



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
INFORMATION RIGHTS**

**Case No. EA/2010/0071**

**ON APPEAL FROM:**

**The Information Commissioner's  
Decision Notice No: FS50225815  
Dated: 23 March 2010**

**Appellant: MICHAEL COLE**

**Respondent: INFORMATION COMMISSIONER**

**Determined on the papers on 16 July 2010 at Holborn Bars, London**

**Before**

**Robin Callender Smith**

Tribunal Judge

and

**Elizabeth Hodder  
Andrew Whetnall**

Tribunal Members

For the Appellant: Mr Michael Cole in person

For the Respondent: Mr Richard Bailey, Solicitor for the Information Commissioner

**Subject matter:**

**Freedom of Information Act 2000**

Qualified exemptions

- Law enforcement s.31

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notice dated 23 March 2010 and dismisses the appeal.

**REASONS FOR DECISION**

Introduction

1. Mr Michael Cole ("the Appellant") asked the Cumbria Constabulary (the "Public Authority") for the number of prosecutions for speeding offences on the M6 during 2007. He broke his request into a series of 5 mph speed bands ranging through from 70 mph to 90+ mph.
2. Initially Cumbria Constabulary refused to provide a breakdown of the numbers of prosecutions although it did provide a total figure. Subsequently it went on to provide the majority of the information but it declined to provide a breakdown of the two lowest speed thresholds, namely 70-75 mph and 76-80 mph. The Public Authority stated this was withheld under exemptions at Section 31 of the Freedom Information Act 2000 ("FOIA") in relation to law enforcement and Section 38 in relation to health and safety.
3. Mr Cole's position in this appeal – which relates only to the section 31 FOIA exemption – is that releasing data in relation to prosecutions of the two bands between 70-75 mph and 76-80 mph would not encourage speeding because of existing publicity about the tolerance levels in relation to excess speed and actual prosecutions.

The request for information

4. The Appellant wrote on 20 November 2008 to the Camera Safety Camera Unit based at the Public Authority's police headquarters asking for information in relation to the M 6 motorway running through the Cumbria region and the number of prosecutions for speeding offences over the last 12 months (or the latest 12 months data are available) the speeds between:
  - 70-75 mph
  - 76-80 mph
  - 81-85 mph
  - 86-90 mph.

5. The Public Authority responded and provided the Appellant with the total number of prosecutions but maintained that the further breakdown requested it would breach Sections 31 and 38 of FOIA.

The complaint to the Information Commissioner

6. The Appellant complained to the Information Commissioner ("IC") on 3 December 2008, challenging the Public Authority's decision to withhold the information requested.
7. During the course of the IC's investigation the Public Authority provided the majority of the information to the Appellant but it declined to provide a breakdown of the two lower speed thresholds (70-75 mph and 76-80 mph).
8. Further information was withheld under Section 12 FOIA relating to 570 records which included two kinds of information. The first concerned cases where it was not appropriate to make a Conditional Offer or issue an Endorsable Fixed Penalty Notice and the matter had been dealt with by way of summons. The second covered cases involving speeding offences detected by a police officer where an Endorsable Fixed Penalty Notice was issued to a driver at the time of the offence.
9. The IC served his decision notice on 23 March 2010 and concluded that Section 31 (the law enforcement exemption) was engaged and that the public interest in maintaining the exemption outweighed the public interest in disclosure

The appeal to the Tribunal

10. The Appellant appealed on the basis of that the IC's decision that Section 31 (a) and (b) FOIA applied was wrong.

The questions for the Tribunal

11. The Tribunal had to consider the balance of the public interest in relation to the law enforcement exemption embodied in Section 31 FOIA.

Evidence

12. The Tribunal considered the full information in an un-redacted form – provided as Closed Information to the Tribunal – sought by the Appellant, but redacted in documents and letters provided to him.
13. Although that information was provided to the Tribunal to permit the detail and context of the issues under appeal it has not, as a matter of fact, played any part in the Tribunal's decision.

Conclusion and remedy

14. The Appellant contests the IC's conclusion that if motorists were aware of precise speed thresholds, or the likelihood of being caught when travelling at a speed within the 70-80 mph speed band, that would give them the latitude to travel at what they perceive to be the highest speed at which they were likely to be able to evade detection. The Appellant submits that this argument *"is not substantiated and no evidence is provided to support it"*.
15. The Appellant also argues that *"the fact that there is a declared policy and approach which allows +10% +2 mph, the 'tolerance level', over a prescribed limit is made by the police/public authority and known to the public defeats the argument that [disclosure of] further bands of data will undermine their ability to prosecute"*.
16. Finally the Appellant argues that the IC was wrong to conclude that knowledge of the likelihood of being called within the lowest speeding threshold at 70-75 mph would be likely to impact on the prevention and detection of crime and the apprehension or prosecution of offenders when the tolerance level up to 79 mph (above the lowest speeding

threshold) was already in the public domain. Those tolerance levels for speeding are contained within the speed enforcement guidelines issued by the Association of Chief Police Officers ("ACPO").

17. The Appellant argues that Section 31 FOIA does not apply to the prosecution or detection of crime, the apprehension or prosecution of offenders or the administration of justice *"as this section was not intended to be applied for information released of this nature in general is that it does not specifically relate to a case or individuals and by nature is past as any judicial process has been completed"*.

18. The Tribunal disagrees with the Appellant.

19. The information requested does not have to relate to a specific case or a specific individual for the exemption to be engaged. The question (as correctly identified by the IC) is whether the information is likely to prejudice things like the prevention or detection of crime generally, not in relation to a particular individual.

20. The disclosure of the requested information would demonstrate a policy that would have continued to have been applied at the date of the request in November 2008 and is likely to have been prejudicial to the prevention or detection of crime at this time.

21. It is established Tribunal practice that the date for the assessment of the issues before the Tribunal is the date of the original request.

22. It is also clear to the Tribunal that the ACPO guidelines are exactly that: guidelines and nothing more. Prosecutions can and do take place at the police's discretion on occasions that merit it when the speed limit has been breached only fractionally.

23. This is not the same as the kind of discretion used by the police and the Crown Prosecution Service in terms of drivers and blood alcohol levels where the legal limit is 35 µg/mL but where prosecutions do not take place until the 40 µg/mL threshold is reached to ensure that any faulty tolerance levels within the equipment and machinery are not factored in adversely against drivers.

24. The Tribunal is not persuaded by the Appellant's argument that there is evidence to show that people "*do adapt their behaviour for better performance, e.g. smoking, eating etc when the facts and information is made known to them*".

25. It agrees with the IC's contention that simply because people adapt their behaviour in other parts of life when information is known it does not necessarily follow that this applies to driving habits. There is no evidence provided by the Appellant to support this assertion.

26. The Tribunal is satisfied to the required evidential standard (the balance of probabilities) that the disclosure of the disputed information would be likely to prejudice the prevention of crime as it could encourage drivers to make judgements of the probabilities of enforcement at speeds within a certain margin above the speed limit.

27. Our decision is unanimous.

28. The Tribunal makes no order as to costs in relation to this appeal.

29. Under section 11 of the Tribunals, Courts and Enforcement Act 2007 and the new rules of procedure an appeal against a decision of the First-tier Tribunal on a point of law may be submitted to the Upper Tribunal. A person wishing to appeal must make a written application to the First –



tier Tribunal for permission to appeal within 28 days of receipt of this decision. Such an application must identify any error of law relied on and state the result the party is seeking. Relevant forms and guidance can be found on the Tribunal's website at [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk).

Robin Callender Smith

Judge

29 August 2010