

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 20 September 2010

Public Authority: Surrey County Council (Surrey Safety Camera Partnership)
Address: County Hall
Penrhyn Road
Kingston upon Thames
Surrey
KT1 2DN

Summary

The complainant requested the number of vehicles photographed by a specified speed camera and information on the amount of time that this camera is active. The public authority refused the request and cited the exemptions provided by sections 31(1)(a) (prejudice to the prevention or detection of crime) and 31(1)(b) (prejudice to the apprehension or prosecution of offenders) on the grounds that disclosure of the information requested by the complainant would be likely to lead to vandalism of the speed camera specified in the request. The Commissioner finds that these exemptions are not engaged and the public authority is required to disclose the information requested.

The Commissioner's Role

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

2. The complainant made the following information requests on 26 August 2009:

(1) *"The amount of motor vehicles photographed [by the camera on the A3 northbound at the north end of the Esher bypass at Hook] as exceeding the speed limit including any discretionary limit and sent appropriate notices [between 15 February 2007 and 15 February 2009]."*

(2) *"Of the 1096 days between 15 February 2007 and 15 February 2009 the quantum of days the camera was working and the quantum of days the camera wasn't working."*

3. The public authority responded to this on 14 September 2009 and refused the request, citing the exemptions provided by sections 31(1)(a) (prejudice to the prevention or detection of crime), 31(1)(b) (prejudice to the apprehension or prosecution of offenders) and 38(1)(a) (endangerment to health). The arguments of the public authority at this stage related to the diminishing effect that it believed disclosure would have on the effectiveness of speed cameras as a deterrent to driving in excess of the speed limit.
4. The complainant responded on 12 October 2009 and complained about the refusal of his request. He contacted the public authority again by letter dated 27 November 2009 and made clear that he wished the public authority to respond to him. The public authority took this as a request for internal review and responded with the outcome of the review on 20 January 2010. The refusal was upheld, with the public authority now citing sections 31(1)(a) and (b), but not section 38(1)(a). The public authority now gave a different argument as the basis for citing these exemptions, stating that the issue was the vandalism of speed cameras and speed camera housing, which it believed would be encouraged through disclosure of the information in question.

The Investigation

Scope of the case

5. The public authority first contacted the Commissioner with a complaint form dated 11 January 2010. At that stage the complainant raised the issue of the public authority having not replied with the outcome of the internal review by that time. The Commissioner contacted the public authority on 22 January 2010 in connection with the internal review. The public authority responded on the same date and confirmed that it had now completed the review.

6. Following this, the complainant contacted the Commissioner again by letters dated 24 January and 2 February 2010 and confirmed that he wished to complain about the refusal of his request. The complainant suggested that the information requested should be disclosed as he believed that the safety camera in question was aimed at generating revenue rather than improving road safety.

Chronology

7. The Commissioner contacted the public authority on 5 May 2010 and asked that it respond with reasoning in relation to the exemptions cited. The public authority was also asked to address specifically whether it maintained that section 38(1)(a) was engaged given that the internal review response had suggested that it may no longer have been relying on that exemption. The public authority had previously provided the information withheld from the complainant to the Commissioner's office.
8. The public authority responded on 6 May 2010 and confirmed that its argument in relation to sections 31(1)(a) and (b) concerned vandalism to speed camera housing, and to the camera located within where live camera sites are targeted, which it believed would be made more likely through disclosure of the information in question. The public authority did not address the section 38 question. As a result, the Commissioner has drawn the conclusion that the public authority has withdrawn its reliance upon this exemption and this is not covered in the analysis section below.

Analysis

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 for information the disclosure of which would, or would be likely to, prejudice the apprehension or prosecution of offenders. Consideration of these exemptions is a two-stage process; first, the exemptions must be engaged as a result of prejudice relevant to the exemptions being at least likely to occur. Secondly, these exemptions are subject to the public interest, which

means that the information must be disclosed if the public interest in the maintenance of the exemptions does not outweigh the public interest in disclosure.

10. Covering first whether the exemptions are engaged, the Commissioner has undertaken a three-stage process here. First, he has considered whether the prejudice predicted by the public authority is relevant to that described in the exemption. Secondly, he has considered the nature of the prejudice and whether there is a causal relationship between disclosure of the information and this prejudice, and thirdly he has considered whether this prejudice is at least likely to occur as a result of disclosure of the information in question. The prejudice test is not a weak test, and a public authority must be able to point to prejudice which is "real, actual or of substance" and to show some causal link between the potential disclosure and the prejudice.
11. The public authority has not specified whether it believes that prejudice *would* occur, or *would be likely* to occur. Where the public authority does not specify the likelihood of prejudice, the Commissioner will consider whether prejudice *would be likely* to occur. The test that the Commissioner applies when considering whether prejudice would be likely to result is that the possibility of this prejudice occurring 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)
12. Turning to whether the prejudice predicted by the public authority is relevant to the exemptions that it has cited, the argument of the public authority concerns vandalism to speed camera housings and, potentially, to the cameras, where live sites are targeted. It believes that this would come about through disclosure as the camera sites that are revealed as capturing the most speed offences and are active for the highest proportion of time are more likely to be targeted for attacks by vandals. On the grounds that vandalism of speed camera housings and potentially the cameras themselves would be a crime and that the outcome of disclosure predicted by the public authority would lead to prejudice to the prevention of this crime, the Commissioner accepts that this argument is relevant to section 31(1)(a).
13. The Commissioner is not clear, however, how this argument is relevant to the apprehension or prosecution of offenders, which is the process

mentioned in section 31(1)(b). As the argument of the public authority is not relevant to section 31(1)(b), the Commissioner concludes that this exemption is not engaged and this is not covered further in this analysis.

14. As to the causal relationship between disclosure of the information in question and the prejudice predicted by the public authority, the public authority has referred to previous occasions where speed cameras have been vandalised and to the existence of a group that has the stated aim of carrying out vandalism of speed cameras. The public authority argues that disclosure of the information in question here would make vandalism of the camera specified in the request more likely.
15. The Commissioner accepts that there are those who would seek to vandalise speed cameras. The public authority has referred to a group that exists for this stated aim, and it is the case that there have been numerous examples of vandalism to speed cameras and speed camera housings. The public authority has also referred to the publication in a newspaper of the locations of the speed cameras responsible for the most fines in Wiltshire, immediately following which one of the cameras specified was vandalised.
16. The argument of the public authority relies primarily on what disclosure in response to the complainant's request would reveal about the *comparative* number of speeding offences caught by this camera and time that it is active for. This argument would have carried greater weight if it had been the case that information about other comparable speed cameras was already available, or would become available at the same time as the information in question. This would be the case if, for example, the public authority had previously released information about single cameras, or if the complainant had specified more than one camera in his request.
17. In the event, however, the complainant specified only one camera in his request. Neither has the public authority argued that similar information about comparable cameras is available, and the Commissioner is not aware of any other hard evidence that suggests that such information is available. This means that the information in question would not reveal that the camera specified in the request had a high detection rate, unlike the example cited by the public authority where it appears from the description given by the public authority that information published in a newspaper had revealed specifically speed cameras with high detection rates. The argument of the public authority is weakened as a result.

18. However, the Commissioner would accept that comparisons could be made in a broader, less specific sense. This could be through, for example, an existing perception held by motorists in the area of the camera in question that this camera was the source of a high number of fines. The information in question may then be held as proof of this perception. The Commissioner would accept that, in such a situation, the likelihood of vandalism to the speed camera in question would be increased as a result of disclosure.
19. The public authority has also argued that the location of the camera in question is remote, making vandalism more likely. In isolation, this argument is not relevant here as, if the location of the camera makes it vulnerable to vandalism, this vulnerability exists as a result of this location, not as a result of disclosure of the information in question. However, the Commissioner accepts that the location of this camera, combined with the possible perception that this is responsible for a high number of fines and disclosure of the requested information, could lead to an increased likelihood of vandalism.
20. The Commissioner accepts that there is potentially a causal relationship between disclosure of the information in question and the prejudice predicted by the public authority. However, the argument of the public authority would have been stronger had it been the case that similar information to that in question here relating to other cameras was available and with which the information in question could be compared.
21. Moving to whether the likelihood of this outcome occurring meets the test of "real and significant", the public authority has provided little evidence to the Commissioner as to the likelihood of prejudice. It has not, for example, provided evidence (or an assertion) that the camera in question is widely perceived to be responsible for a comparatively high number of fines. Neither has it provided any other argument relating to information about comparable cameras being available currently, or being made available at the same time as this information.
22. As noted above, a hypothetical possibility of prejudice is an insufficient basis on which to conclude that an exemption is engaged. Whilst the Commissioner has accepted the possibility of prejudice in this case, the public authority has failed to develop its argument by presenting evidence that there is a sufficiently high likelihood of this possible prejudice occurring as a result of disclosure. The view of the Commissioner is, therefore, that the public authority has failed to satisfy the evidential burden for him to accept that the likelihood of disclosure is real and significant and so he concludes that the

exemption provided by section 31(1)(a) is not engaged. Given this conclusion, and as the Commissioner has already concluded that section 31(1)(b) is not engaged because the argument advanced by the public authority is not relevant to the process mentioned in that section, it has not been necessary to go on to consider the balance of the public interest.

Procedural Requirements

Sections 1 and 10

23. In failing to disclose within twenty working days of receipt of the request information which the Commissioner now concludes was not exempt, the public authority breached the requirements of sections 1(1)(b) and 10(1).

The Decision

24. 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 applied the exemptions provided by sections 31(1)(a) and (b) incorrectly and, in so doing, breached the requirements of sections 1(1)(b) and 10(1).

Steps Required

25. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
 - disclose to the complainant the information specified in his request.
26. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

27. 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.

Other matters

28. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the public authority failed to provide the outcome to the review within 20 working days. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

29. 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.

Website: 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.

30. 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 20th day of September 2010

Signed

**Anne Jones
Assistant Commissioner**

**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 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"