

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 July 2024

Public Authority: National Highways
Address: Bridge House
1 Walnut Tree Close
Guildford
Surrey
GU1 4LZ

Decision (including any steps ordered)

1. The complainant has requested information about variable speed limits at a particular date, time and location. National Highways refused to provide the information citing section 31 of FOIA (Law enforcement).
2. The Commissioner's decision is that National Highways was entitled to rely on section 31 and that the public interest lies in non-disclosure.
3. The Commissioner does not require further steps.

Request and response

4. On 16 February 2024, the complainant wrote to National Highways and requested information, having clarified in the following terms:

"Unfortunately, you have not provided me with the information I requested, you've just directed me to your website which doesn't have specific information I requested.

I was very clear in my request and would like it handled under

FOIA 2000.

I would like information with evidence of the temporary / variable speed limit changes displayed on the motorway overhead bars just before getting to the speed camera at M25 anti clockwise Swanley, between exits 2 and 3 (pictured below) on Friday 24/11/2023 between 08:20-08:25 hours.

I need this because I'm 100% certain that the speed limit was clearly 60mph within that timeframe, from exit 3 till the camera, but Kent Police stated it was 40mph which is not correct and I cannot agree with having 3 points on my clean driving license because I never overspeed."

5. National Highways responded to the request and refused to provide the information, citing section 31 of FOIA.
6. The complainant asked for an internal review on 5 March 2024. They acknowledged that they might not be sent the information but would like it shared with the police or the judge in an upcoming court case.
7. National Highways provided an internal review on 4 April 2024 in which it maintained its position. It also provided a link to relevant information about signs and signals.
8. The complainant responded to National Highways because they were not content that the same member of staff that had provided the refusal notice had carried out the internal review.

Scope of the case

9. The complainant contacted the Commissioner on 8 April 2024 to complain about the way their request for information had been handled because they did not accept that the information could not be released.
10. The Commissioner wrote to the complainant on 18 July 2024 with his initial view that he was unlikely to accept that this information should be released and provided them with a link to a recent decision he had made on the same subject. The complainant did not agree with this view and asked for a formal decision to be made.
11. The Commissioner considers that the scope of his investigation is to look at National Highways citing of section 31 of FOIA and whether the requested information has been correctly withheld.

Reasons for decision

Section 31 – Law enforcement

12. Section 31(1) of FOIA states:

“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.”

13. National Highways is relying on all of the above to withhold the requested information.

14. In its response to the complainant, National Highways outlined why it had cited sections 31(1)(a), (b), and (c) “...because the release of this information can prejudice the prevention and detection of crime, the apprehension and prosecution of offenders and the administration of justice.”

15. There have been several recent decision notices regarding this subject. National Highways provided two references in its review for the complainant to consider – [IC-261835-Z2M4](#) and [IC-258440-X2D5](#).

16. In view of his recent decision in [IC-293752-M8G4](#) the Commissioner has not considered it necessary to see the withheld information or seek further argument from National Highways. The requested information is essentially the same, concerning the variable speed limit, though in this case the complainant is querying the limit displayed rather than why it had been set at a particular speed. The Commissioner here repeats paragraphs 14 and 15 of that decision:

“As previously discussed, the Commissioner has dealt with at least two similar cases, where requestors have all requested variable speed limit (‘VSL’) settings, i.e. why a specific speed limit was set at a specific location and at a specific time.

Paragraphs 15-28 of IC-258440-X2D5 contain a detailed analysis as to why VSL setting information engages section 31(1)(a), (b)

and (c). The Commissioner doesn't intend to replicate that whole analysis here."¹

17. However, the decision summarised the argument from IC-258440-X2D5 as follows:

"16. ...the public authority has previously provided the Commissioner with evidence between itself, a Police force and Road Safety Support 'RSS', which demonstrates that disclosure of VSL setting information had directly prejudiced the Police's ability to prosecute an offender, and thus prejudicing the prevention or detection of crime and the administration of justice.

17. Following on from this incident, the public authority now refuses requests for VSL setting information under section 31(1)(a), (b) and (c) of FOIA, because disclosure of this information has previously prejudiced law enforcement activity.

18. Since the Police advised the public authority that disclosure of VSL setting information has previously prejudiced law enforcement activity, it follows that disclosure now would be likely to do so again. Therefore the Commissioner is satisfied the exemption is once again engaged."

18. The Commissioner accepts that disclosure of this information "would be likely to prejudice" law enforcement for the same reasons as are set out in paragraph 17 above and that the exemption is engaged. The Commissioner has therefore gone on to consider the public interest in releasing or disclosing this information.

Public interest factors in favour of releasing the requested information

19. National Highways stated that "Disclosure of the information would be consistent with our commitment to proactively publishing data and transparency."

20. In their internal review request, the complainant argued the following:

"It will be an injustice where the police accidentally or wrongly fines and gives a driver, penalty points for over speeding where the speed limit displayed was actually 60mph but the police think it was 40mph and the FOI officer is refusing to release a crucial

¹ [IC-258440-X2D5](#)

information that would help deliver justice. I am 100% certain the variable speed at the incident time, date and place was 60mph and I suspect the FOI officer has found this to be true hence the refusal to release the information."

21. The complainant provided the following to the Commissioner -

"Every UK government organisation must have a governance structure and process in place that is fair to all citizens irrespective of their colour, age or gender, to deal with issues like this. Freedom of information request should be what it says - release the information required - this is not a confidential information, hence there is no moral justification to withhold it, especially where it will help avoid injustice against a British citizen.

Public interest factors in favour of maintaining the exemption

22. National Highways provided the following points (partly paraphrased below) to the complainant in its refusal notice:

- The signs and signals information National Highways holds is for operational purposes only and is only representation of what was set and not evidential of the time it was displayed.
- The release of such records into the public domain would likely be detrimental to the interests of law enforcement where it is misunderstood as representing a grounds for appeal by members of the public who have received a Notice of Intended Prosecution (NIP) from the police.
- These appeals would be ultimately unsuccessful and be at considerable cost to all parties involved, and therefore a waste of public resource and as such does not represent a public interest in disclosing. The enforcement and prosecution of speeding offences needs to be robust and effective to ensure the safety of road users and operatives.

The balance of the public interest

23. The Commissioner is relying on paragraphs 19-27 of his previous decision notice [IC-293752-M8G4](#) to support his decision below.
24. The Commissioner has therefore concluded that the public interest in disclosure is limited and that there are other appeal processes that are more appropriate to challenge what an individual contends is an injustice. Although the Commissioner understands the complainant's desire to see this information, the legislation does not mean that it is in the public interest for all information held by public authorities to be disclosed and FOIA contains exemptions for that reason. The Commissioner considers that his previous decisions on this subject correctly decided that the disclosure of variable speed limit information had a detrimental effect on the ability of the police to prosecute offenders which is not in the interests of public safety.
25. The Commissioner has therefore decided that National Highways is entitled to rely on sections 31(1)(a), (b) and (c) to withhold the information.

Right of appeal

26. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Janine Gregory
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF