

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 10 August 2006

Public Authority: Chief Officer of Thames Valley Police
Address: Thames Valley Police Headquarters
Kidlington
Oxon OX5 2NX

Summary Decision

The complainant requested figures for the number of speeding tickets issued at camera sites 265 and 266 on Marlow Road in High Wycombe. The public authority refused to provide this information citing Section 31 (Law Enforcement Exemption) as the basis for its refusal. In correspondence with the Commissioner, the public authority also cited Section 38 (Health and Safety Exemption) as an additional basis for its refusal. The Commissioner found that the public authority did not comply with some of its procedural obligations under the Act. However, the Commissioner decided that the information was exempt because disclosure would prejudice law enforcement and would endanger health and safety and that the public interest in maintaining both exemptions outweighed the public interest in disclosing the requested information.

The Commissioner's Role

1. The Commissioner's role 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's request under the Act was made to the Thames Valley Safer Roads Partnership ("TVSRP"). TVSRP conducted all correspondence with the complainant about this matter. TVSRP is comprised of a number of local organisations including Thames Valley Police, a number of local borough, district and county councils, the Highways Agency and Thames Valley Magistrates Courts Service. TVSRP is not, of itself, a public authority under the Act. However, TVSRP confirmed in correspondence with the Commissioner that any Decision Notice issued on this case should be served on the public authority named at the head of this Notice.

3. The complainant requested the following information from the public authority on 4 April 2005:

“figures for the number of speeding tickets issued at camera sites 265 and 266 Marlow Road High Wycombe.”

4. In its refusal letter of 6 April 2005, the public authority stated that it was applying Section 31 (Law Enforcement Exemption) to the requested information on the grounds that disclosure would prejudice the apprehension or prosecution of offenders. It stated that *“Specifically, releasing information about the offence history of any site could enable a member of the public to calculate the level of enforcement at the site and therefore the likelihood of being detected in committing an offence.”*

5. The complainant requested an internal review and received a response dated 31 May 2005. This review upheld the public authority's original position outlined in paragraph 4 above stressing that this reflected the guidance it had received from the Association of Chief Police Officers (“ACPO”). It also included public interest considerations favouring disclosure and non-disclosure as follows:

“Favouring disclosure: Accountability – the information would allow the public to analyse at what levels the police enforce a site

Favouring non-disclosure: This information would allow the public to assess the potential likelihood of being detected at any one site and therefore compromise the operational effectiveness of said site.”

6. There was further correspondence between the parties from 4 August 2005 and 10 September 2005. The complainant had also brought this matter to the attention of local elected representatives and a Member of the House of Lords. The issues surrounding this case were discussed in the House of Lords on 29 June 2005. It appears that the complainant was seeking to persuade the public authority to change its mind in the light of wider support received. The public authority reiterated its position explaining that it was upholding a position agreed nationally by ACPO and directed the complainant to the Commissioner's office.

The Investigation

Scope of the case

7. The Commissioner identified an apparent confusion evident in some elements of the correspondence between the parties. Unfortunately, the complainant had neglected to date some of their correspondence to the public authority and was unable to provide to the Commissioner proof of the date of sending of this correspondence. Furthermore, the public authority had no record of receiving some of this correspondence. It appeared to the Commissioner that, as a consequence, the parties were corresponding at cross purposes on several occasions. In the Commissioner's view, neither party had acted in bad faith and much of the confusion in the correspondence was as a result of a genuine

- misunderstanding. The Commissioner then identified those pieces of correspondence which were sufficient as evidence for consideration in this complaint. Having agreed this evidence with the complainant, the Commissioner was able to establish the scope of the case.
8. The Commissioner also drew the complainant's attention to an Information Tribunal (the "Tribunal") decision on a case relating to a similar matter (Mr P Hemsley vs The Information Commissioner and Northamptonshire Police) http://www.informationtribunal.gov.uk/our_decisions/documents/hemsley_judgment.pdf. In the Northamptonshire Police case, the Commissioner had not upheld a complaint about the public authority's refusal to provide speed camera information. The Commissioner accepted in that case that disclosure of the requested information could allow drivers to deduce likely enforcement patterns at particular site and that this would be likely to prejudice law enforcement. The Commissioner also accepted that there would be a likely risk of endangering health and safety arising as a consequence. The Commissioner further accepted that the public interest in maintaining both exemptions outweighed the public interest in disclosure. The Commissioner's decision in that case was appealed to the Tribunal. However, following a hearing, the Tribunal had dismissed the appeal.
 9. The Commissioner asked the complainant to read the Tribunal's judgment and to provide additional arguments as to how their complaint differed from the complaint in the Northamptonshire Police case.
 10. Having considered the judgement, the complainant argued that the disclosure of the figures for camera sites on Marlow Hill would not cause prejudice to law enforcement because it was never their intention to have two sets of figures from which a comparison could be made. They accepted that had they asked for such information, their case would be much weaker. They argued that the figures would act as a deterrent because drivers would be put off from speeding on the hill if a large statistic was presented to them.
 11. They further argued in relation to the public interest that a large number of local residents had contacted them to complain about the cameras on Marlow Hill. These complaints focussed on the fact that the cameras were sited just as the speed limit on that stretch of road changes from 30 mph to 40 mph on a steep hill. Drivers are allegedly caught out where they overtake slow vehicles who travel slowly up the dual carriageway. There is a widespread view, the complainant argues, that the cameras are positioned where they can make most money rather than to serve a safety purpose. They also cited support for disclosure from the leader of Wycombe District Council and from Baroness Gardner of Parkes who had raised the issue in the House of Lords http://www.publications.parliament.uk/pa/ld200506/ldhansrd/vo050629/text/50629-01.htm#50629-01_head2.
 12. The complainant accepted that disclosure in this case could set a precedent for other disclosures but that their request should not be prejudiced through "*sheer speculation about any further requests*".

13. In correspondence with the Commissioner, the public authority confirmed that it would also seek to rely on Section 38 (Health and Safety Exemption) arguing that release of the information would facilitate deduction of enforcement levels at each site. In the public authority's view, where a driver speeds at a speed camera site because he or she has deduced that enforcement is less likely at that site, there is an increased risk of a serious accident. Sites are generally selected for speed limit enforcement because of the number of accidents that have occurred at that site. Increased driver speed at known accident blackspots is, in the public authority's view, likely to lead to an increase in the frequency and severity of crashes. This mirrored the position adopted by Northamptonshire Police in the above case. The public authority also provided public interest arguments for and against maintaining the exemption as follows:

“For release: The information would allow the public to see how individual sites were ranked according to the most offences detected.

Against release: Increased speeds at sites identified as not in use could lead to an increase in the frequency and severity of crashes.”

Full details of the provisions of Section 38 are reproduced in the Annex to this Notice.

14. The Commissioner considered the comments of both parties. He disagrees with the complainant's assertion in paragraph 10 above that they had not asked for separate figures. The complainant's email dated 4 April 2005 can readily be construed as a request for “figures” rather than a combined “figure”. However, as a pragmatic approach bearing in mind the genuine misunderstanding in correspondence referred to in paragraph 8 above, the Commissioner's investigation has focussed on the following points:
- Would disclosure of statistical information about camera sites 265 and 266 (if disclosed as two separate figures) prejudice law enforcement and/or endanger the health and safety of any individual?
 - Would disclosure of a combined figure prejudice law enforcement and/or endanger the health and safety of any individual?
 - Where prejudice to law enforcement or risk to health and safety would be likely to arise, does the public interest in maintaining the relevant exemption outweigh the specific public interest considerations highlighted by the complainant in paragraphs 10 - 12 above.

Chronology of the case

15. The complainant submitted a complaint to the Commissioner on 21 September 2005. Due to an administrative oversight which occurred in relation to a small number of cases, the case was not correctly acknowledged by the Commissioner's office until 14 December 2005.
16. Between 11 May 2006 and 17 June 2006, the Commissioner corresponded with the complainant to clarify the matters referred to in paragraphs 7 – 12 above. Between 11 May 2006 and 27 July 2006, the Commissioner corresponded with TVSRP and the public authority on all aspects of this case.

Findings of fact

17. The Commissioner requested a copy of the withheld information from TVSRP, the body who had been in correspondence with the complainant on the public authority's behalf. TVSRP provided statistics to the Commissioner but the Commissioner noted that the statistics provided referred to "activations" rather than tickets issued. In correspondence and telephone conversations between the Commissioner, TVSRP and the public authority it was established that TVSRP, as a separate entity, did not hold the number of speeding tickets issued. Instead it held the number of camera activations at each site. It was further established that camera activation does not always lead to the issue of a ticket. The public authority advised that its current published figures showed that 78% of activations would result in tickets but that this rate related to all types of traffic enforcement be that fixed camera, mobile unit or traffic light enforcement.
18. The public authority then confirmed that it, rather than TVSRP, held figures for the number of times a Notice of Intended Prosecution (NIP) had been issued as a result of alleged speeding at sites 265 and 266 and it provided this information to the Commissioner. It was agreed that this more accurately fitted the description of the information specified in the request (see 4 above). Further information about NIPs is available on TVSRP's website in a section entitled "Got a Ticket?" <http://www.saferroads.org/got-a-ticket/index.html>
19. The Commissioner notes that there are two enforcement sites on the A404 Marlow Hill in High Wycombe. Camera 265 enforces a 30 mph zone near the bottom of the hill and camera 266 enforces a 40mph zone near the top of the hill. Information about these units can be found on TVSRP's website in a recent press release <http://www.saferroads.org/news/speed-enforcement-at-marlow-hill.html> and by using the "camera search" facility on TVSRP's website entering the search term "marlow hill". The public authority confirmed that both directions of travel are enforced at each site.

Analysis

20. The Commissioner has considered the public authority's response to the complainant's request for information.

Procedural matters

21. The public authority neglected to provide the complainant with details of its internal review procedure in its emailed refusal notice dated 6 April 2005. It also neglected to explain its basis for considering that the public interest in maintaining the Section 31 exemption outweighed the public interest in disclosing the requested information. It also neglected to provide the complainant with information about contacting the Commissioner's office. In neglecting to provide this information, the public authority contravened the requirements of Section 17(3), Section 17(7)(a) and Section 17(7)(b) of the Act. Full details of these requirements are found in Annex 1 of this Notice. It is arguable that the confusion in correspondence referred to in paragraph 8 above may not have arisen had this

information been provided. However, judging by the nature of the subsequent confusion in this particular case, the Commissioner cannot state with certainty that it would have been avoided had this information been provided.

22. The Commissioner asked the public authority what steps it had taken or proposed to take to avoid similar procedural failures in the future. The Commissioner also provided the public authority with a copy of his Good Practice Note on Refusal Notices http://www.ico.gov.uk/cms/DocumentUploads/Refusal_Note_Guidance_Jan_06.pdf. The Commissioner drew the public authority's attention to the checklist provided at Appendix A of this Good Practice Note.
23. The public authority advised that all relevant staff had been reminded of these procedural obligations and gave assurances that it would comply with these obligations in the future.

Exemptions

24. As stated in paragraph 14 above, the Commissioner considered whether the disclosure of figures for both cameras either separately or as a combined single figure would prejudice law enforcement and endanger health and safety.

Disclosure of separate figures – Section 31 (Law Enforcement)

25. Having seen both the camera activation and the NIP figures for both sites, the Commissioner is satisfied that disclosure of this information would be likely to prejudice law enforcement. In the Commissioner's view, any driver with access to this information could compare the enforcement rates at those two sites and deduce the relative likelihood of enforcement. Having made that deduction, a driver may risk speeding at one or other of the sites in contravention of the law.
26. The Commissioner notes that speed limits are actively enforced on an intermittent basis. Drivers are generally advised through road signs that a particular area may be subject to enforcement. Where drivers do not know for certain that a particular stretch of road is subject to active enforcement, they are more likely to observe the speed limit for fear of being caught. In other words, police forces enforce speed limits using a deterrent effect as an alternative to active enforcement. If the public authority were to release the requested information it would be likely to find it necessary to alter its enforcement patterns to counter the deductions that could be made where the requested information is released. In other words, it would be required to make operational decisions about enforcement of traffic law based on disclosures under the Act rather than other and more relevant factors such as traffic volumes or accident rates. The Commissioner considers that the likelihood of the potential outcomes identified here and in paragraph 25 is sufficient to engage the law enforcement exemption.

Disclosure of separate figures – Section 38 (Health and Safety)

27. The Commissioner acknowledges that sites are selected for speed camera enforcement because they have, in the past, proved to be accident blackspots (see paragraph 13 above). The Commissioner agrees that increased speed at

known accident blackspots is likely to result in an increased risk to the health and safety of road users.

28. The Commissioner accepts arguments which assert that speeding is not the only factor contributing to traffic accidents. He recognises that driver abuse of drugs or alcohol, poor driving skills or adverse prevailing weather conditions can also contribute to traffic accidents. However, he is not convinced that speeding is an insignificant factor. The combination of these two factors, speed (in excess the stated limit) and location (a known accident blackspot) persuades the Commissioner that the health and safety exemption applies. In other words, the Commissioner is satisfied that the release of this information would be likely to result in increased accident numbers where drivers, making use of the requested information, risk speeding at a known accident blackspot.

Disclosure of a combined figure – Section 31 (Law Enforcement)

29. The Commissioner recognises that it would be virtually impossible to deduce from a combined figure the likelihood of being caught speeding on Marlow Hill. However, he believes that if a combined figure is disclosed for these two cameras, the public authority would find it difficult to resist a request for a combined figure for other pairs of cameras sited on a single stretch of road elsewhere in the Thames Valley area, e.g., A44 London Road, Chipping Norton. According to TVSRP's website, this stretch of road also has two mobile enforcement sites. By comparing the two combined figures, it would be possible to assess the likelihood of being caught speeding on London Road in comparison with Marlow Hill. In *Hemsley vs The Information Commissioner and Northamptonshire Police*, the Tribunal made the following comment regarding precedent setting:

“Moreover, we are 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 [who had concerns about adequacy of signage at the site in question] and others whose purpose was less admirable, for example the creation of a commercial website selling forecasts on the operation of safety cameras.” (Paragraph 23).

30. The Commissioner recognises that the disclosure of combined figures for a considerably larger number of cameras may not have a prejudicial effect on law enforcement. For example, the disclosure of combined enforcement figures for all the mobile units in the Thames Valley area would be unlikely to prejudice law enforcement or endanger health and safety in the manner described above. However, the Commissioner is persuaded that the disclosure of combined statistics for two cameras on a single stretch of road, would have a prejudicial effect on law enforcement.

Disclosure of a combined figure – Section 38 (Health and Safety)

31. For the reasons outlined in paragraphs 27 and 28 above, the Commissioner is persuaded that the increased likelihood of speeding that would result where site specific information is disclosed would also increase the likelihood of traffic accidents at that site. The Commissioner is persuaded that this likelihood is sufficient to engage the health and safety exemption.

Public Interest Test – Section 31 (Law Enforcement)/Section 38 (Health and Safety)

32. Having agreed that the disclosure of either individual or combined figures for Marlow Hill would engage both exemptions, the Commissioner considered whether the public interest in maintaining these exemptions outweighed the public interest in disclosing the requested information. The Commissioner believes that the application of these exemptions are closely linked in this case and that many of the public interest arguments are interrelated.
33. The Commissioner recognises that enforcement of speed limits on Marlow Hill has prompted considerable local controversy. He acknowledges the genuine concerns of the complainant and accepts that this reflects the concerns of other local road users. It is not the Commissioner's role to adjudicate on the purpose and efficacy of speed cameras either in general or at specific sites. The Commissioner believes, however, that the disclosure of this information could inform the debate about the deployment of mobile enforcement units on Marlow Hill. The Commissioner considers that there is a strong public interest in informing this debate.
34. That said, the Commissioner believes that there is an even stronger public interest in avoiding the prejudice to law enforcement and the risk to health and safety that has been identified in this case. The Commissioner notes that the enforcement sites are near a school and a hospital. As such it is likely that a large number of more vulnerable pedestrians and road users will be using the area. Emergency vehicles are also likely to use Marlow Hill on approach to the hospital. The Commissioner acknowledges that the public authority is obligated to alleviate the genuine concerns of local road users in relation to the enforcement of speed limits at this site. However, its primary obligation in this matter is to ensure road user safety and to ensure that speed limits are observed.
35. As mentioned in paragraph 26 above, the Commissioner notes that police forces use deterrence in addition to active enforcement of road traffic laws. The Commissioner has already noted in paragraph 26 that disclosure of the requested information is likely to undermine the effectiveness of the deterrence strategy. Two possible options have been brought to the Commissioner's attention as an alternative to the use of a deterrent.
36. Firstly, the public authority could introduce permanent active enforcement at known accident black spots. Given the manpower costs involved in using mobile enforcement units this would probably require the installation of a fixed camera unit. While fixed camera units are likely to be cheaper than mobile units for permanent active enforcement, there would be a consequential increase in administrative costs as more tickets are inevitably issued. The Commissioner

does not consider that it is in the public interest to introduce a less cost effective method of enforcing road traffic laws such as permanent active enforcement at known accident black spots.

37. As a second option, the public authority could alter its enforcement patterns taking into account the fact that indications of previous enforcement patterns had been released under the Act. This way, drivers would not be able to use previous enforcement patterns to predict current enforcement patterns. The Tribunal commented on this point in the *Hemsley vs The Information Commissioner and Northamptonshire Police* case. At paragraph 24 of its judgment, the Tribunal stated: “*We do not accept that operational times can easily and safely be changed following disclosure since their initial selection is determined to a significant degree by casualty records.*” The Commissioner believes that there is a strong public interest allowing the public authority the freedom to make operational decisions about traffic enforcement taking casualty records into account. The Commissioner does not consider that the public interest is best served where the public authority is required to make operational decisions based on what it has and has not disclosed about traffic enforcement levels under the Act.

Conclusion

38. The Commissioner recognises that there is widespread and legitimate concern among local road users about the enforcement of speed limits on Marlow Hill. However, the Commissioner considers that the public interest in maintaining the exemptions cited in this case (Section 31 – Law Enforcement and Section 38 – Health and Safety) outweighs the public interest in disclosing the requested information.

The Decision

39. The Commissioner’s decision is that the public authority dealt with the request for information in accordance with the Act in so far as it has correctly applied the exemptions it had cited. However, the Commissioner finds that the public authority failed to comply with some of its procedural obligations under Section 17 of the Act.

Steps Required

40. The Commissioner requires no steps to be taken.

Right of Appeal

41. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Reference: FS50098965



Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

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

Dated the 10th day of August 2006

Signed

**Phil Boyd
Assistant Commissioner**

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

Annex 1 – Extracts from Relevant Statutory Requirements

Section 1 – General right of access to information held by public authorities

1. - (1) 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 17 – Refusal of Request

17. - (3) 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.

17. - (7) A notice under subsection (1), (3) or (5) must-

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.

Section 31 – Law Enforcement

31. - (1) 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 - Health and safety.

38. - (1) 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.