

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 25 August 2009**

**Public Authority:** Chief Officer of Essex Police  
**Address:** Essex Police Headquarters  
PO Box 2  
Chelmsford  
Essex CM2 6DA

### Summary

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The complainant submitted several requests in a single letter for information related to the use and operation of a type of speed camera and an additional request for certain contractual information. The public authority refused to provide the information citing sections 12 and 40(1). After internal review, it provided some information caught by the scope of the requests.

The Commissioner has concluded that the majority of the requests could be aggregated for the purpose of calculating the cost of compliance but that the public authority failed to justify its application of section 12(2). The Commissioner requires the public authority to confirm or deny what it holds within the scope of the complainant's aggregated requests, and either provide her with that information or explain why it is exempt. The Commissioner also identified a number of procedural shortcomings in the way the public authority handled this request, namely: sections 1(1)(b), 10(1), 16(1) and 17(1).

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. The complainant submitted a multi-part request to the public authority on 15 May 2006. The information she sought related both to the use and operation of a type of speed camera and to information about contracts the public authority had agreed above a certain value. The full text of her letter is set out in an Appendix to this Notice. The complainant did not use numbering for each part but instead used hyphens. She also used hyphens for subsections of the final part of her

request. As can be seen in paragraph 9, the public authority numbered each element itself and it is this numbering system which the Commissioner has used for the remainder of this Notice and in the Appendix.

3. On 9 June 2006, the public authority issued a refusal notice citing section 12 of the Act as the basis for its refusal. Section 12 is set out in full in a Legal Annex to this Notice. The public authority explained in its refusal notice that it would exceed the appropriate limit of £450 to *“locate and collate”* the information requested. It invited the complainant to redefine and resubmit her request but commented that *“requests covering the same subject from the same applicant may be amalgamated for the purposes of costs if they are received within a sixty day time period.”* It also directed the complainant to the website of Essex Safety Camera Partnership. It offered the complainant an internal review where she was dissatisfied with this refusal and reminded her of her right to complain to the Commissioner where she remained dissatisfied.
4. On 12 June 2006, the complainant asked the public authority for a copy of the written assessment which led it to conclude that it was entitled to use the provisions of section 12.
5. The public authority responded on 12 July 2006, referring to its refusal notice of 9 June 2006. It invited her to revise and resubmit her multi-part request of 15 May 2006. It then commented that it could be argued that her original request was a deliberate attempt to misuse the legislation by tying up its time and resources. It referred her to section 12(4)(a) and (b) although it provided no detail as to the content of these subsections. It also referred her to section 14 (Vexatious and repeated requests) as a possible basis for refusal. Later in the same letter it commented that *“the above opinion is merely conjecture on our part and not a formal notification that your request is refused on the grounds that section 12(4) or section 14 apply. However, I would ask that you bear in mind these provisions”*. It explained that had she disputed the fixed penalty notice she had received, she would have had the right to exercise her rights to information in support of her case under the *“Crime Procedures Investigation Act (CPIA 1996) [sic]”*. It commented that she chose not to pursue this course of action and paid the fixed penalty. It again invited her to break down, redefine and resubmit her requests and expressed a willingness to make enquiries as to whether it held recorded information relevant to the request.
6. The complainant requested an internal review of the public authority's refusal of 9 June 2006 in a letter dated 27 September 2006. In a letter to the complainant dated 26 October 2006, the public authority undertook to conduct an internal review of its response to her information request of 15 May 2006 and advised that it would send the outcome of this review to her within 3 months.
7. The public authority did not meet this target and the complainant sought the intervention of the Commissioner in November 2006 and again on 12 February 2007. The Commissioner contacted the public authority on 22 February 2007 and was advised that the review was being carried out. The public authority confirmed the outcome of its internal review in a letter to the complainant dated 6 March 2007 which included an apology as to delay.

8. This review set out the public authority's position in relation to each point of the original letter in turn. It drew attention to the fact that she had made specific reference to her own offence in the introductory sentence of her request (see Appendix) and commented that she had therefore established a connection between her offence and her request under the Act. It commented that the Act was applicant and purpose blind and that any disclosure it made under the Act could conceivably be placed on its website or made available to any other person making the same request.
9. The public authority numbered each request and provided a response to each in turn. In relation to question 1, it appeared to apply section 40(1) (Requester's personal data) because it considered that the question related to a specific speeding offence that she was alleged to have committed, although it did not actually specify which subsection of section 40 it was relying on. It commented that she had accepted guilt by paying the fine and had chosen not to exercise her right of appeal. Her right to do so would have been set out in the Conditional Offer of a Fixed Penalty that she would have received. It also commented that had she lodged an appeal she would have been provided with advice and assistance and information about accessing information under the provisions of the Criminal Procedure and Investigation Act 1996. It further argued that the information caught by the scope of this question was also exempt from disclosure under section 30(1) (Investigations information). It provided arguments as to the balance of public interest in relation to section 30(1) and asserted that the public interest favoured non-disclosure. It also provide links to websites for the following organisations: Essex Safety Camera Partnership; Association of Chief Police Officers (ACPO); Department for Transport; the Home Office.
10. It sought to apply the same exemptions to question 2 (and the same reasoning) but also provided a link to the website of the camera manufacturer, Gatso. It argued that sections 43 (Commercial interests) and 41 (Information given in confidence) would apply to the requested manual although it provided no further detail as to the application of these exemptions. In particular, it did not set out which subsection would apply nor did it set out the balance of public interest in relation to section 43 as it had done in relation to section 30(1) above.
11. In relation to question 3, it argued that requesters were required, by virtue of section 8(1)(c) of the Act, "*to adequately describe what in terms of recorded information held by Essex Police they seek access to*". It argued that her use of the phrase "*provide any information*" (see Appendix) was not sufficient in this regard. It said that an adequate description would narrow the search and reduce the chances of a request being too costly to answer. It again referred to the actions of searching for and collating information as being relevant to calculating whether the fees limit would be exceeded. It provided general information about Home Office approval as to the reliability of speed cameras and provided a weblink to information about Home Office Type Approval legislation.
12. In relation to question 4, it referred back to its earlier comments about requests which include the phrase "*provide any information*" and also commented

“*[d]epending on what information is being requested this request could attract a number of exemptions*”. It listed 3 options as follows.

- a. Costs exemptions – it explained that the information may not be kept in a readily accessible format. It referred to the fact that no time period was specified in the request and commented that its systems may not be able to produce information about cases which had gone to court.
  - b. Sections 30, 31 (Law enforcement), 32 (Court records), 38 (Health and safety), 40 (Personal data), 41 (Information given in confidence), 44 (Prohibition on disclosure) although it provided no further information as to which subsection of these exemptions would apply, no information as to how the exemptions would apply and no information as to the balance of public interest where applicable.
  - c. The information may not be held.
13. It invited her to resubmit her request for more specific information suggesting, as an example, statistical information, but commented that the camera at the site in which she had expressed a particular interest met governmental and manufacturer’s requirements in terms of calibration and operation.
  14. In response to question 5, it referred her to the response it had given for question 4 but added that it had received confirmation from its Camera Enforcement office that it did not hold this information.
  15. In response to question 6, it referred her to the response it had given for question 4 but explained the process that would normally be followed where a Conditional Offer of Payment was not followed by a payment.
  16. In response to question 7, it commented that it complied with related ACPO guidance which it named and provided a relevant weblink.
  17. In response to question 8, it referred the complainant to the “*answer given to Question 8 [sic]*”.
  18. It provided a calibration certificate in response to question 9 and drew her attention to information on that certificate in response to question 10.
  19. It stated unequivocally that it did not hold the information caught by the scope of questions 11 and 12.
  20. In response to question 13, it referred to the response it had provided in relation to question 1 and asked her to write in for a particular form which she would be required to complete before it would comply with her right of subject access to her personal data. It also described this information as being exempt from disclosure to her under the Act by virtue of section 30 (Investigations information), section 38 (Health and safety) and section 40 (Personal data) but provided no further detail about which subsections were applicable or how these exemptions applied.

21. It provided her with relevant web links as a response to question 14.
22. In response to question 15, it referred to the response it had provided in relation to question 1.
23. It stated unequivocally that it did not hold the information caught by the scope of question 16 and referred her to an extract from the Essex Safety Camera Partnership's website.
24. In response to question 17 it referred again to what it described as the complainant's "*obligations under section 8, 1 (c)*" but added that it did not hold information relevant to this request and referred her to Essex County Council.
25. In response to question 18, it referred again to what it believed to be her obligations under section 8 of the Act. It also referred to a relevant extract from the ACPO Code of Practice which it had already mentioned elsewhere in its response. It also described information about enforcement patterns as being exempt for law enforcement and health and safety reasons and referred to sections 31 and 38 of the Act. It also referred to an early decision of the Commissioner as being relevant.
26. In response to question 19, it referred again to what it believed to be her obligations under section 8 of the Act but provided a response it had given under the Act to a request on a related matter.
27. As can be seen from the Appendix to this Notice, question 20 was subdivided into 4 parts. The public authority referred again to what it believed to be her obligations under section 8 of the Act but stated unequivocally that it did not hold information caught by the second element of this question. It referred her to Essex County Council and provided her with contact details for that authority. It provided information in relation to the first and third subsection of the question, namely a table which included a description of the procurement exercise, the date of the Official Journal of the European Union (OJEU) award notice (see Findings of Fact below) and the names of successful tenderers in each case. It described the information caught by the final subsection of the question as being exempt by virtue of both section 41 (Information given in confidence) and section 43(2) (Prejudice to commercial interests).
28. The public authority then referred to question 21. Arguably, based on the handwritten formatting used by the complainant, this was, in fact a further subsection of question 20. However, for ease of reference and for completeness, the Commissioner has used the public authority's numbering here and in the Appendix to this Notice. Nothing turns on this because the complainant did not complain to the Commissioner about how the public authority responded to this part.
29. The complainant wrote to the Commissioner to complain about the outcome of the public authority's review in a letter dated 27 June 2007. She objected in general terms to the tone of the public authority's correspondence with her and also identified her particular concerns about the detail. The Commissioner

acknowledged receipt of her complaint in a letter dated 17 July 2007 and, on the same day, notified the public authority that it had received an eligible complaint from the complainant about how it had handled her request of 15 May 2006.

30. The Commissioner wrote to the complainant again on 6 September 2007 and 13 December 2007 to advise that the complaint had yet to be allocated to a case officer. The Commissioner also wrote to the public authority on 13 December 2007 to ask whether, given the passage of time, it was prepared to reconsider the application of any of the exemptions it sought to rely on and to disclose the requested information.

## The Investigation

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### Scope of the case

31. Prior to formal allocation to a specific caseworker, one of the Commissioner's caseworkers undertook preparatory work on the case. This caseworker entered into correspondence with the complainant in order to clarify which parts of her 15 May 2006 request she wished to complain about. The complainant identified questions 1, 3, 4, 5, 6, 8, 11, 13, 16, 19 and 20 as being those questions "*to which I wait a proper reply*".
32. Her complaints about the public authority's responses to these questions can be summarised as follows:
- exemptions have been incorrectly applied;
  - the public authority has been unhelpful and not attempted to provide information within the costs limit;
  - the public authority has incorrectly denied holding certain information;
  - the public authority's response is incomprehensible (with particular reference to question 8); and
  - the public authority has ignored the third part of her question 20.
33. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### Chronology

34. The Commissioner wrote to the complainant on 12 January 2009 and explained his view that the information caught by questions 1 and 13 would constitute her personal data. He explained that, as such, this information would be absolutely exempt from disclosure under section 40(1). Section 40 is set out in full in a Legal Annex to this Notice. The Commissioner set out information about her right of access to her own personal data under section 7 of the Data Protection Act 1998 ("DPA") and her right under DPA section 42 to request an assessment from his office as to whether or not an organisation had provided a proper response to such a request (known as a "subject access request"). He explained that such an assessment would be carried out by one of his DPA complaint handling teams



rather than one of his Freedom of Information complaint handling teams. There are further comments on this issue in the Other Matters section of this Notice.

35. The Commissioner stated that in the light of the above, his investigation would focus exclusively on how the public authority responded to her questions 3, 4, 5, 6, 8, 11, 16, 19 and 20. He explained his initial view that the substantive matter in the case appeared to be whether the public authority had correctly applied section 12 rather than any other of the exemptions it cited. Section 12 is set out in full in the Legal Annex to this Notice. The Commissioner explained that if it would exceed the appropriate limit described in section 12 in order to comply with the request, the application of any other exemptions cited by the public authority would not, strictly speaking, be relevant. The Commissioner also outlined the relationship between section 12 and section 16 (Duty to provide adequate advice and assistance to requesters) and explained that he would also consider whether the public authority had complied with this duty in respect of her request. Section 16 is set out in full in the Legal Annex. The Commissioner invited the complainant to contact him if she thought matters other than these should be considered in his investigation. The complainant did not object to this approach although she did ask the Commissioner to consider the public authority's assertions that certain information was not held.
36. In the same letter the Commissioner also asked the complainant for further commentary as to why the public authority's provision of the date of the OJEU award notice in relation to its last ten contracts was insufficient for the purposes of the third element of question 20. The complainant replied:
- "My questions about contracts are intended to discover whether the police have carried out procurement within the terms of the [European Procurement Directives]. Quite clearly it is in the public interest to know [whether] they have done. At the time of my enquiry contracts for goods and services of a value exceeding £144371 were subject to the regulations. An [OJEU] notice, as referred to by the police is simply 'a notice placed in a relevant journal concerning the progress of a particular competitive procurement'; it does not in any way demonstrate the police have complied with all the requirements of the legislation. The fact that their answer on this point was evasive is to say the least interesting".*
37. The complainant suggested that the Commissioner conduct an online search using the phrase "european [union] procurement directives" to learn more about the subject.
38. The Commissioner wrote to the public authority on 20 January 2009 setting out the chronology of relevant pre-complaint correspondence between the parties and the scope of his investigation.
39. The Commissioner set out his initial analysis of the public authority's application of the Act and asked for the public authority to provide further comment as to the application of section 12. In particular, the Commissioner sought comment as to whether the public authority was applying section 12 to section 1(1)(a) of the Act (Duty to confirm or deny whether requested information is held) or to section

- 1(1)(b) (Duty to provide requested information) because, in the Commissioner's view, it was unclear from the public authority's letter of 6 March 2007 as to which was the case.
40. The Commissioner also expressed concern about the public authority's repeated reference to section 8 and its apparent decision to put the onus on the complainant to provide an adequate request rather than its duty to assist her in formulating it. The Commissioner noted that the complainant's requests appeared fairly specific although he acknowledged that the description of information sought may not readily match information that the public authority held.
  41. The Commissioner provided guidance notes that he had recently produced on the application of section 12 to assist the public authority in formulating its response. He noted reference in one of those guidance notes to an adjudication of the Information Tribunal: *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA/2006/0004). In paragraph 12 of that adjudication, the public authority's estimate of the cost of compliance is described as "*sensible, realistic and supported by cogent evidence*". He explained that in the light of that adjudication, he expected public authorities to provide cost estimates of a similar quality when seeking to rely on section 12. He asked the public authority now to do this in this case.
  42. The Commissioner asked the public authority to clarify its position with relation to question 8.
  43. With regard to question 11, the Commissioner asked what searches it had undertaken to determine that the information described in this part of the request was not held. He also asked whether the manufacturer in question was under a contractual obligation to the public authority to provide a calibration service using appropriately qualified individuals. If it was, and the public authority held information relating to this (such as a clause in a contract), this would seem to fall within the scope of this element of the complainant's request and should be provided to her unless exempt.
  44. With regard to question 20, he referred to information within the scope of that request which had been provided and to information which had been exempted by virtue of sections 41 and 43(2). He asked the public authority for further arguments as to the application of section 41 and for a copy of the information which had specifically been withheld, namely, the names and addresses of unsuccessful bidders.
  45. He also raised concerns about how the public authority had approached questions 1 and 13 which, in the Commissioner's view, clearly related to the complainant's personal data. Further comment on this subject is found below in Other Matters.
  46. The Commissioner requested the public authority's full and complete arguments to support its position. He explained that if the public authority chose not to submit any further response the Commissioner might proceed to make a decision based solely on the information which has already been supplied to him. He added that



he may also choose to use his formal information gathering powers under section 51 requiring the public authority to provide such information. He set a deadline for response of 20 working days from the date of the letter, that is, by 17 February 2009.

47. In a letter dated 13 February 2009, the public authority wrote to request that the deadline for response be extended to 2 March 2009, citing increased workload and limited resources as the reason why it would not be able to meet the deadline that the Commissioner had originally set.
48. On 17 February 2009, the Commissioner wrote to agree the requested extension. In that letter he explained that 20 working days was a standard timescale and that a shorter timescale would normally be set out for any follow up letters. He also reminded the public authority again of his formal information gathering powers under section 51 of the Act.
49. In a letter dated 27 February 2009, the public authority provided its response to the Commissioner's letter of 20 January 2009.
50. In its opening paragraphs, the public authority set out its concerns about the Commissioner's requirements. It commented that it did not have sufficient time and resources to devote to putting together an in-depth and lengthy response to the Commissioner's letter of 20 January 2009.
51. It explained that its original refusal on the grounds of costs (dated 9 June 2006) was based on the best judgement that could be made at the time and that it had no documentary evidence to support how it had reached this view. Citing question 19 as an example it said that it had made enquiries at its Safer Roads Bureau (which handles camera enforcement matters) and determined that the information was not held in a readily accessible format because the system which recorded speeding offence data did not distinguish between members of the public and police officers or police staff. It acknowledged that it should have cited section 12(2) in its response whereby it would be exempt from the duty to confirm or deny whether it held information of this nature because it would exceed the appropriate limit to determine whether the information was held.
52. It further commented that the complainant's requests "*would be aggregated for the purpose of calculating costs (as pointed out in my letter of 12 July), therefore if one of her requests is refused on the basis of cost then it is logical to assume that all associated requests would also be refused on that basis*". The Commissioner would observe at this point that the public authority's letter of 12 July 2006 did not point this out to the complainant. Instead it specifically stated that it was not formally notifying her that it was aggregating her requests (see paragraph 5).
53. It commented that it maintained the view it had set out in its letter of 12 July 2006 that "*there were grounds to believe that her "request" [public authority's emphasis] was vexatious and a misuse of the legislation*". It made references to public comments made in May 2007 by the Commissioner regarding vexatious requests and asked for his comments as to whether the complainant's request

could be construed in that way. It also commented that it had received requests of a similar format albeit with not as much detail from safety camera campaign groups and others wishing to contest speeding fines.

54. The public authority also set out how its approach to requests for information of a similar description had changed. It explained that it would now provide a response which cited section 40(5) as its basis for refusal (see Legal Annex) whereby a public authority is exempt in certain circumstances from its duty to confirm or deny under the Act whether it holds an individual's personal data.
55. Focussing on questions 3, 4, 5, 6, 19 and 20, it referred the Commissioner to its comments regarding application of section 12 in its original refusal of June 2006. The Commissioner construes this as meaning that it had no documentary evidence to support this stance and that its decision in June 2006 as to the application of section 12 was based on its judgement at the time (see paragraph 51).
56. It commented that confirmation or denial under the Act of the existence of information described in questions 3, 4 and 5 could lead to an inadvertent public confirmation that the complainant had committed a speeding offence which could be construed as public disclosure of her personal data. It argued that the same could be said for confirmation or denial relating to the information described in parts 9, 10, 11, 12, 13, 15, 16 and 17 because they could all be linked to her offence through the wording of her request.
57. It acknowledged that its response to question 8 had included a typo and that it had intended to refer the complainant to its response to question 7.
58. With regard to question 11, it reiterated its view that confirmation or denial that it held information matching this description could be construed as a disclosure of the complainant's personal data. It went on to provide detail of the calibration process, explaining that calibration itself takes place in Holland where the manufacturer in question is based. It added that it is not required for Type Approval purposes to know who actually carries out the calibration.
59. Regarding the names and addresses of unsuccessful contractors, it acknowledged that this information could have been considered for release but, *"given the lapse in time, [the public authority understood] that this documentation has since been disposed of in accordance with the force's retention and disposal policy"*.
60. In summary, it reiterated its view that the requests could be construed as unreasonable. It acknowledged that there had been technical inaccuracies in its original response which had prompted further correspondence from the complainant. It observed that the complainant had not shown a willingness to co-operate with it in terms of amending or clarifying her requests and had not applied for access to her personal data despite being invited to do so. It acknowledged errors of judgement on its part particularly in the non-provision of certain information and commented that *"given the time it has taken for this complaint to*

*be referred to [it], this information is no longer held'*. It stated that all it could do in this regard was offer the complainant its apologies.

61. The Commissioner responded to this letter on 11 March 2009. In relation to the public authority's comments about section 14(1) (Vexatious requests), he explained that it was not his role to offer an opinion as to what alternative provisions may be relied upon as a basis for refusing to provide requested information. He invited the public authority to submit its arguments as to the application of section 14(1) if it wished to rely on this provision and provided his recently published guidance on this subject to assist it in formulating its response.
62. Regarding the application of section 12, the Commissioner commented that the public authority's statement that it did not hold the information in a readily accessible format and its failure to provide an explanation as to how it calculated that the appropriate limit would be exceeded was insufficient. He commented that in the absence of further detail it would be difficult to conclude with any degree of certainty that it could rely on this provision. He added that he did not know what information the public authority held for its own purposes that might be caught by the scope of the complainant's questions; how the public authority held that information; what electronic records management systems it had; or what kind of facilities it had for searching those systems.
63. The Commissioner explained that he would need to know precisely what it would need to do in order to identify, locate, retrieve and extract the information, how long it would take to do so and what costs (in addition to time at £25/hour) would be incurred. He commented that were this matter to go before the Information Tribunal, the public authority would be expected to provide such detail in order to support its view that section 12 applies. Finally, he commented that, in the absence of such detail, he would be left with little option but to conclude that the public authority could not rely on section 12 and to issue a Decision Notice to that effect.
64. He invited the public authority to respond within 20 working days (i.e., by 9 April 2009) and noted that this timescale was twice that normally set for public authorities (including central government departments). This was an acknowledgement of the resource difficulties that the public authority had described. The Commissioner also explained that if the public authority decided not to provide any further arguments, he would make his decision on this case based on the detail that had been provided to date.
65. On 14 April 2009, the Commissioner called the public authority to check whether a response would be forthcoming and to discuss the consequences where none was provided. During the conversation, the public authority confirmed that it did not wish to make any further submissions. The Commissioner wrote to the public authority on the same day to check whether he had understood it correctly in this regard.
66. No further comment has been received from the public authority on this case. The Commissioner therefore assumes it is content to rely on the arguments it has provided to date.

## Findings of Fact

67. According to the Office of Government Commerce (“OGC”) website, an OJEU award notice is a notice which announces the winner of a procurement exercise.
- “Notices (often referred to as Advertisements) placed in the Official Journal of the European Communities (OJEU) are the official means of information delivery concerning the progress of a particular competitive procurement (usually over the relevant EC threshold, but not always) to the European public at large.”*
68. Further information about public sector procurement is available on the OGC’s website:  
[http://www.ogc.gov.uk/procurement\\_policy\\_and\\_practice/procurement\\_policy\\_and\\_application\\_of\\_eu\\_rules.asp](http://www.ogc.gov.uk/procurement_policy_and_practice/procurement_policy_and_application_of_eu_rules.asp)
69. According to page 10 of a Department for Transport leaflet entitled “Speed: Know Your Limits”, speed limits are determined by local authorities rather than police forces such as the public authority in this case:  
<http://www.dft.gov.uk/pgr/roadsafety/speedmanagement/speedknowyourlimits.pdf>

## Analysis

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### *The complainant’s personal data*

70. The Commissioner is satisfied that the information caught by the scope of her requests 1 and 13 would, if held, constitute the requester’s personal data. This information, if held, would clearly constitute evidence collated in relation to the specific traffic offence that she committed on a particular day at a particular time. The Commissioner is not persuaded by the public authority’s argument set out in paragraph 54 regarding the majority of the other requests. He acknowledges that the complainant prefaced all her requests with the reference number which related to her own offence. However, he believes that the information caught by the scope of her other requests is sufficiently removed from the actual commission of the offence such that it would not, if held, constitute her personal data. It does not, in the Commissioner’s view, become her personal data simply because her interest in it arises from her own experience of safety cameras operated within the jurisdiction of the public authority.
71. The public authority should, strictly speaking, have refused to confirm or deny under the Act whether it held the requester’s personal data (as described in questions 1 and 13) under section 40(5)(a). This section is set out in full in a Legal Annex to this Notice.
72. As a matter of good practice the public authority should have automatically activated its procedures for handling individuals’ requests for access to their own personal data under section 7 of the DPA upon receipt of the complainant’s

requests 1 and 13. Further commentary on this point is set out in Other Matters later in this Notice.

### *Section 12 – Cost of Compliance*

73. In its original refusal notice dated 9 June 2006, the public authority explained that it was refusing to respond to the complainant's request because it believed section 12 applied. Section 12 removes the obligation on public authorities to comply with section 1 of the Act where the estimated cost of compliance with either part of that section would exceed what is known as "the appropriate limit". This limit is set by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations). For non-central government public authorities such as the one in this case the appropriate limit is £450 (which can be calculated as 18 hours of work where an hour is charged at a standard rate of £25).
74. Section 17 sets out what details public authorities are required to provide as regards their reasoning where they refuse a request. Section 17 is recorded in full in a Legal Annex to this Notice. By virtue of section 17(1), public authorities are required to set out precise details as to which element of which exemption they seek to rely on and why they believe they can do so. However, a public authority is not obliged to set out such detail where it seeks to rely on section 12. Section 17(5) merely requires a public authority to state that it is relying on section 12 where it believes it has a basis for doing so. The practical consequence of this is that a public authority is not, strictly speaking, formally obliged to provide much detail in a refusal notice as to why it believes section 12 applies.
75. However, a public authority is obliged under section 16 to provide complainants with reasonable advice and assistance in accordance with the section 45 code of practice. More detailed analysis of this requirement is set out later in this Notice but the Commissioner would note at this stage that the section 45 code of practice includes recommendations as to good practice for engaging with a requester where a public authority seeks to rely on section 12 as a basis for refusal of their request.
76. In the Commissioner's view, constructive progress on this particular request was hampered by a failure on the part of the public authority to follow recommendations as to good practice in this regard. Had it explained its reasoning more clearly (in accordance with the recommendations of the section 45 code of practice), the parties may have been able to reach a compromise. Even where no compromise could have been reached, the focus of any disagreement between them may have been easier to determine. Unfortunately, the public authority failed to explain its position with any clarity until its letter to the Commissioner dated 27 February 2009. The Commissioner would note that, by the public authority's own admission (see paragraph 50), this letter was not as detailed as it could have been.
77. This Notice will now address the merits of the public authority's arguments in relation to section 12 insofar as they can be determined from its correspondence



with the complainant and with the Commissioner. It will then address the public authority's compliance with section 16.

78. Having analysed the correspondence, the Commissioner believes that there are three subsections of section 12 which are particularly relevant to this case.
- Section 12(4): allows a public authority to aggregate the cost of compliance with multiple requests in certain circumstances.
  - Section 12(2): removes the public authority's obligation to provide confirmation or denial as to whether requested information is actually held where the cost of doing so would exceed the appropriate limit.
  - Section 12(1): removes the public authority's obligation to provide requested information where the cost of identifying, locating, retrieving and extracting the requested information would exceed the appropriate limit.
79. The interplay between the various provisions set out in paragraph 78 is somewhat intricate. In this case, where the estimated cost of providing confirmation or denial would exceed the appropriate limit in relation to one request (from a set of aggregated requests), the public authority would not be obliged to provide such confirmation or denial in relation to any of the other requests aggregated in the same set. This would appear to be the argument that the public authority sought to make in its letter of 27 February 2009 (see paragraphs 51 and 52).
80. Analysis of the application of section 12 in relation to this case has therefore been as follows.
- Has the complainant made one request with multiple parts or multiple requests in one letter?
  - If the latter, can any of the requests be aggregated?
  - Has the public authority sought to rely on section 12(2) in relation to any of these aggregated requests?
  - Where it has, can the public authority rely on section 12(2) in relation to any of these aggregated requests?

Where the Commissioner finds that the public authority can rely on section 12(2) in relation to one of the aggregated requests, then it follows that the public authority would not be obliged to confirm or deny whether it held any of the information caught by the scope of the aggregated requests.

*Has the complainant made one request with multiple parts or multiple requests in one letter?*

81. Section 12(4) can be engaged where one person makes two or more requests. It allows for the aggregation of these requests for the purpose of calculating costs in circumstances which are set out in Regulation 5 of the Fees Regulations. This Regulation provides that multiple requests can be aggregated where two or more requests relate, to any extent, to the same or similar information.
82. Given the effect of section 12(4), the Commissioner first considered whether the complainant's letter of 15 May 2006 constituted a single request with multiple



elements or multiple requests. The Information Tribunal considered a similar issue in *Fitzsimmons v ICO & Department for Culture Media and Sport* (EA/2007/0124).

<http://www.informationtribunal.gov.uk/DBFiles/Decision/i242/Fitzsimmons.pdf>

83. Taking the Tribunal's decision in *Fitzsimmons* (in particular its comments at paragraph 36) into consideration, the Commissioner would characterise the complainant's letter of 15 May 2006 as containing more than one request within a single item of correspondence.

*Can any or all of the requests be aggregated?*

84. Having established that the complainant had made multiple requests in a single letter, the Commissioner went on to consider whether those requests could be aggregated for the purpose of calculating the cost of compliance.
85. The Commissioner's task in considering whether any of the requests could be aggregated has been made somewhat more complicated by the fact that the public authority complied in part with certain requests although, according to the position it set out in February 2009, it was not obliged to do so by virtue of the interplay between section 12(4) and section 12(2). The complainant has complained to the Commissioner about some, but not all, of the responses where it has decided to comply with her requests. For example, she has disputed the public authority's response to request 5 that it holds no information of the type described in that request but she has not disputed its response to request 12 which is of a similar nature.
86. For practical purposes, the Commissioner has focussed on how the public authority responded to the following of the complainant's requests: 3, 4, 5, 6, 8, 11, 16, 19 and 20. The complainant confirmed that these were the ones of most interest to her (see paragraph 35). He believes that, in the circumstances of this case, no useful purpose is served by considering whether the public authority could also have aggregated those requests which the complainant did not include in her complaint to him.
87. Having considered the text of these questions, the Commissioner has concluded that questions 3, 4, 5, 6, 8, 11, 16 and 19 could be aggregated for the purpose of calculating the cost of compliance. They follow an overarching theme about the establishment, use and reliability of safety cameras. He considers that the cost of compliance with the second element of question 20 could also be aggregated with these other requests because it follows the same overarching theme. However, he does not consider that the remaining elements in question 20 are sufficiently related to this theme such that the cost of compliance with any of these remaining elements could be aggregated with the cost of complying with 3, 4, 5, 6, 8, 11, 16 and 19.
88. Having concluded that the majority of the questions could be aggregated for the purpose of calculating costs, the Commissioner went on to consider the application of section 12(2).

*Has the public authority sought to rely on section 12(2) in relation to any of these aggregated requests?*

89. In its letter of 27 February 2009, the public authority provided the Commissioner with some information about how it reached the view that it would exceed the appropriate limit to confirm whether it held information within the scope of question 19 (as described in paragraph 51 above). While its explanation does not seem wholly unreasonable, the Commissioner cannot conclude with any certainty that the cost of compliance would exceed the appropriate limit because this explanation is not supported by cogent evidence as recommended by the Information Tribunal in *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency (EA/2006/0004)* and as requested by the Commissioner in accordance with the Tribunal's recommendation. The public authority did not, for example, set out approximately how long it would take to search each record as described. It did not set out the limits of any keyword search facility within the system in question. It appears not to have considered whether its Human Resources or Professional Standards departments would hold such information and whether and how it could be retrieved from their respective systems. It may have considered such options and subsequently ruled them out but the Commissioner has received no evidence to show that it applied itself in this way.
90. The public authority provided no information about how it reached the view that it would exceed the appropriate limit to provide confirmation or denial in relation to any of the other questions. Had it provided such evidence, the Commissioner would have taken this into consideration, even where insufficient evidence had been provided in relation to the cost of compliance with question 19. If such evidence in relation to the cost of compliance with one of the other questions had been persuasive, the Commissioner would have concluded that the public authority was exempt from its obligation to provide confirmation or denial in response to all the aggregated requests.

#### *Section 12(2) and 12(4) – Conclusion*

91. In light of the above, the Commissioner has concluded that the public authority can aggregate questions 3, 4, 5, 6, 8, 11, 16, 19 and the second element of question 20 for the purpose of estimating the cost of compliance with those questions by virtue of section 12(4). However, it cannot rely on section 12(2) as its basis for refusing to provide confirmation or denial as to what it holds within the scope of these aggregated requests because it has not supplied cogent evidence in support of its position in this regard. The public authority is therefore obliged to provide confirmation or denial as to whether it holds information caught by the scope of 3, 4, 5, 6, 8, 11, 16, 19 and the second element of question 20.

#### *Confirmation or denial already provided*

92. The Commissioner notes that the public authority has already denied holding information caught by the scope of questions 5, 11, 16 and the second element of question 20 and the complainant has challenged the denials in relation to question 5, 11 and 16. She has also complained that these denials were not

followed by advice and assistance from the public authority which would have helped her to find the information she was seeking.

93. In the Commissioner's view, these denials (provided at internal review) do not constitute a proper response to the complainant's request because the letter in which they are set out is confused and beset with contradictions. The public authority did not make clear to the complainant that her requests had been aggregated and then, having failed to do so, it appeared to provide unequivocal denial in relation to some of the requests and equivocal denial in relation to others. It then went on to argue that it would exceed the appropriate limit to confirm or deny what it holds in relation to any of the requests.
94. In its letter to the Commissioner dated 27 February 2009, the public authority eventually confirmed that it sought to rely on section 12(2). It argued, correctly, that if section 12(2) were applicable, it would be under no obligation to provide any specific confirmation or denial in relation to any of the aggregated requests. It then appeared to argue that the unequivocal denials it set out in relation to some of the requests were an effort to provide reasonable advice and assistance in accordance with its obligations under section 16. The Commissioner will consider the public authority's compliance with section 16 later in this Notice. However, the Commissioner is not in a position to make a determination as to whether any of the public authority's statements of confirmation or denial are correct because the public authority has not co-operated by providing evidence of its costs estimate with regard to the application of section 12(2). As such the Commissioner cannot reach a view as to whether it conducted sufficiently thorough searches in relation to 5, 11 and 16. Had it done so, the Commissioner may well have concluded that section 12(2) was applicable and that the public authority would not have been obliged to provide confirmation or denial in relation to any of the requests.
95. The Commissioner has decided that the most practical way forward in the circumstances of this case is to consider the public authority's responses to questions 5, 11 and 16 in the context of its overall obligation to provide reasonable advice and assistance to the complainant. As has already been noted and as will be set out in more detail shortly, the Commissioner believes that the public authority did not provide adequate advice and assistance to the complainant. He will require the public authority to take certain steps to correct this, including providing unequivocal confirmation or denial in relation to what it holds within the scope of all of her requests. Given the interrelated nature of the aggregated requests (including 5, 11 and 16) and the volume of information sought overall, he believes it is more appropriate for the complainant and the public authority to work out between themselves which information is of the highest priority to her. The parties will be in a position to do this once the public authority has determined what it holds within the scope of the aggregated requests and once it has issued a proper refusal notice explaining why, if applicable, it believes any of this information is exempt from disclosure.

#### *Section 16 – Advice and Assistance*

96. Section 16 imposes a duty upon public authorities to provide advice and assistance to requesters. Section 16 is set out in full in a Legal Annex to this

Notice. Section 16(2) states that where a public authority has conformed with the code of practice under section 45 it will have complied with its duty to provide reasonable advice and assistance. This code of practice can be accessed on-line via the following link: <http://www.dca.gov.uk/foi/reference/impref/codepafunc.htm>.

97. The Commissioner has considered the code of practice and believes that the following paragraphs are relevant to this case:

Paragraphs 8 – 11: Clarifying the request  
Paragraph 13 –15: Advice and Assistance and Fees

98. The public authority has sought to argue that it satisfied its obligations to provide reasonable advice and assistance to the complainant because its refusal notice included an invitation to her to refine her request. The Commissioner acknowledges that the public authority did issue such an invitation but he notes that this invitation was accompanied by a commentary as to the likelihood of a further refusal.

99. Paragraph 10 of the code of practice identifies the following as non-exhaustive list of examples of appropriate advice and assistance that public authorities might offer when clarifying a request:

- “a. providing an outline of the different kinds of information which might meet the terms of the request;*
- b. providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority;*
- c. providing a general response to the request setting out options for further information which could be provided on request”.*

100. The public authority did provide the complainant with a number of weblinks which covered information within the scope of her request. However, aside from a statement to the effect that it might hold other information within the scope, it provided little or no detail as to what this information might be and instead set out why such information, if it were held, would be likely to be exempt. It provided the complainant with no information as to how it calculated that the cost of complying with her request would exceed the appropriate limit. It alluded to various provisions of the Act as potentially being engaged but was equivocal in setting out its application of those provisions such that it would have been difficult for the complainant to understand precisely which ones were being relied upon.

101. The public authority also appeared to hold the view that section 8 of the Act imposed a duty upon requesters to formulate their requests in a particular way and that failure to comply with this “duty” somehow disapplied the public authority’s own duty to provide advice and assistance. It misquoted section 8(1)(c) of the Act and, having compared section 8(1)(c) of the Act with paragraph 8 of the section 45 code of practice, the Commissioner believes the public authority may have confused the two. Paragraph 8 of the section 45 code states that:

*“A request for information must adequately specify and describe the information sought by the applicant. Public authorities are entitled to ask for more detail, if needed, to enable them to identify and locate the information sought. Authorities should, as far as reasonably practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested.”*

102. Paragraph 11 of the section 45 code of practice states:

*“In seeking to clarify what is sought, public authorities should bear in mind that applicants cannot reasonably be expected to possess identifiers such as a file reference number, or a description of a particular record, unless this information is made available by the authority for the use of applicants”.*

103. In this case, the public authority observed the first two sentences of paragraph 8 of the section 45 code but placed the onus on the complainant to describe the information she requested more clearly without offering any practical advice and assistance to enable her to do this.

104. The Commissioner acknowledges that the complainant's use of the phrase “any information” is not particularly constructive. He has recently published guidance entitled “How to make a Request” which addresses this subject and offers practical suggestions about phrasing requests in a constructive way:  
[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/practical\\_application/fop100\\_how\\_to\\_make\\_a\\_request\\_v1.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/fop100_how_to_make_a_request_v1.pdf)

105. However, he observes that the subjects in which the complainant expressed an interest in her request were fairly specific. He believes that the public authority could reasonably have done more to assist her in framing her requests to cover information which more readily matched the records it holds for its own purposes on this subject.

106. As outlined above, the public authority has sought to argue that it was exempt either from its duty to confirm or deny what it held within the scope of the complainant's requests or to provide such information where it is held. However, the Commissioner considers that the public authority did not have due regard to the relevant paragraphs of the section 45 code of practice when seeking to explain its application of section 12 to the complainant.

107. Where a public authority believes the cost of compliance with a request would exceed the appropriate limit, paragraph 14 of the section 45 code of practice suggests that it “*should consider providing an indication of what, if any, information could be provided within the cost ceiling*”. It also suggests that the “*...authority should ...consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee*”. In this case, beyond supplying relevant weblinks, it did not provide an indication as to what could be provided within the cost ceiling. Based on the public authority's comments at paragraph 51, the Commissioner has concluded that it did not do this because it did not conduct a specific exercise to better inform its initial guess that compliance would exceed the cost ceiling.



108. Paragraph 15 of the section 45 code comments that "*An authority is not expected to provide assistance to applicants whose requests are vexatious within the meaning of section 14 of the Act*". In several stages of its correspondence with both the complainant and the Commissioner, the public authority has suggested that it might wish to rely on section 14 of the Act as a basis for refusing the complainant's request. However, it has never stated an unequivocal intention to do so or nor has it provided arguments in support of such a position. As such, the Commissioner does not believe that the recommendations of paragraph 15 of the section 45 apply in this case.

### *Section 16 – Conclusion*

109. The Commissioner has concluded that the public authority did not provide the complainant with adequate advice and assistance as required by Section 16(1) of the Act. In reaching this conclusion, the Commissioner has had regard to the recommendations of the section 45 code of practice.
110. In the Commissioner's view, had the public authority properly explained from the outset how and why it was aggregating the cost of complying with the requests and then set out why the cost of compliance would exceed the appropriate limit, it would have gone some considerable way to providing adequate advice and assistance to the complainant. The Commissioner notes that relations between the parties were particularly strained, perhaps inevitably given that the complainant's dealings with the public authority under the Act were prompted by receipt of a speeding ticket. He acknowledges that this situation did not necessarily lend itself to constructive dialogue between the parties. However, he believes that the public authority should have considered more closely the recommendations of the section 45 code of practice for its own part rather than mistakenly placing the onus on the complainant to do so herself.

### *Question 20 – first, third and fourth elements*

111. Finally, this Notice will address the public authority's response to those requests which cannot be aggregated with 3, 4, 5, 6, 8, 11, 16, 19 and the second element of question 20. These are the first, third and fourth elements of question 20.
112. The public authority provided the information caught by the first element, albeit considerably after the statutory time period for response of 20 working days had expired. It provided a description of each of the last ten contracts it had awarded above a certain value specified in the request and the names of the successful tenderers. In response to the third element, it provided the date that the OJEU Award Notice was issued in each case (see Findings of Fact). In response to the fourth element, it initially argued that the information was exempt. However, it subsequently revised that position and accepted that it could have provided the information at the time. Unfortunately, it had by then disposed of the information in question in accordance with its document retention and disposal policy.
113. It did not provide the Commissioner with a copy of this policy, despite the Commissioner's request that it do so. However, the Commissioner eventually located the relevant detail online. Page 10 of its document retention and disposal



policy states that unsuccessful tender documents are disposed of one year after the start of the contract in question:

[http://www.essex.police.uk/cms/global/documents/pa\\_rrpol.pdf](http://www.essex.police.uk/cms/global/documents/pa_rrpol.pdf)

114. The Commissioner believes that, on the balance of probabilities, the information caught by the fourth element of question 20 is no longer held by the public authority and was disposed of in accordance with this policy. The Commissioner has concluded that the information was not deliberately withheld from the complainant and that the public authority's failure to provide it at the time of the request was, instead, symptomatic of its generally poor handling of this matter. More commentary on this point is provided in Other Matters later in this Notice.
115. As regards the third element of the complainant's request, the complainant has described the public authority's response to this part of her request as being "evasive" and commented in her email of 20 January 2009 that this alleged evasiveness was "*to say the least interesting*" (see paragraph 36). The Commissioner assumes that, with this comment, the complainant is speculating that the public authority has not complied with relevant European Union (EU) procurement legislation for, if it had, it would have been able to give her a more detailed response.
116. In the Commissioner's view, the public authority's limited response to the third element of question 20 is also more likely to also be symptomatic of its general failure to engage with the complainant than of a failure to comply with EU procurement legislation. The complainant did not specify to the public authority (or subsequently to the Commissioner, despite a request that she do so) which particular requirements of EU procurement legislation she was concerned about. Inevitably, this made it very difficult for the public authority (and the Commissioner) to identify what sort of information she was seeking which would address this point, for example, standard contractual clauses. The Commissioner believes that neither party has been particularly constructive in seeking resolution of this point and does not propose to address it in further detail given that the complainant has not given particular focus to it in her complaint. When the public authority provides adequate advice and assistance to the complainant in accordance with section 16 (as directed by this Notice), the complainant should consider providing more specific detail to the public authority as to which legislative requirements she is particularly concerned about (assuming she retains an interest in this point).

#### *Question 20 – Conclusion*

117. In the Commissioner's view, where the public authority failed to provide the information caught by the first, third and fourth elements of question 20 within the statutory time period, it contravened several of the procedural requirements of the Act, namely, section 1(1)(a) and (b) and section 10(1) and section 17(1)(a),(b) and (c). These provisions are set out in a legal annex to this Notice.

## The Decision

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118. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act, in that it:

- failed to provide unequivocal confirmation or denial as to whether it holds information within the scope of the complainant's requests 3, 4, 5, 6, 8, 11, 16, 19, and the second element of part 20 within the statutory period in contravention of sections 1(1)(a) and 10(1)
- failed to provide adequate advice and assistance in accordance with its obligations under section 16 when seeking to rely on any of the provisions of section 12;
- failed to provide the information caught by the first, third and fourth elements of question 20 within the statutory time period in contravention of sections 1(1)(a) and (b), 10(1) and 17(1)(a), (b) and (c).

## Steps Required

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119. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act.

- Provide the complainant with unequivocal confirmation or denial as to whether it holds information within the scope of the complainant's requests 3, 4, 5, 6, 8, 11, 16, 19, and the second element of part 20, in accordance with its obligations under section 1(1)(a).
- Where it holds information within the scope of any of the above requests it should provide that information in accordance with its obligations under section 1(1)(b), or set out why it is exempt in accordance with its obligations under section 17.
- Provide adequate advice and assistance to the complainant with particular regard to paragraphs 8-11 and 13-15 (inclusive) of the section 45 code of practice to assist the complainant in reformulating any of the requests contained in her letter of 15 May 2006, should she wish to do so. It should, for example, set out for the complainant, the detail it provided to the Commissioner in its letter of 27 February 2009 regarding the information caught by question 11.

120. The public authority must take the steps required by this Notice within 35 calendar days of the date of this Notice.

## Other matters

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121. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

### *Engagement with the Commissioner's investigation*

122. During the course of his investigation, the Commissioner has met with resistance in his attempts to understand the public authority's reasons for invoking section 12. The public authority has appeared unwilling or unable to provide the details requested or to meet the timescales for response set out in the Commissioner's letters. The Commissioner does not consider the public authority's approach in this case to be particularly co-operative, or within the spirit of the Act. As such he will be monitoring the public authority's future engagement with his office and would hope to see improvements in this regard.

### *Records management*

123. During the course of the Commissioner's investigation, the public authority indicated that some of the withheld information (relating to unsuccessful tenders for contracts) was no longer available as, given the lapse of time, it had been disposed of in accordance with the authority's retention and disposal policy. However, the public authority did not confirm the exact date of disposal.
124. The Commissioner is concerned that the disposal of this documentation may not conform to the provisions of the section 46 code of practice on the management of records. Paragraph 9.9 of the code provides:

*"If a record due for destruction is known to be the subject of a request for information, destruction should be delayed until disclosure has taken place or, if the authority has decided not to disclose the information, until the complaint and appeal provisions of the FOIA have been exhausted."*

125. The Commissioner's guidance on the destruction of requested information recommends that public authorities retain all requested information for at least six months from the date of their last communication about the request, to allow for appeals. The Commissioner notes that there was just over four months between the date of the authority's internal review (6 March 2007) and the date that the Commissioner informed the public authority of the complaint to his office (17 July 2007).
126. While he recognises that in this case the destruction may have taken place before the publication of his guidance on the matter in August 2008, the Commissioner remains concerned that this information was destroyed before the appeal provisions of the Act were fully exhausted, and may have been destroyed after the public authority became aware of the Commissioner's investigation. The Commissioner expects the public authority to take steps to ensure that this does not happen in future.

### *The internal review*

127. The Commissioner is concerned that the public authority's internal review did not conform with the provisions of Part VI of the section 45 code of practice. Paragraph 38 of the code of practice states:

*“Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an authority’s response to a request for information should be treated as a complaint... These communications should be handled in accordance with the authority’s complaints procedure, even if, in the case of a request for information under the general rights of access, the applicant does not expressly state his or her desire for the authority to review its decision or its handling of the application.”*

128. The public authority treated the complainant’s letter of 12 June 2006, which questioned the initial refusal under section 12 and requested further details of how it had been applied, as a new request for information. The Commissioner would advise the public authority that any such letter objecting to a refusal should instead trigger an internal review of that decision.
129. Even allowing for the fact that only the subsequent letter of 27 September 2006 was treated as a request for internal review, the public authority took over five months to complete the review. As he has made clear in his ‘*Good Practice Guidance No 5*’, published in February 2007, the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. While he recognises that, in this case, the delay occurred before the publication of his guidance on the matter, the Commissioner would advise the public authority to ensure that internal reviews are completed promptly in future.
130. In the internal review response, the public authority gave further reasons for withholding the requested information but did not appear to consider any procedural issues in relation to how the request was handled. Paragraph 39 of the code of practice states:

*“The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act”.*

131. The internal review response did not record that a review of handling issues had been conducted in accordance with the code. The Commissioner is particularly concerned that the public authority did not appear to consider whether it had complied with its duty to confirm or deny whether information was held or its duty to advise and assist the applicant, despite these issues being specifically raised in the complainant’s appeal letter.

*Reference to section 14 (vexatious or repeated requests)*

132. In its letter of 12 July 2006, the public authority referred to section 14 of the Act (vexatious or repeated requests) and stated that the complainant’s requests could be construed as being inherently unreasonable and a deliberate attempt to misuse the Act. This view appears to have been based primarily on the number of

requests contained in the complainant's original letter. The public authority also made reference to the assumed motive of the complainant in challenging a fixed penalty notice for a speeding offence, and stated that it did not consider the requested information to be relevant to any such challenge or appeal. However, the public authority did not seek to rely on section 14(1).

133. The Commissioner would encourage public authorities to consider section 14 where there are genuine grounds for considering a request to be vexatious or repeated. However, it is important that every request is considered on its merits and that public authorities do not apply section 14 in an inappropriate manner or threaten its use in order to deter requesters from making valid requests.
134. As the public authority did not seek to rely on section 14(1), the Commissioner has not considered whether the requests would in fact have been vexatious in this case. However, as a matter of good practice, he would advise the public authority that it will not usually be appropriate to guess at or question a requester's motives, especially if not actually seeking to rely on section 14(1). Even where the authority does refuse a request as vexatious, it should take care when considering the motive behind a request. Although the motive or purpose may sometimes be relevant to the issue of whether a request is vexatious, a perceived lack of serious purpose or value is unlikely to be enough on its own to make a request vexatious, and the public authority should take care before placing too much weight on this factor.

#### *Failure to identify a subject access request*

135. The public authority should have recognised that the information covered by at least two of the requests in the complainant's list would, if held, constitute her personal data. The public authority should have instigated its own procedures for handling subject access requests under Section 7 of the Data Protection Act 1998 much earlier in its dealings with the complainant. Ideally, this should have been at the time it received her request.

#### **Failure to comply**

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136. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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137. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 25<sup>th</sup> day of August 2009**

**Signed .....**

**David Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**



## **Annex – Full text of complainant's request of 15 May 2006**

*“Please provide information as requested on the following sheets in accordance with the provisions/requirements of the Freedom of Information Act in relation to offence [unique reference number provided by complainant]*

[The following was set out on separate sheets in the original request without numbering but the Commissioner has used the public authority's numbering system]

- 1 *Explain precisely how the speed of the car was calculated, together with the calculations, and the evidence which supports these calculations*
- 2 *Provide a full specification of the equipment which recorded the alleged offence including the instruction manual*
- 3 *Provide any information which you have which specifies the reliability of such equipment which recorded the alleged offence and the parameters of its reliability. In particular provide information as to the percentage error within which the equipment works when recording speeds*
- 4 *Provide any information which you have of cases where the equipment in question has failed to accurately record the speed of the vehicle. Also provide the name of/details of the supplier of the equipment to whom the same question can be put*
- 5 *Provide any information which relates to/sets out successful challenges made against speeds recorded by the equipment which is identical or similar*
- 6 *Provide any information you have of cases in Essex where no prosecution has been pursued in the case of a vehicle travelling at a speed in excess of 50 mph in a 50 mph speed limit area*
- 7 *With reference to the above matter, set out the maximum speed at which you would not pursue a prosecution in a 50mph speed limit area*
- 8 *With reference to the above set out the ACPO guidelines in that regard*
- 9 *State precisely when the equipment which detected the alleged offence was last calibrated and provide both sides of the calibration certificate*
- 10 *State precisely who calibrated the equipment i.e., name and position*
- 11 *Set out the calibrator's qualifications to calibrate the equipment and when any training to update their knowledge was undertaken and to provide copies of any certification in that regard*
- 12 *State precisely who provided the training and what their qualifications were to do so*
- 13 *Provide the photograph of the car taken by the camera in question*
- 14 *Explain the relevance of the markings on the road i.e., the white lines on the road which apparently accompany speed cameras*
- 15 *If they played any part in the calculation of the speed relating to the alleged offence, state precisely how, and provide evidence which supports such calculations*
- 16 *Provide a copy of the traffic or other order relevant to this case (i.e., creating the speed limit) together with documentation that demonstrates that the order was properly made and that all the requirements were complied with including copies of the necessary approvals*
- 17 *Provide copies of any documentation with regard to the decision to site the speed cameras and copies of the necessary approvals*
- 18 *Provide detailed information about the status of speed cameras in the county and, in particular, whether individually they are active or not and if they are inactive whether they are clearly marked “out of use” and if not, why not*

- 19 *Provide any info you hold which sets out*
  - *any incidents where police force personnel (uniformed or otherwise) or vehicles have been recorded by any speed monitoring equipment as exceeding speed limits in Essex;*
  - *any action taken against the individuals in each case or, if no action taken, why no action was taken*
- 20 *Provide documentation which sets out the nature of*
  - *the last 10 contracts (all relevant contracts let on or before 15/5/06) awarded by Essex Constabulary in respect of goods and services generally;*
  - *the last five contracts [same time frame as above] awarded by Essex Constabulary in respect of the procurement of speed monitoring equipment;*

*where the contract value exceeded £144,371 in value and;*

  - *any available documentation which demonstrates whether or not Essex Constabulary complied with EU procurement law on a contract by contract basis;*
  - *the names and addresses of the successful and unsuccessful contracts in each case*
- 21 *The name and address of your external auditor*

*Please provide all information in hard copy.*

*If you intend to cite any exemptions specified in FOIA with a view to attempting to avoid answering any of these questions please state specifically which exemption by reference to the legislation and why you believe the exemption applies in each case."*

## Legal Annex

### **General Right of Access – Section 1**

**Section 1(1)** provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

### **Time for Compliance – Section 10**

**Section 10(1)** provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

**Section 10(2)** provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

**Section 10(3)** provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

**Section 10(4)** provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

**Section 10(5)** provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

**Section 10(6)** provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

**Exemption where cost of compliance exceeds appropriate limit – Section 12**

**Section 12(1)** provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

**Section 12(2)** provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

**Section 12(3)** provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

**Section 12(4)** provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

**Section 12(5)** – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

## **Refusal of Request – Section 17**

**Section 17(1)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

**Section 17(2)** states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
  - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
  - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2, the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

**Section 17(3)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

**Section 17(4)** provides that -

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

**Section 17(5)** provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

**Section 17(6)** provides that –

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

**Section 17(7)** provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”

**Personal information – Section 40**

**Section 40(1)** provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

**Section 40(2)** provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

**Section 40(3)** provides that –

“The first condition is-



- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
  - (i) any of the data protection principles, or
  - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded."

**Section 40(4)** provides that –

"The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data)."

**Section 40(5)** provides that –

"The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
  - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
  - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

**Section 40(6)** provides that –

"In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded."

**Section 40(7)** provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;  
"personal data" has the same meaning as in section 1(1) of that Act.