police and is satisfied that no matter of relevance has been overlooked.



Section 35(1)(a) – Law enforcement

12. Section 35(1)(a) of FOISA exempts information if its disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime. As the Commissioner's guidance on this exemption¹ indicates, the term "prevention or detection of crime" is wide-ranging, encompassing any action taken to anticipate and prevent crime, or to establish the identity and secure prosecution of persons suspected of being responsible for crime. This could mean activities in relation to a specific (anticipated) crime or wider strategies for crime reduction and detention.
13. There is no definition in FOISA of what is deemed to be substantial prejudice, but the Commissioner considers that the authority would have to identify harm of real and demonstrable significance. The harm would also have to be at least likely, and therefore more than simply a remote possibility.
14. In their submissions, Grampian Police explained that, although the public were aware that fixed speed cameras were not always active, the detail of when particular cameras were active was not made known to the public. They acknowledged that, in this case, information had been requested about one site only. Nevertheless, questions to the force about the number of offences detected at speed camera sites were not infrequent and so, if the information were to be released on this occasion, it would set a precedent for the response to subsequent requests. The information would, in conjunction with comparable information from other fixed camera sites, allow a map or "league table" to be created showing the cameras detecting the most and least offences. This would, Grampian Police submitted, allow drivers to assess at which sites they had less chance of being caught speeding.
15. Grampian Police also referred to research entitled *The speeding driver: who, how and why?* carried out for the Scottish Executive and published in 2003. In this document, they advised, over half of Scottish drivers said they would slow down near speed cameras where they were aware of the location of the camera, but would not necessarily moderate their speed for the rest of the journey. This, Grampian Police submitted, showed the deterrent effect of a speed camera believed to be operational. Releasing information undermining that belief would, in their view, be likely to encourage drivers to disregard the speed limits knowing that they were less likely to be caught. For camera enforcement to be truly effective, they argued, there must be a perception that the chance of being recorded was high at all times and at all sites.
16. For the reasons set out above, Grampian Police also argued that the detection of those actually flouting the speed limit would be substantially prejudiced by disclosure of the information.
17. In her application, Ms Stephen commented that she failed to understand Grampian Police's reasoning for not releasing the information, which was all in retrospect and should have no bearing on any possible future camera usage at the various locations.

¹ <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section35/Section35.asp>



18. Having considered the submissions from Grampian Police and Ms Stephen, the Commissioner acknowledges Ms Stephen's view that the information she is seeking is retrospective. Nonetheless as fixed safety cameras are used as part of a strategy for crime reduction, the Commissioner does not consider it necessarily accurate to infer that camera usage in the past is not an indication of current or future camera usage at a particular location.
19. Furthermore, the Commissioner accepts that if the information covered by Ms Stephen's request were released to her, this would give her an understanding of the number of alleged offences detected at various times of day, over a number of days, weeks and months at a specific fixed camera site.
20. Having considered the arguments received from Grampian Police, the Commissioner accepts that this information would enable Ms Stephen (and the wider public) to understand and be aware of when this fixed camera may or may not be in use, which would in turn have an impact on the effectiveness of the camera as a deterrent to driving at excessive speeds on this stretch of road. The Commissioner accepts that this would substantially prejudice Grampian Police's ability to prevent motorists from flouting the speed limit on this part of the road (as well as their detection of those actually doing so). Such incidences of motorists not moderating their speed in this area would also have the potential to cause accidents, which this camera is there to prevent.
21. For the reasons set out above, the Commissioner is satisfied that disclosure of the withheld information would, or would be likely to, prejudice substantially Grampian Police's ability to prevent or detect crime. The Commissioner is therefore satisfied that the information is (and was, at the time Grampian Police dealt with Ms Stephen's request) exempt under section 35(1)(a) of FOISA.

Public interest test

22. Section 35(1)(a) of FOISA is a qualified exemption, which means that its application is subject to the public interest test set out in section 2(1)(b) of FOISA. Therefore, having decided that the information is exempt under section 35(1)(a), the Commissioner must now go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.
23. In their submissions, Grampian Police acknowledged that it would be in the public interest to publish information indicating whether the speed camera was used to its potential to prevent and detect road traffic offences. They recognised a particular public interest in information about this particular site, given that a petition had been placed before the Scottish Parliament to improve safety measures at that junction and research was being carried out to justify the required measures.
24. Grampian Police also accepted that it would be in the public interest to highlight the road traffic offences detected at this site in order to demonstrate the requirement for a speed camera, to serve as a deterrent to those who might have considered their chances of detection to be low.



25. On the other hand, Grampian Police did not consider it to be in the public interest to release site-specific data which would lead to an increase in the number of road traffic offences. On the contrary, they argued it was in the public interest for road traffic legislation to be observed in order to keep the roads safe for the benefit of drivers, passengers and other road users.
26. Furthermore, Grampian Police did not consider it to be in the public interest to release information that significantly reduced the effectiveness of lawful and cost-effective methods used by them to prevent and detect crime. They indicated that the requirement to abandon fixed speed cameras in favour of mobile patrols, or to introduce longer and more frequent coverage by fixed speed cameras in order to detect speeding offences, as a response to this disclosure, would be more labour intensive and significantly more costly.
27. On balance, Grampian Police concluded that the need to deploy effective methods to prevent and detect crime was greater than illustrating the effectiveness of speed cameras. Therefore, they considered that the arguments supporting use of the exemption were stronger than the arguments in favour of release.
28. In her submissions, Ms Stephen explained that she suspected there might be an anomaly at this specific location and perhaps a fault or irregularity with the particular camera concerned. Ms Stephen considered it was in the public interest to find out if there was some irregularity with the equipment used. Following on from these concerns, she also put forward more personal reasons why she considered the information should be disclosed
29. Having considered the submissions from both Grampian Police and Ms Stephen, the Commissioner accepts that there is a public interest in ensuring that the speed camera is working properly and is not faulty in any way. Nevertheless, the Commissioner considers that the information already disclosed to Ms Stephen by way of the calibration certificate (accessible on the authority's website, as Ms Stephen was advised in response to her request of 27 February 2012) and related invoices (disclosed in response to a request made on 5 April 2012, the response being provided along with the review outcome for this case) for the camera concerned would fulfil this public interest. The Commissioner does not accept that disclosure of the numbers of alleged speeding offences detected by the camera over the timescales specified by Ms Stephen would allow the public to determine whether the camera is faulty.
30. Having considered the more personal interests identified by Ms Stephen, the Commissioner accepts that disclosure of the withheld information might potentially assist her in pursuing these, which might by extension be in the interests of justice (and therefore in the public interest). On the other hand, it is difficult to see what that information would add to the information already accessible to her and referred to in paragraph 29.
31. Having considered the public interest arguments advanced by Grampian Police, the Commissioner agrees that there is a public interest in disclosing information which demonstrates whether this speed camera is used to its full potential, and is effective in preventing or detecting crime. The Commissioner also recognises, having read the petition submitted to the Scottish Parliament about the junction in question, that there is widespread public interest in the safety of this particular junction.

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32. With that in mind, the Commissioner considers that it is of significant public interest that Grampian Police continue to have mechanisms, such as the fixed speed camera, in place to ensure that speed limits are observed and the safety of that junction and stretch of road is maintained.
33. It is also, in the Commissioner's view, of significant public interest in the current economic climate that public authorities can seek to deploy their resources in the most cost-effective and efficient way possible. The Commissioner accepts, for the reasons detailed by Grampian Police, that disclosure of the withheld information in this case would lead to less efficient and cost-effective use of resources, which would be contrary to that public interest.
34. On balance, the Commissioner has concluded that in all the circumstances of this case, the public interest in disclosing the withheld information is outweighed by that in maintaining the exemption in section 35(1)(a) of FOISA. Therefore, the Commissioner has concluded that Grampian Police were entitled to withhold the information in line with section 35(1)(a) of FOISA.
35. As the Commissioner is satisfied that the withheld information has been properly withheld in line with section 35(1)(a) of FOISA, she is not required to go on to consider the application of the exemptions in sections 35(1)(b) and 39(1) of FOISA (which were also applied to this information by the Council).

DECISION

The Commissioner finds that the Chief Constable of Grampian Police complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Ms Stephen.

Appeal

Should either Ms Stephen or the Chief Constable of Grampian Police wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

Margaret Keyse
Head of Enforcement
24 January 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

35 Law enforcement

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially-

- (a) the prevention or detection of crime;

...