

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 December 2010

Public Authority: Chief Constable of West Midlands Police
Address: Police Headquarters
Lloyd House
Birmingham
B4 6NQ

Summary

The complainant requested details of the five speed cameras with the highest detection rates within the area covered by the public authority. The public authority 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), 38(1)(a) (endangerment to health) and 38(1)(b) (endangerment to safety) of the Act. The Commissioner finds that the public authority cited the exemptions provided by sections 31(1)(a) and (b) correctly and so is not required to disclose the requested information. The Commissioner also finds, however, that the public authority failed to comply with the procedural requirements of sections 17(1)(b) and (c) and 17(3)(b) in its handling of the request.

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 request on 28 December 2009:

"...of the 12 speed cameras operated by yourself in Coventry, which five have detected the most speeding motorists in the last five years. I would like the data in a list format with the total number of detections for each camera per year listed."

3. The complainant received an initial response from the public authority on 27 January 2010. At this stage the public authority stated that it believed that sections 31 (prejudice to law enforcement) and 38 (endangerment to health and safety) were engaged, but that an extension of a further 20 working days was required in order to consider the balance of the public interest. No subsections from the exemptions cited were specified in this response and neither was there an explanation as to why these exemptions were considered engaged.
4. The complainant received a substantive response from the public authority on 8 February 2010. The request was refused, with the public authority now 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), 38(1)(a) (endangerment to health) and 38(1)(b) (endangerment to safety) of the Act. An explanation about the citing of these exemptions was provided at this stage. The public interest was addressed jointly, rather than separately for each exemption cited.
5. The complainant responded to this on 12 February 2010 and asked the public authority to carry out an internal review. The complainant received the outcome of the internal review on 6 April 2010. The conclusion of this was that the exemptions cited previously were upheld, but no reasoning for this outcome of the review was given.

The Investigation

Scope of the case

6. The complainant contacted the Commissioner's office on 6 April 2010 in connection with the refusal of this request and set out his grounds for complaint. The first of these was the period of time that the public authority had taken to respond to the request. Secondly, the complainant did not believe that the internal review had been sufficiently thorough and also that it had taken too long. Thirdly, the complainant stated that he believed that the disclosure of the information he had requested was in the public interest on the basis that increased awareness of speed cameras would be likely to result in a reduction in speeding offences.

Chronology

7. The Commissioner's office contacted the public authority on 29 July 2010. At this stage the public authority was asked to respond with any further arguments it wished to add to those given in its correspondence with the complainant.
8. The public authority responded to this by letter dated 25 August 2010. It advanced further reasoning for the exemptions cited by way of addressing the arguments that the complainant had advanced in his request for internal review.

Analysis

Exemptions

Section 31

9. The public authority has cited the exemption provided by 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. This section is set out in full in the attached legal annex, as are all of the other sections of the Act referred to in this Notice. It has also cited section 31(1)(b), which provides the same for information that would, or would be likely to, prejudice the apprehension or prosecution of offenders. Consideration of these exemptions is a two-stage process; first, these exemptions must be engaged as a result of prejudice relevant to the exemptions being at least likely to result through disclosure. Secondly, these exemptions are qualified by the public interest, meaning that the information must be disclosed unless the public interest in the maintenance of the exemptions outweighs the public interest in disclosure.
10. Covering first whether the exemptions are engaged, the Commissioner has undertaken a three-stage process in determining this. First, he has considered whether the outcome of disclosure predicted by the public authority is relevant to the prejudice described in the exemptions cited. Secondly, he has considered whether there is a causal relationship between disclosure of the requested information and this prejudice. Thirdly, he has considered what level of likelihood there is of this prejudice resulting through disclosure.

11. Turning to whether the arguments advanced by the public authority are relevant to the exemptions cited, the requirement here is for the arguments to concern prejudice to the prevention or detection of crime (section 31(1)(a)), or to the apprehension or prosecution of offenders (section 31(1)(b)). If the public authority was arguing that a different type of prejudice would occur through disclosure, that disclosure would harm its commercial interests for example, this argument would not be relevant to the exemptions it has cited and so these exemptions would not be engaged on the basis of this argument.
12. The public authority has advanced two arguments in connection with these exemptions. The first of these concerns vandalism to speed cameras; the public authority argues that identifying which speed cameras detect the most speeding motorists would lead to damage or destruction of speed cameras through vandalism. The public authority believes that vandalism that led to stretches of road no longer being monitored by speed cameras would lead to an increase in speeding offences.
13. The second argument advanced by the public authority is that disclosure would reveal the enforcement pattern of the speed cameras, in the sense that it would indicate how likely it is that a particular camera is active at any given time. The public authority believed that, if a motorist perceived a low likelihood of a camera being active, they will be more likely to commit a crime by speeding within the area monitored by that camera. The Commissioner considers it clear that both of these arguments are relevant to all of the four processes mentioned in sections 31(1)(a) and (b); these being the prevention and detection of crime, and the apprehension and prosecution of offenders.
14. As to whether there is a causal relationship between disclosure of the information in question and the prejudice predicted by the public authority, the issue here is whether the prejudice predicted by the public authority would or would be likely to come about as a result of disclosure of the information requested. If the public authority had not linked this prejudice to disclosure of the information, or had argued that this prejudice would come about through some means other than disclosure of this information, this would not be a valid argument in favour of the exemptions being engaged. In this case, the Commissioner believes that the causal relationship between disclosure and the prejudice predicted by the public authority is clear; the public authority argues that disclosure would lead to either a perception on the part of motorists that they could predict the enforcement pattern of the cameras, or to vandalism that would render the speed cameras inoperative, and that motorists would speed as a result.

15. Moving to the likelihood of the prejudice occurring, the public authority specified in its correspondence with the complainant that it believed that prejudice *would* result, rather than *would be likely* to result. The test that the Commissioner applies when considering whether prejudice would result is that the likelihood of this must be at least more probable than not. The Commissioner considers this to be in line with the approach taken by the Information Tribunal in the case *Hogan v Oxford City Council & the Information Commissioner* (EA/2005/0036 and EA/2005/0030) in which it stated:

"[the] prejudice test is not restricted to "would be likely to prejudice". It provides an alternative limb of "would prejudice". Clearly this second limb of the test places a much stronger evidential burden on the public authority to discharge."
(paragraph 36)

16. Covering first the argument made by the public authority about disclosure revealing the enforcement pattern of the speed cameras, when requesting an internal review, the complainant stated correctly that he had not asked for any information about the enforcement pattern of the cameras. The Commissioner is not clear how the information requested could reveal anything about such a pattern. Whilst it may be reasonable to argue that these figures give some indication of which cameras are likely to be active for the highest proportion of the time, although that is not certain, it is not clear how this could be said to provide any indication as to how likely it is that a particular camera will be active at any specific time. The public authority has provided no explanation as to why it believes that such an inference could be drawn from the information requested, and in the absence of such an explanation the Commissioner does not find that it is more probable than not that disclosure would have this result. Neither does the Commissioner believe that this argument would have met the test applied when considering whether prejudice *would be likely* to result, which is that the likelihood of prejudice would be at least real and significant, and more than hypothetical or remote.
17. Moving secondly to the argument concerning vandalism to speed cameras, in support of its argument the public authority has cited an example where information revealing which speed cameras in a specified area had the highest detection rates was disclosed and published in a newspaper. Immediately following this disclosure the speed cameras were vandalised. This argument from the public authority also relies on the numerous other examples of vandalism to speed cameras not directly related to disclosure of detection rates.

18. In response to this argument, the Commissioner notes, first, that there is plentiful publicly available evidence that vandalism with the aim of rendering speed cameras inoperative is widespread and a regular occurrence. As to whether disclosure of the information in question here would make this vandalism more likely, the Commissioner considers it reasonable to assume that cameras that are perceived to be the source of a comparatively high number of detections would be at a higher risk of vandalism. It follows from this, therefore, that he also accepts that where it is confirmed that a camera does have a comparatively high detection rate, as would be the case through the disclosure of the information requested by the complainant, there is a significant likelihood that this camera would be targeted for vandalism.
19. The complainant has argued against the likelihood of prejudice, on the basis that the example cited by the public authority of vandalism following disclosure of information about detection rates involved publication of the disclosed information in a national newspaper. In this case, the complainant argues, disclosure would be made to a local newspaper with a considerably smaller circulation and so fewer people would be made aware of this information. In response to this the public authority has correctly referred to disclosure via the Act meaning that information is effectively rendered publicly available. The same is true of the outcome of this Notice; if the conclusion of this Notice was that the information should be disclosed, the effect of this would be that the information should be made available to any person. The size of the circulation of the newspaper by which the complainant is employed is not, therefore, relevant to the question of whether the exemptions cited are engaged.
20. On the basis of the evidence that vandalism of speed cameras is commonplace, and in particular the evidence that cameras that have been identified as having a comparatively high detection rate have been specifically targeted, the Commissioner finds that the likelihood of prejudice through vandalism of speed cameras occurring as a result of the disclosure of the requested information is more probable than not. The exemptions provided by sections 31(1)(a) and (b) are, therefore, engaged.

The public interest

21. Having concluded that the exemptions are engaged it is necessary to go on to consider the balance of the public interest. In this case, the public authority failed to provide a separate public interest assessment for each of the exemptions under sections 31(1)(a) and 31(1)(b). However, having regard to the requested information and the nature of the arguments advanced in the context of these particular exemptions,

the Commissioner is satisfied, in the particular circumstances of this case, that the public interest issues are essentially the same for both exemptions. In forming a conclusion on the balance of the public interest, the Commissioner has taken into account the public interest inherent in the exemptions (that is, the public interest in avoiding prejudice to the prevention and detection of crime and to the apprehension and prosecution of offenders), that the Commissioner has concluded would be more likely than not to result through disclosure. He has also taken into account the general public interest in improving the openness and transparency of the public authority. These factors are in addition to the factors that relate to the specific information in question, in connection with which the Commissioner has taken into account the arguments advanced by the public authority and by the complainant.

22. Turning first to the arguments that favour disclosure of this information, the complainant has argued that speed cameras are the subject of controversy and that, therefore, the public interest favours disclosure. He has also argued that disclosure would be in the public interest as increased awareness of those speed cameras that are responsible for the highest detection rates would result in less speeding.
23. The Commissioner agrees that speed cameras are controversial. He notes particularly the perception that at least some cameras exist primarily to generate revenue, rather than to improve road safety, and believes that disclosure would be in the public interest in order to improve public knowledge and understanding about speed cameras in the context of this perception. He also notes that speed cameras are the subject of an ongoing public debate concerning whether they are a fair and reasonable means to police speed limits. The Commissioner regards disclosure in order to inform the debate that relates to speed cameras to be a valid public interest factor in favour of disclosure, and of considerable weight.
24. As to the complainant's argument that disclosure would be in the public interest as it would increase awareness of the speed cameras specified and thus would reduce speeding, the Commissioner has accepted that it is more probable than not that disclosure would lead to vandalism rendering the cameras inoperative and that this would result in increased speeding. He would regard it as inconsistent with this finding to conclude that the public interest favours disclosure on the basis that it would lead to a decrease in speeding and has not, therefore, afforded this argument weight in the balance of the public interest here.

25. Moving to those factors that favour maintenance of the exemptions, as noted above, the Commissioner has taken into account here the public interest inherent in the exemption. The arguments advanced by the public authority concerned the harm that it believed would result through disclosure, meaning that it was effectively also arguing that the public interest favoured maintenance of the exemptions on the grounds of the public interest inherent in the exemptions. This public interest is bolstered by the finding that the prejudice *would* result, rather than it *would be likely* to result. As the Commissioner has concluded that prejudice relevant to sections 31(1)(a) and 31(1)(b) would be more probable than not to result through disclosure, he must also conclude that this is a factor of significant weight in favour of maintenance of the exemption.
26. The Commissioner notes that detailed information about the locations of speed cameras within the jurisdictional area of the public authority is made available online¹ by the West Midlands Casualty Reduction Scheme, of which the public authority is a member. Whilst this information does not include the specific information requested by the complainant, it is relevant here in that information is available that provides for public knowledge and understanding about the use of speed cameras in this area.
27. The approach of the Commissioner is that, where public interest in a subject exists, this public interest will extend to all information that relates to that subject, meaning that the existence in the public domain of information relating to a particular subject does not preclude public interest in the disclosure of other information on that subject. In this case, the Commissioner recognises that public interest in the information in question continues to exist, despite the public availability of linked information. However, the Commissioner believes that the public interest in favour of disclosure in this case is somewhat reduced by the existence in the public domain of this linked information given that this public interest is partly based upon how this would improve public understanding and knowledge of speed cameras in this area.
28. The Commissioner has recognised public interest in favour of disclosure of significant weight; there are few issues that are the subject of such consistent public debate as the use of speed cameras. However, he must also give appropriate weight to the public interest in avoiding the prejudice to the prevention and detection of crime and to the apprehension and prosecution of offenders that he has accepted would be more probable than not to result through disclosure of the

¹ http://www.wmsafetycameras.co.uk/regions_gmapi.php

information in question. This public interest inherent in the exemptions, combined with the service to the public interest that has already been provided through the information that is made available about speed cameras within the area covered by the public authority, in the Commissioner's view tips the balance in favour of withholding the information. For these reasons, the conclusion of the Commissioner is that the public interest in the maintenance of the exemptions outweighs the public interest in disclosure.

Section 38

29. As the above conclusion has been reached on sections 31(1)(a) and (b), it has not been necessary to also go on to consider sections 38(1)(a) and (b).

Procedural Requirements

Section 17

30. In failing to state within 20 working days of receipt of the request which subsections from sections 31 and 38 were believed to be engaged and why, the public authority did not comply with the requirements of sections 17(1)(b) and (c).
31. In addressing the balance of the public interest for each of the exemptions cited jointly, the public authority failed to comply with the requirement of section 17(3)(b).

The Decision

32. 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 procedural requirements of sections 17(1)(b) and (c), and 17(3), in its handling of the request.

Other matters

33. 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 5, when giving the outcome of the

internal review, the public authority gave no 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.”

34. 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 for why the initial refusal was upheld and should reflect that there has been a genuine reconsideration of the request.
35. 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 respond with the outcome of the review within 20 working days. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

36. 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.

37. 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 16th day of December 2010

Signed

**Jon Manners
Group Manager**

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

Legal Annex

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 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".

Section 38(1) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.”