

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 23 September 2010**

**Public Authority:** Chief Constable of Devon and Cornwall Police  
**Address:** Police Headquarters  
Middlemoor  
Exeter  
Devon  
EX2 7HQ

### Summary

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The complainant requested the location of all fixed automatic numberplate recognition (ANPR) cameras operated by the public authority. The public authority refused this request and cited the exemptions provided by sections 24(1) (national security), 31(1)(a) (prejudice to the prevention or detection of crime) and 31(1)(b) (prejudice to the apprehension or prosecution of offenders). The Commissioner finds that the public authority applied the exemptions provided by sections 31(1)(a) and 31(1)(b) correctly and the public authority is not required to take any action. However, the Commissioner also finds that the public authority failed to comply with the procedural requirements of sections 1(1)(a), 10(1), 17(1)(c) and 17(3)(b) in its handling of the request.

### 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 made the following information request on 20 July 2009:

- (1) *"The locations of fixed, operating automatic numberplate recognition (ANPR) cameras operated by Devon and Cornwall Police or its agencies."*
  - (2) *"The locations of CCTV cameras with ANPR functionality used by Devon and Cornwall Police."*
3. The public authority responded to this on 18 August 2009 and refused the requests, with the exemptions provided by sections 24(1) (national security), 31(1)(a) (prejudice to the prevention or detection of crime), 31(1)(b) (prejudice to the apprehension or prosecution of offenders) and 31(1)(c) (prejudice to the administration of justice) cited. The refusal notice did not set out separately from the public interest test why these exemptions were believed to be engaged, but did provide some indication under the public interest heading as to why these exemptions were cited. The public interest was addressed in a generalised fashion, rather than separately in relation to each of the exemptions cited.
  4. The complainant responded on 4 September 2009 and requested that the public authority carry out an internal review. The public authority responded with the outcome of the internal review on 21 September 2009. The refusal of the requests was upheld, but little reasoning for this conclusion to the review was given.

## **The Investigation**

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### **Scope of the case**

5. The complainant contacted the Commissioner's office in connection with this case on 22 September 2009. The complainant argued against the case made by the public authority, which was that knowledge of the location of ANPR cameras would enable criminals to avoid them, by suggesting that the locations of these cameras could be established through research as they are clearly visible on roads. The complainant also stated that the concerns of the public authority would also apply to speed cameras, but that the locations of these are publicised, through road atlases for example. The complainant further referred to an occasion where the public authority had released information about the location of ANPR cameras to the makers of a television documentary.
6. At this stage the complainant raised the refusals of both requests (1) and (2). During the correspondence between the Commissioner's office

and the public authority about this case, the public authority amended its stance in relation to request (2) and now stated that it did not hold information falling within the scope of this request. At the behest of the Commissioner the public authority contacted the complainant and advised that it did not hold information falling within the scope of request (2). It was subsequently clarified between the complainant and the Commissioner that this case would continue in relation to request (1). The Analysis sections of this Notice relate solely to request (1), save where the procedural breaches in the handling of request (2) are recorded.

## **Chronology**

7. The Commissioner's office contacted the public authority initially on 16 October 2009 and asked that it respond with a copy of the withheld information. The public authority responded to this on 22 December 2009 and supplied a copy of the information falling within the scope of request (1).
8. A further exchange of correspondence between the Commissioner's office and the public authority followed during which the issues surrounding request (2) were resolved. Following this the Commissioner's office contacted the public authority again on 23 March 2010 and asked that it provide further explanations for the citing of sections 24(1) and 31(1)(a), (b) and (c). The public authority responded to this on 19 April 2010 and gave its reasoning for the citing of sections 24(1), 31(1)(a) and 31(1)(b). At that stage the public authority withdrew the citing of section 31(1)(c).

## **Analysis**

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### **Exemptions**

#### **Section 31**

9. The public authority has cited section 31(1)(a), which provides an exemption for information the disclosure of which would, or would be likely to, prejudice the prevention or detection of crime, and section 31(1)(b), which provides the same in relation to the apprehension or prosecution of offenders. These sections are set out in full in the attached legal annex, as are all other sections of the Act referred to in this Notice. Consideration of these exemptions is a two-stage process; first the exemptions must be engaged, meaning that prejudice relevant to that described in the exemption must be at least likely to occur.

Secondly, these exemptions are subject to the public interest, which means that if the public interest in the maintenance of the exemptions does not outweigh the public interest in disclosure, the information must be disclosed.

10. The public authority has not specified whether it believes that prejudice *would* result, or *would be likely* to result. In the absence of this clarification, the Commissioner has considered whether prejudice *would be likely* to result. The test that the Commissioner applies when considering whether prejudice would be likely is that the possibility of this must be real and significant, and certainly more than hypothetical or remote. This is in line with the approach taken by the Information Tribunal in the case *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) in which it stated:

*“the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk.”* (paragraph 15)

11. The Commissioner has undertaken a three-stage process in reaching a conclusion as to whether these exemptions are engaged. First, he has considered whether the arguments advanced by the public authority are relevant to the prejudice described in sections 31(1)(a) and (b). Secondly, he has considered whether it is conceivably possible that the prejudice predicted by the public authority could occur as a result of disclosure and, thirdly, he has considered whether the likelihood of this prejudice occurring meets the test of real and significant.
12. Covering first whether the arguments advanced by the public authority are relevant to the prejudice described in the exemptions, the public authority believes that disclosure of the locations of ANPR cameras would enable the evasion of these sites and that this would assist those involved in crime by preventing the police from locating and monitoring these individuals on the road network. The Commissioner accepts that this outcome of disclosure predicted by the public authority would produce prejudice to the prevention or detection of crime and to the apprehension or prosecution of offenders. This argument from the public authority is, therefore, relevant to sections 31(1)(a) and (b).
13. As to whether this predicted outcome of disclosure is possible, the Commissioner has referred here to the content of the information in question. This provides detailed information about the location of ANPR cameras within the public authority's jurisdictional area and clearly would provide sufficient knowledge of the location of these cameras to enable avoidance of these. The Commissioner believes that it is well established within the public domain that, whilst the ANPR network is

widespread, it is not the case that it comprehensively covers the entire road network nationwide. If it were the case that coverage of the road network by ANPR cameras was comprehensive, it could be argued that prejudice would not occur in the manner predicted by the public authority as knowledge of the precise location of ANPR cameras would not enable avoidance of these. However, given the detail provided about the location of ANPR cameras within the information withheld and given that the ANPR camera network does not comprehensively cover the road network nationwide, the Commissioner accepts that the outcome of disclosure predicted by the public authority is possible.

14. Turning to whether the likelihood of the prejudice predicted by the public authority is real and significant, the issue here is not only whether knowledge of the location of ANPR cameras would be likely to prejudice the work of the police, but whether this outcome would specifically occur as a result of disclosure. If information about the location of ANPR cameras had, for example, already been disclosed, or was easily available through means other than the Act, the prejudice predicted by the public authority may be likely to occur, but this prejudice would not be as a result of disclosure through the Act.
15. The complainant has argued both that information about the location of ANPR cameras has been disclosed previously by the public authority and that it would be easily possible to locate these cameras through other means. The disclosure that the complainant has referred to was by the public authority to the makers of a television documentary and confirmed that there were ANPR cameras in several specified towns within Devon. The public authority has stated that it does not believe the information disclosed to be comparable to the information in question here as it included no more detail about the location of the ANPR cameras beyond confirming that they were in use in specified towns. Whilst the Commissioner has not seen the detail of what the public authority disclosed at that time, he notes that the complainant has also referred to the public authority confirming only that ANPR is used in specified towns, with no greater detail given. The Commissioner concludes on this point that, whilst this disclosure took place and is relevant here, given the lack of detail about the location of ANPR cameras that was disclosed at that time compared with the information in question, this previous disclosure does not preclude the possibility of the exemptions being engaged here.
16. The complainant has also argued that ANPR cameras are visible from the road and so the location of these cameras could be established through a visual search. The Commissioner accepts that ANPR cameras are, in many cases at least, visible from the road and that, as a result, it may be possible to locate these cameras. The Commissioner does

not, however, believe that this precludes the exemptions from being engaged for the following reasons. First, whilst it may be reasonable to argue that over time a publicly available picture will emerge of where ANPR cameras within Devon and Cornwall are as a result of these being visible, and particularly it may be the case that motorists who regularly travel within this area will become familiar with the locations of these cameras, the Commissioner does not believe that a general awareness of at least some of the ANPR camera positions can be compared to disclosure of the information in question here in terms of the impact that this may have. Secondly, even a motorist who is very familiar with this area could not, on any reasonable basis, be certain that their knowledge extended to *all* ANPR camera locations, whilst the information specified in the request is all such locations. Thirdly, even given that ANPR cameras are visible, the Commissioner accepts that disclosure of the information in question here would place in the public domain significantly greater detail about the location of these cameras than is available without this disclosure.

17. In assessing whether the likelihood of prejudice is real and significant, the Commissioner has also considered what evidence there is to suggest that there are those who would seek to avoid ANPR cameras. On this point, the Commissioner notes that the public authority reportedly captured 64 million images through ANPR cameras during 2008<sup>1</sup>, a figure which supports the notion that the ANPR network is a key tool utilised by the public authority in preventing and detecting crime and in apprehending and prosecuting offenders. The Commissioner considers it reasonable to conclude that this publicly available information about the extent of the use of ANPR cameras by the public authority would suggest to an offender that the ANPR network makes their detention and apprehension more likely. It follows from this conclusion that it is also reasonable to conclude that this suggestion would lead to offenders seeking to avoid the ANPR camera network.
18. The Commissioner concludes that the exemptions provided by sections 31(1)(a) and 31(1)(b) are engaged. The basis for this conclusion is that, on the grounds that the content of the withheld information would provide significant further information than is currently publicly available about the location of ANPR cameras, and the evidence of the extent to which this is a useful crime fighting tool to the public authority, there is a significant and real likelihood of disclosure leading to offenders evading the ANPR camera network. This outcome of disclosure would be likely to cause prejudice to the prevention and

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<sup>1</sup> <http://www.telegraph.co.uk/motoring/news/6011285/Average-motorist-caught-on-camera-100-times-a-year.html>

detection of crime and to the apprehension and prosecution of offenders.

### **The public interest**

19. Having concluded that sections 31(1)(a) and (b) are engaged, it is necessary to go on to consider the balance of the public interest. As noted above, if the public interest in the maintenance of the exemptions does not outweigh the public interest in disclosure, the information in question must be disclosed. In reaching a conclusion on the balance of the public interest here, the Commissioner has taken into account the public interest in avoiding the prejudice described in the exemptions, which the Commissioner has accepted would be likely to result through disclosure, and the general public interest in improving the openness and transparency of the public authority, as well as what the content and subject matter of the information suggest about the balance of the public interest.
20. The existence and extent of the ANPR network both within Devon and Cornwall and nationwide is of considerable significance to the balance of the public interest here. This network enables the monitoring of many of the road journeys undertaken nationwide, regardless of whether these journeys are undertaken in vehicles that have been linked to known criminals or to crime. This information is then retained for two years. The development of a system to record and retain images of many millions of road journeys undertaken nationwide clearly raises questions about the proportionality of this surveillance and whether the reduction in privacy that results through this is justified. Brief online research reveals a significant body of opinion that believes that this reduction in privacy may not be justified.
21. The Commissioner believes that disclosure of the information in question would contribute substantively to the debate about the ANPR network by adding to public knowledge about the implementation and geographical extent of this network. The Commissioner considers this to be a public interest factor in favour of disclosure of significant weight.
22. The Information Tribunal has previously recognised the importance of ensuring that the freedom of information regime does not prejudice the work of the police. In the case *Toms v The Information Commissioner* (EA/2005/0027) it made this point by referring to the following extract from the White Paper which preceded the Act (Your Right To Know: The Government's Proposals for a FOI Act (Cm.3818, 11 December 1997)):

*"[freedom of information] should not undermine the investigation, prosecution or prevention of crime, or the bringing of civil or criminal proceedings by public bodies. The investigation and prosecution of crime involve a number of essential requirements. These include the need to avoid prejudicing effective law enforcement, the need to protect witnesses and informers, the need to maintain the independence of the judicial and prosecution processes, and the need to preserve the criminal court as the sole forum for determining guilt." (paragraph 7)*

23. Whilst the Tribunal was considering the exemption provided by section 30(1) in that case, the implication of the position of the public authority is that its ability to carry out the functions described in sections 31(1)(a) and (b) would be likely to be prejudiced through disclosure of the information in question. The Commissioner believes, therefore, that this point made by the Information Tribunal is relevant to this case despite a different exemption being considered here. The Commissioner further believes that this emphasises the importance of the Commissioner affording appropriate weight to the public interest inherent in the exemption.
24. The public interest factors in this case are finely balanced, with the Commissioner recognising a single factor of very significant weight both for and against disclosure. In favour of disclosure is the public interest in furthering public knowledge and understanding and contributing to the debate about the ANPR network, which is pervasive in its extent. In favour of maintenance of the exemption is the undoubted public interest in avoiding prejudice to the ability of the police to prevent and detect crime and to apprehend and prosecute offenders. Having weighed the factors referred to above, the Commissioner concludes that the public interest inherent in avoiding the prejudice referred to in the exemptions, particularly given that this factor is reflected in the Information Tribunal comments quoted above, tips the balance in favour of maintenance of the exemptions. The conclusion of the Commissioner is, therefore, that the public interest in the maintenance of the exemptions outweighs the public interest in disclosure.

## **Section 24**

25. As the Commissioner has reached the conclusion above on sections 31(1)(a) and (b), it has not been necessary to also consider section 24(1).



## Procedural Requirements

### Sections 1 and 10

26. In failing to accurately confirm or deny whether it held information falling within the scope of request (2) at either the refusal notice or internal review stage, the public authority did not comply with the requirements of sections 1(1)(a) and 10(1).

### Section 17

27. In failing to provide an adequate explanation as to why the exemptions provided by sections 24(1), 31(1)(a), 31(1)(b) and 31(1)(c) were believed to be engaged or as to why the balance of the public interest was believed to favour the maintenance of these exemptions at either the refusal notice or internal review stage, the public authority did not comply with the requirements of sections 17(1)(c) or 17(3)(b).

## The Decision

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28. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that it applied the exemptions provided by sections 31(1)(a) and (b) correctly. However, the Commissioner also finds that the public authority failed to comply with the requirements of sections 1(1)(a), 10(1), 17(1)(c) and 17(3)(b) in its handling of the request.

## Other matters

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29. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. As referred to above at paragraph 4, when giving the outcome to the internal review, the public authority gave little reasoning for concluding that the refusal of the request should be upheld. Paragraph 39 of the section 45 Code of Practice states the following:

*"The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue."*

30. The internal review response from the public authority did not reflect that a reconsideration of the request conforming to the description above took place. The Commissioner would advise the public authority that a response giving the outcome to an internal review should state the reasoning as to why the initial refusal was upheld and should reflect that there has been a genuine reconsideration of the request.

## Right of Appeal

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

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

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.

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

**Dated the 23<sup>rd</sup> day of September 2010**

**Signed .....**

**Jon Manners  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## **Legal Annex**

### **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."

### **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 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(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 24**

Section 24(1) provides that –

"Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security."

## **Section 31**

Section 31(1) provides that –

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice"