

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 March 2012

Public Authority: The Chief Constable of Devon and Cornwall
Police

Address: Force Headquarters
Middlemoor
Exeter
EX2 7HQ

Decision (including any steps ordered)

1. The complainant submitted a request to Devon and Cornwall Police (the Police) asking for the number of times a day a safety camera at a particular location in Cornwall had been activated. The Police refused to provide this information on the basis that it was exempt from disclosure under the law enforcement exemption (section 31) and the health and safety exemption (section 38) of the Freedom of Information Act.
2. The Commissioner's decision is that the Police are entitled to withhold this information.

Request and response

3. On 7 June 2011 the complainant wrote to the Police and requested information in the following terms:

'Pursuant to the Freedom of Information Act, you are asked to supply the following information:

The number of times that the camera situated at the above location is activated per day

How long this camera has been situated at this location'

4. The Police responded on 21 June 2011. In relation to the first part of the request the Police confirmed that it was relying on section 31 of FOIA to withhold the information that it held. In relation to the second part of

the request the Police confirmed that the records held in respect of this site only went back to April 2007. However the response confirmed that speed enforcement measures had been in place at this site since this date.

5. The complainant contacted the Police on 7 July 2011 and asked for an internal review of this decision.
6. The Police informed the complainant of the outcome of the review on 8 August 2011. The review upheld the decision to withhold the information falling within the scope of the first part of the request but confirmed that this was being withheld on the basis of the specific exemptions contained at sections 31(1)(a), 31(1)(b), 38(1)(a) and 38(1)(b) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant argued that the Police had misunderstood her request because it had assumed that she had asked where the camera was located rather than how many times it had been activated. Furthermore the complainant argued that its reasoning to withhold the information that she had actually requested was flawed. (The complainant provided the Commissioner with a number of reasons to support her position in relation to this latter point; these are referred to in the analysis below.)
8. Having reviewed the Police's responses to the complainant, the Commissioner informed her that he was satisfied that Police had interpreted her request correctly for the following reasons:
9. With regard to the second part of the request, the responses provided confirmed that speed enforcement measures had been in place since April 2007 at the site in question. In light of this response the Commissioner suggested that the Police had understood this part of her request and furthermore had in fact provided her with the information sought.
10. With regard to the first part of the request, the Commissioner accepted that the Police's responses made reference both to the location of the camera and the activation of the camera. However, it was his understanding that the Police had simply taken these two issues into account as part of its decision making when determining whether the number of times the camera is activated per day is information which is exempt from disclosure.

11. The Commissioner therefore explained to the complainant that his investigation would simply focus on determining whether the information falling within the scope of the first part of her request is exempt from disclosure under FOIA. The complainant did not contact the Commissioner in order to dispute this suggested approach.

Reasons for decision

12. The parts of section 31 of FOIA relevant to this request state 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'

13. In order for a prejudice based exemption, such as section 31, to be engaged the Commissioner believes that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner believes that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.

The Police's position

14. In its internal review the Police explained that placement of camera sites is pursuant to a heightened need for enforcement at a specific location

due a number of criteria being met. The purpose of a camera is to reduce the risk of road traffic accidents caused by excessive speed at a specific location where it has been established that road users tend to break the speed limit.

15. Disclosure of the information requested in this case would enable the public to establish when speed is being enforced at this site and therefore, when excessive speed is likely to result in a fine. Safety cameras are not always active and the Police rely on the perception by drivers that camera housing could be active and would therefore adjust their speed so as to not contract a fine. If this information was disclosed then drivers would know when they can and cannot pass this specific site at a speed above the statutory limit. This would render the purpose of a camera site at this location obsolete.
16. Clearly, if drivers are able to establish when they can avoid being detected speeding on this road, this will undermine police enforcement of the established speed limit. Disclosure would therefore hinder law enforcement. It would also require an increased Police presence in this area which would put an unnecessary strain on its resources.
17. Disclosure of the site specific information would also set a precedent for further requests relating to other safety cameras, which would effectively make the entire network of safety cameras obsolete or it would mean that all would need to be active at all times.
18. In submissions to the Commissioner the Police informed him that it was relying on the higher threshold of likelihood that disclosure **would**, rather than simply being likely to, occur and thus have the prejudicial effects described above. In order to support this position the Police explained how disclosure of the specific information in this case would reveal a pattern of enforcement. Furthermore the Police highlighted the fact that since enforcement had commenced at this site the average speed and number of collisions had fallen dramatically (the Commissioner was provided with specific evidence to support this).

The complainant's position

19. In submissions to the Commissioner, the complainant explained that in her opinion disclosure of the number of times this camera is operated per day would not impact on resources or create any changes in the use of the road. She also argued that it was not credible to argue that disclosure would make the entire network of safety cameras obsolete.

The Commissioner's position

20. With regard to the first limb of the three stage test set out at paragraph 13, the Commissioner is satisfied that the first limb is clearly met; the

nature of the prejudice envisaged by the Police if this information was disclosed falls directly into that which sections 31(1)(a) and 31(1)(b) are designed to protect.

21. With regard to the second limb, the Commissioner is also satisfied that there is a causal link between disclosure of information and prejudice occurring. This is because the Commissioner accepts the rationale behind the Police's key argument that it is logical to assume that if it was revealed to the public when a particular speed camera was likely to be active, or not, then drivers could alter their speed confident that they would not receive a fine for exceeding the speed limit.
22. More broadly, the Commissioner also accepts the Police's further line of argument that a prejudicial strain could be placed on its resources if it had to alter its tactics to ensure that speed limits were adhered to at this site following disclosure of the withheld information. Clearly the use of Police additional resources to enforce the speed limit at this specific site that would have previously been deployed elsewhere has the potential to result in the prejudicial consequences described in sections 31(1)(a) and (b).
23. Furthermore, the Commissioner is also prepared to accept that there is a causal link between disclosure of the withheld information and the precedent it would set in relation to the disclosure, by other police forces, of similar information about their specific safety camera sites. In reaching this finding the Commissioner notes the comments of the Information Tribunal in *Hemsley v Information Commissioner* which also related to a request for site specific data very similar to that requested in this case. The Tribunal explained that it was:

'impressed by the argument as to "setting a precedent". Whilst every request must be dealt with on its merits, if this request were granted, it is not hard to envisage the difficulties faced by police authorities in dealing with future requests for such information, justified more or less plausibly, as designed to test the efficacy of signs, the hazards posed by weather conditions or the vigilance of drivers at particular times of day. It might be difficult to distinguish between the public – spirited motivation of such as the appellant and others whose purpose was less admirable, for example the

creation of a commercial website selling forecasts on the operation of safety cameras.' (Para 23)¹

24. With regard to the third limb, the Commissioner is confident that disclosure of the requested information held by the Police would reveal an enforcement pattern likely to influence drivers' behaviour in relation to this specific site. Obviously the Commissioner cannot explain in detail why he is of this opinion without revealing something about the content of the withheld information itself. However, he believes that the specific nature of the request, i.e. the fact that it asks for a breakdown of activations by day, rather than by a broader time period, very significantly increases the risks of revealing an enforcement pattern. Furthermore the Commissioner is satisfied that the envisaged change to drivers' behaviour is one that would clearly be prejudicial to both the prevention or detection of crime and the apprehension of offenders when one considers how the average speed has dropped at this site since speed enforcement began.
25. The Commissioner is also satisfied that the likelihood of prejudice occurring is further increased given the two broader ways harm could also occur, i.e. a strain on the resources of this particular Police force and the harmful consequences of, in the longer term, further disclosures by particular forces. (However, the Commissioner wishes to stress that he is fully satisfied that the exemption is engaged simply on the basis of the prejudice to the enforcement of the speed limit at this particular site; the arguments discussed at paragraphs 22 and 23 only add further weight to his decision to engage the exemption.)
26. The Commissioner is therefore satisfied that in the circumstances of this case the Police have provided sufficient evidence to demonstrate that the higher level of prejudice is met. The information falling within the scope of the first part of the request therefore engages the exemptions at sections 31(1)(a) and 31(1)(b) of FOIA.

Public interest test

27. Section 31 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

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[http://www.informationtribunal.gov.uk/DBFiles/Decision/i39/Hemsley%20v%20IC%20&%20Chief%20Constable%20of%20Northants%20\(EA-2005-0025\)%20Decision%2010-04-06.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i39/Hemsley%20v%20IC%20&%20Chief%20Constable%20of%20Northants%20(EA-2005-0025)%20Decision%2010-04-06.pdf)

Public interest arguments in favour of maintaining the exemption

28. The Police argued that there was a strong public interest in ensuring the safety of road users via enforcement of speed limits either through activations or the perception that an activation may occur.
29. Furthermore, it would not be in the public interest to place an increased strain on police resource at a time when the police are under pressure to find cost saving efficiencies.

Public interest arguments in favour of disclosing the requested information

30. The Police acknowledged that the use and purpose of safety cameras causes much debate and hostility, and disclosure of this information would assist the public in being more informed about speed enforcement at this particular site.
31. The complainant argued that it was strongly in the public interest that information about the siting and operation of cameras was disclosed. In support of her position the complainant argued that in Cornwall there were numerous changes of speed for the motorist to deal with and it was essential that the motorist was made aware of the appropriate speed limit. The complainant alleged that the Police do not always ensure adequate signage when speed limits are reduced or revert to back to the normal speed limit, and that this was a deliberate policy in order to ensure that the motorist is left in ignorance of a particular speed limit for a particular stretch of road. The complainant argued that such a policy causes dangerous driving and reduces the competence of good drivers who follow signs when they are provided and have no intention to ignore them.

Balance of public interest arguments

32. The Commissioner recognises that the use of speed cameras is a subject matter which generates significant debate, not least because of the suspicion that they are used as means of revenue generation rather than as a road safety tool. Furthermore, the Commissioner respects the complainant's point of view that she has significant concerns about the accuracy, or rather the adequacy, of signing in relation to this particular location. The Commissioner therefore accepts that there is some public interest in disclosure of this information to ensure the Police are open and transparent about the operation of this particular camera site. However in the Commissioner's opinion it is likely to be of limited value in informing the complainant's line of argument regarding the inadequacy of signage.

33. In contrast the Commissioner believes that it is very strongly in the public interest to protect the Police's ability to prevent and detect crime and apprehend offenders. In the specific circumstances of this case the Commissioner believes that these arguments attract particular weight given the specific nature of the information requested and indeed the content of the information held by the Police. The public interest in withholding the information also attracts further weight when one takes into account the broader consequences of disclosure.
34. The Commissioner is therefore satisfied that the public interest in maintaining the exemptions outweighs the public interest in disclosing the information.
35. In light of his findings in respect of section 31, the Commissioner has not considered the Police's reliance on section 38.

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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Alexander Ganotis
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