

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 23 October 2008

Public Authority: The Chief Officer of Staffordshire Police
Address: Staffordshire Police
Police Headquarters
Cannock Road
Stafford
ST17 0QG

Summary

The complainant requested copies of any evidence, which had not already been passed to her, in connection with an alleged speeding offence. This request ultimately became confined to the provision of a video tape which would show the recording of her alleged offence and all other motorists or pedestrians captured on the same footage.

The Commissioner's decision is that the exemption at section 30(1)(a)(i) was appropriately applied and that the public interest favours maintaining the exemption. He has not therefore considered the exemption at 40(2). The Commissioner also found that the public authority failed to respond to two earlier iterations of the request in breach of section 1(1). However he did not order any steps in relation to those requests as the decision notice deals with an identical request which was processed by the public authority under the Act. In relation to that request the Commissioner has found that the public authority breached sections 17(1)(b) and 17(3)(b). The latter breach was remedied at internal review and in view of the content of this decision notice the Commissioner has not ordered any remedial steps in relation to the section 17 breaches.

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.

Background Information

2. In January 2005 the complainant was travelling in the Staffordshire area. She later received a Notice of Intended Prosecution (NIP) alleging she had exceeded the speed limit. She was unsure whether she or her travelling companion had been driving at the time of the alleged offence as they had shared the task. Therefore she requested some 'evidence' in order to be certain as to the identity of the driver.
3. The complainant initially made requests for information related to the alleged offence to the Casualty Reduction Partnership (CRP). The Commissioner understands that the complainant was sent photographs taken from the speed camera to assist her in determining who was driving at the time of the alleged offence. He further understands that these disclosures were not made under the Act but in the course of the complainant's dealings with the CRP regarding the alleged offence. The CRP's response also stated: *"It has not been possible to forward all of the evidence..."*. This led to the complainant's further request for *"all such evidence as you have available ... to enable me to name the driver"*.
4. The applicant was eventually supplied with a copy of the video tape footage of her own vehicle as it passed the safety camera. This was provided to her solicitor who had received the material from the CPS under the Criminal Procedure and Investigations Act 1996 (CPIA) disclosure requirements related to her case. It was not released under the provisions of the Act.
5. The Commissioner believes that it is important to note at this point that pre-disclosure rules under the CPIA govern disclosure in a different way to disclosure under the Act. Information released under the Act has to be 'purpose blind' and 'person blind' and therefore be considered suitable for disclosure to the world at large. It is outside the Commissioner's remit to adjudicate whether disclosure rules under the CPIA have been complied with.
6. The complainant's prosecution was dropped by the Crown Prosecution Service (CPS) at the third hearing. The record is finalised as *"no evidence offered, offence dismissed, defence order granted."* Whilst more precise reasons were not recorded, the public authority has stated to the Commissioner that errors recorded by a member of staff on the NIP were the most likely cause for not proceeding rather than problems with the video evidence.

The Request

7. The complainant initially made a request for information to the CRP. The CRP itself is not a public authority for the purposes of the Act though the various partners are public authorities in their own right and are therefore subject to the Act. In this case the complainant's request was eventually transferred to the public authority named at the head of this notice as it was a request for information that was held on behalf of that organisation.
8. On 3 February 2005, after previously being given photographs of the rear of her vehicle, the complainant asked the CRP for further photographs of the front of her vehicle as well as "*all such evidence as you have available*" in relation to her NIP; this evidence would have included the full session video recording. The CRP responded on 8 February 2005 stating that photographs were not taken of the front of her vehicle. It did not make further reference to the other evidence.
9. On 10 February 2005 the complainant again requested "*all of the evidence*". On 11 February 2005 the CRP responded and advised her to look on its website for further information. It did not refer to her information request.
10. On 16 February 2005 the complainant again wrote and specified that under the Act she required the following information:

"Could you please supply me with the evidence so far not disclosed but in your possession as referred to in your letter – dated 2/2/2005 ..."
11. This was acknowledged on 25 February 2005 and the complainant was advised that her request had been transferred from the CRP to the public authority's freedom of information officer. The CRP further stated:

"Your offence was recorded on videotape from which you have already received a 'still' frame copy of the image of your vehicle. The rest of the evidence is the video and my letter of 2nd February 05 invites you to this office to view it. We are therefore not withholding any evidence from you but for practical reasons we are not prepared to send every offender a video tape of their offence as it serves no purpose. You already have a relevant 'still' image from it and you have been invited here to see the rest of the video."

"As your case is still under investigation, it is in fact exempt from the Freedom of Information Act at this moment in time."

“Should you decide to have your case heard in court rather than accept the offer of a fixed penalty and choose to enter a ‘not guilty’ plea, the Crown Prosecution Service will at that point make all evidence available to your solicitor.”

12. On 2 March 2005 the public authority wrote to the complainant in respect of her request under the Act. In this letter the public authority explained that it considered the video to be exempt under sections 30 and 31. It noted that the video constituted information obtained and held for the purposes of ascertaining whether or not the complainant had committed a speeding offence. It noted that such an offence would constitute a criminal offence and concluded that the public interest favoured maintaining the exemptions.

13. On 4 March 2005 the complainant complained about this decision. She highlighted that she had been invited in to view the evidence and that the CRP had initially withheld it for ‘practical reasons’. She further stated that she lived over 100 miles away so it was unreasonable for her to be expected to travel that distance. As she was being expected to state who was driving the car at the time of the alleged offence she needed to view the video to ascertain this. She further stated:

“In summary it is a flawed argument to deny my request as “a public interest exemption” as your colleagues have invited me to view it!”

“Furthermore the only reason that I have been given previously for not being supplied with a copy “is for practical reasons”.”

14. On 30 March 2005 the public authority responded to the complainant. It advised the complainant that an appeals board had again considered her request and maintained that their original response was correct and that the exemptions at sections 30 and 31 applied. The response included extracts of the two exemptions and the public authority’s public interest considerations.

15. The complainant decided to make a ‘not guilty’ plea in relation to the alleged speeding offence and therefore wrote asking for various items by way of advance disclosure. These were not considered as requests under the Act but under CPIA pre-disclosure rules.

16. On 21 November 2005 the complainant wrote to the public authority in relation to complaints she had made about the way in which her alleged speeding offence had been dealt with. In that letter she highlighted that an earlier request for information had not been responded to. The items specified in this correspondence as being outstanding were as follows:

- The full unedited videotape
 - The witness statement of a co-technician (name removed)
 - A generic letter issued by the Casualty Reduction Partnership
 - The continuity evidence of the handling of the videotape
17. The request was acknowledged on 30 November 2005 and the public authority again stated that the videotape had already been considered and was exempt for the reason given above. It advised the complainant to progress any further complaint with the Commissioner, as it did in its internal review response dated 30 March 2005. It further explained that the other three items were now being considered under the Act and a response would be given shortly.
18. On 1 December 2005 the public authority again wrote to the complainant and advised who was dealing with her correspondence and informed her that in fact all four items would be considered within their forthcoming response.
19. On 22 December 2005 the public authority responded to the further request. It advised that although the request in relation to the video tape had already been considered it had decided to revisit its original response in view of the elapsed time and also in order to comply with its duty under the Act to advise and assist.
20. In respect of the video tape it stated the following:
- “The requested videotape is of vehicles travelling on A449 in Staffordshire on 23rd January 2005. This video was made in order to ascertain whether any of the vehicles travelling on that road at that time were speeding. The video shows features of the vehicles, such as vehicle registration marks, from which the vehicles can be identified.”*
- “Since the video contains the vehicle registration marks, it contains the information from which the registered keeper of the vehicles may be identified.”*
- “Therefore it is my opinion that the full unedited videotape exhibit (reference removed) is exempt from disclosure under the provisions of the Freedom of Information Act 2000 under sections 30 (investigations and proceedings conducted by a public authority) and 40 (personal information).”*
21. The public authority also advised the complainant that it would undertake an internal review if this response was unsatisfactory, but one was not requested.

The Investigation

Scope of the case

22. It is evident from the details of the requests above that some of the complainant's letters have been treated as requests under the Act whilst others have been processed under 'normal course of business' or in accordance with separate access regimes such as the CPIA.
23. In order for a request for information to be valid under section 8 it is not necessary to cite the Freedom of Information Act. Therefore any written request for information can constitute a request under the Act, provided that it includes a name and address for correspondence.
24. Where an applicant is engaged with a public authority for other reasons and therefore other access regimes such as the CPIA are relevant, this can lead to confusion about which access route is appropriate.
25. In this case the complainant still has a right to request information under the Act even though other disclosure regimes such as the CPIA may also apply. However, where a request is considered under the Act it must be considered from an applicant and purpose blind perspective as explained in the background section of this notice. Further, the public authority is still obliged to respond to those requests under the Act and if it does not wish to provide the information then it must provide a reason for not doing so.
26. For the avoidance of doubt the Commissioner has clarified that the complainant requires a decision about the public authority's refusal to provide the full session video recording, i.e. the entire videotape from the session recorded on 23 January 2005. This was confirmed by email on 6 November 2007. This falls within the information requested initially on 3 February 2005 and subsequently on 10 and 16 February 2005.
27. On 4 August 2006 the complainant wrote to the Commissioner. It is important to note that since he received this complaint the Commissioner has implemented a policy that he will not consider complaints submitted longer than two months after the date of the internal review except in exceptional circumstances. However, as this policy was not in place at the time that this complaint was received, the Commissioner has considered this case. The complainant's initial letter included her reasons for wishing to have sight of the full tape including her belief that the speed camera was not used according to ACPO guidelines.

Chronology

28. The Commissioner acknowledged receipt of the complaint on 25 August 2006. He requested background documentation from the complainant and this was provided on 1 September 2006.
29. Unfortunately the Commissioner was unable to begin his investigation until 6 November 2007. He clarified the scope of the complaint with the complainant by email on the same day.
30. On 7 November 2007 the Commissioner wrote to the public authority and raised various questions about the exemptions cited. He also requested a copy of the full unedited video to assist his investigation.
31. On 30 November the public authority requested an extension to the deadline that the Commissioner had given for their response. This was agreed and its response was sent on 11 December 2007 which was within the arranged time limit. The video itself was received on 7 December 2007.
32. Further queries were raised with the public authority on 21 November 2007 and 22 November 2007 about the equipment used and how the images were captured onto tape. A response was received on 28 November 2007. The Commissioner raised further questions on 10 December 2007, 4 January 2008, 5 June 2008 and during telephone conversations. All queries were dealt with promptly.

Findings of Fact

33. The Association of Chief Police Officers (ACPO) has a code of practice which states that a camera operator must form a “prior opinion” that a vehicle is breaking the limit before using a speed camera to record its speed. The camera operator is not allowed to simply target every vehicle that is going past; this practice would constitute “fishing”.
34. The “ACPO Code of Practice for Operational Use of Enforcement Equipment” can be found on-line at:
<http://www.acpo.police.uk/asp/policies/Data/RPET%20Manual%20version%202-3.pdf>
35. Some excerpts pertaining to “prior opinion” are as follows:

“The evidence from attended actively operated equipment corroborates the operator's prior opinion the target vehicle was travelling in excess of the permitted speed limit for the road or class of vehicle.”

“Operators should bear in mind the device confirms and corroborates their prior personal observations and opinion.”

36. The hand-held speedmeter used in this particular case was an LTI 20.20 TS/M Speedscope. This was used in conjunction with a Lastec local video system which is a peripheral part to the LTI 20-20 instrument. The video equipment is used by UK police forces for documenting the circumstances of the measurement made by the speedmeter. The actual evidence recorded by the video serves to corroborate that the operator’s “prior opinion” is accurate.

37. According to <http://norfolk-safety-camera.org.uk/index.php?page=techinfo> The LTI 20-20 TS/M Speedscope is:

“... linked directly to a VHS video system that will run constantly during the whole period of operation. The Speedscope can be trained on vehicles up to 1,000 metres away and will record the time, date, speed, distance, site coding and whether the vehicle is travelling towards or away from the checkpoint.”

“All this data is stored on to a 'tape logger' which is downloaded onto the tape at the end of each check.”

“This equipment was type approved by the Secretary of State on the 1st November 1993.”

38. The Commissioner has also confirmed the following with the public authority:

“... when the mobile safety camera is in operation at a particular location, the video facility is continually running. The speed recording facility is not constantly in operation and is activated only when the camera operator suspects that the vehicle is exceeding the relevant speed limit“.

39. The Commissioner has been further advised by the public authority that on this occasion the mobile camera apparatus was mounted on a tripod in the rear of a specially adapted vehicle. This vehicle had a back window which could be fully opened and allowed clear observation across both sides of the carriageway. Whilst there were two members of staff in the vehicle only one was operating the equipment; the other was there purely in a passive role.

Analysis

40. As mentioned earlier the complainant was invited to view the videotape when it was initially requested. She has argued that, in view of this, the public authority has incorrectly refused to provide the information under the Act in reliance on section 30(1)(a).
41. The Commissioner understands that the offer for the complainant to view the tape was made outside of the Act and would have been made solely to the complainant. This was in view of her circumstances and to assist her in identifying the driver. He further understands that the public authority's view was that the information was exempt from disclosure under the Act by virtue of section 30(1)(a). The Commissioner is required to consider whether the requested information can be disclosed to the general public. In this case he does not consider that the public authority's offer to allow the complainant an opportunity to view the tape has the effect of preventing it from citing the exemption, particularly as it is a class-based rather than a prejudice-based exemption. Therefore he has not considered this point further in his analysis. However, he has made further comments about the public authority's offer of inspection in the other matters section of this decision notice below.
42. In view of the above the Commissioner has not considered further the complainant's argument regarding the earlier offer of a viewing when assessing the authority's reliance upon section 30(1)(a).

Procedural matters

Section 3(2)(b)

43. Whilst the initial recipient of the request, the CRP, is not a public authority in its own right its specific partners (according to its website) are all public authorities. If it receives a request for anything it holds on behalf of one of these partners it should treat this as a request to that partner under the terms of the Act. This is because it holds that information on behalf of that partner in accordance with section 3(2)(b) of the Act. This states that, for the purposes of the Act, information is held by a public authority if "it is held by another person on behalf of the authority". Whether the CRP then deals with it itself or transfers it to the relevant public authority is down to local practices.
44. In this case the Commissioner understands that the withheld videotape is held by the CRP on behalf of Staffordshire Police, which is why this notice is in fact served on that public authority.

Section 1(1)(a) and (b)

45. It was not until the complainant wrote to the CRP on 16 February 2005 and first cited her request was being made under the Act that it was dealt with as such. However, the complainant's requests of 3 and 10 February 2005 were both valid requests which complied with the requirements of section 8 of the Act. Inadequate responses were sent to these which did not confirm whether information of the description requested was held or give any reasons for withholding information under the Act. Furthermore no details of any complaints procedure were provided to the complainant. As the information was held on behalf of the public authority both letters should have been dealt with as valid information requests and responded to accordingly. In failing to confirm whether information was held and, if so, provide it (or alternatively issue a valid refusal notice), the public authority breached section 1(1) of the Act. In view of the contents of this notice the Commissioner has not ordered any remedial steps in relation to these requests.

Section 17(1)(b) and (3)(b)

46. The public authority's response to the request of 16 February 2005, dated 2 March 2005, failed to comply with section 17(1)(b) as it did not specify the subsection of section 30 that was deemed to apply. It also breached section 17(3)(b) as it did not explain why it had concluded that the public interest in maintaining the exemption outweighed the public interest in disclosing the information.
47. The Commissioner has not ordered any remedial steps in relation to these breaches of section 17 in view of the contents of this notice. He also notes that the section 17(3) breach was remedied by the public authority at the internal review stage. The Commissioner has made some additional comments about the refusal notice in the other matters section below.
48. The Commissioner notes that section 31 clearly states that in cases where section 30 applies section 31 cannot be used. They cannot both be cited in relation to the same information. Whilst it is not clear whether they were initially attached to different parts of the video recording it is noted that in its second internal review of 22 December 2005 this was varied by the public authority to section 30(1)(a)(i) only.

Section 30 - Investigations and proceedings by public authorities

49. Section 30(1)(a)(i) applies to a particular class of information, namely information held at any time for the purpose of an investigation with a view to ascertaining whether a person or persons should be charged with an offence. The data held on the video tape is captured and held by the

police in order to fulfil its statutory duties in relation to speeding offences. The Commissioner is therefore satisfied that the requested information is held by the public authority for this purpose and it is therefore caught entirely by the scope of section 30(1)(a)(i) – details of which are given in the Legal Annex to this Notice.

50. A speeding offence is covered by the Road Traffic Regulation Act 1984 and Schedule 2 to the Road Traffic Offenders Act 1988. It is a criminal offence that is heard by a Magistrate in the criminal courts. It is not an offence that can be heard in a civil court.

The Public Interest Test

51. Section 30 is qualified by a public interest test. Therefore, if a public authority refuses to comply with section 1(1)(b) on the basis that section 30(1)(a) applies it must be satisfied that the public interest arguments in favour of maintaining the exemption outweigh those in favour of disclosure.
52. The Commissioner's consideration of the public interest has been informed by the judgment of the Information Tribunal in the case of *Toms v Information Commissioner (EA/2005/0027)* in relation to section 30(1). In view of that he considers that the following factors are pertinent when identifying which public interest arguments in favour of maintaining the exemption are relevant when carrying out the weighing exercise.
- The stage or stages reached in any particular investigation or criminal proceedings;
 - The significance or sensitivity of the information to the investigation;
 - Whether confidentiality is critical to the success of the investigation; and,
 - Whether the information reveals techniques used by the public authority which could harm the investigation.

Stage of the investigation

53. The Commissioner is required to consider whether or not the public authority complied with the Act at the time of the request as opposed to the time the decision notice is served. This approach has been confirmed by the Information Tribunal in the case of *DBERR v Information Commissioner and Friends of the Earth (EA/2007/0072)*. At the time of the complainant's original request under the Act proceedings were still in progress. In fact it was not until much later that the case was actually discontinued by the CPS.

54. The Commissioner considers that where investigations are 'live' there is a strong public interest in preserving the public authority's ability to determine the direction of the investigation and to pursue new leads and different evidence as and when it arises and as far as it deems necessary. The full, unedited video, as requested, additionally contains footage of many other vehicles and people who may have been the subject of other on-going investigations at the time of the request.
55. Where the information would assist those affected by decisions made by the authority, in this case to penalise or prosecute them, the Commissioner recognises that there is a public interest in disclosing the material. This would allow those individuals to challenge those decisions from a more informed standpoint. However, the Commissioner has not attributed significant weight to this argument. This is because he notes that some evidence is routinely provided to such parties on request, as in this case where the still images were released. Furthermore, where cases progress any relevant evidence can be obtained under the CPIA.

The significance and sensitivity of the withheld information to the investigation

56. The Commissioner considers that in some cases the public interest may favour disclosure of certain information held for the purposes of an investigation if that information is not particularly significant to the investigation and where the harm that might arise as a result of disclosure would be low and/or is particularly unlikely. However, the more significant the information is to the investigation, arguably the more harm is likely to arise if it were disclosed and the stronger the public interest in maintaining the exemption.
57. In this particular case the video footage is a significant piece of evidence used (to back up the operator's prior opinion) for the prosecution of drivers who are believed to have been speeding during that particular recording session. As such it is significant not only in this case but also in many other cases.
58. The public authority has further explained to the Commissioner that:

"the primary evidence would be that of the trained camera operator who formed the initial opinion that the vehicle was speeding and the evidence from the camera, although probably the most important and persuasive would serve as secondary evidence. However, without the tape it is unlikely that any court would convict on the uncorroborated opinion of the operator alone. The tape would therefore be essential to the case."

59. The Commissioner also notes the complainant's assertion that the operator was not complying with standard procedures and that he was 'fishing' for vehicles exceeding the speed limit. Disclosing the video would ensure greater transparency on the part of the public authority and in particular demonstrate the aptitude and capability of the operator. However the Commissioner also notes that any possible deficit in the operator's ability has already been assessed, and disproved, by the Independent Police Complaints Commission.
60. In addition, the Commissioner has viewed the information and, whilst he is not an expert in this field, can find no evidence to support the assertions that the complainant has made. In view of this and in particular the outcome of the Independent Police Complaints Commission's review in this case he has attributed less weight to the transparency and accountability argument in favour of disclosure.

Is confidentiality critical to the success of the investigation?

61. The Commissioner notes that the success of an investigation often depends on the quality of any evidence obtained. Prematurely revealing the evidence or lines of enquiry could allow an offender to plan their continued evasion from justice. The Commissioner recognises that, as a general principle, there is a strong public interest in allowing the police to withhold case evidence until such time as it is appropriate to release it.
62. At the time of her request the complainant's case was still subject to investigation. The video tape was crucial evidence in the case and disclosure would, necessarily, be strictly controlled under CPIA rules. Additionally, the complainant's case is unlikely to have been the only one that was covered by the footage and as such there may have been other outstanding cases as the request was made only a short time after the alleged offence. Premature revelation of the evidence could have undermined the investigations and justice process for any other cases.
63. The public authority again wrote to the complainant after undertaking a second internal review in December 2005. It is recognised that this was done after her case had been discontinued and, at this point, her case was therefore no longer 'live'. However, as set out above it is likely that there were still outstanding cases or cases which had been appealed.
64. In addition, as mentioned earlier, the Commissioner must consider the public interest at the time of the request. This approach is informed by the Information Tribunal decision in the case of DBERR v Information Commissioner and Friends of the Earth (EA/2007/0072). At the time of the request the investigation into the complainant was still ongoing and possible offences committed by other drivers depicted in the video would

still have been within the timescale for investigation and prosecution. The Commissioner therefore considers that the public interest in allowing the public authority to proceed with the cases and to keep the evidence out of the public domain has significant weight.

Does the information reveal techniques used by the public authority which could harm the investigation?

65. Whilst a considerable amount of information about speed camera operation is already known to the public the full extent and practice is not.

66. According to the public authority:

“The revelation of the whole tape would lead to the identification of the speed threshold at which enforcement was made thereby leading to drivers driving to the enforcement limit rather than the speed limit, thereby defeating law enforcement and risking health and safety.”

67. The Commissioner notes that the guideline issued by the Association of Chief Police Officers is not to prosecute motorists unless they are recorded as going at 10% plus 2mph over the posted speed limit. These guidelines, which are publicly available, include specific thresholds which ACPO recommends are applied for determining whether to issue a fixed penalty notice or a summons. They do note that police officers do still retain discretion to determine whether in a particular case a notice or summons should be issued even if a motorist is driving at a lower speed.

68. However, whilst ACPO has issued guidance it remains an operational matter for each chief officer of police to decide at what threshold cameras are set taking account of local circumstances. The public authority has commented that it believes that revelation of the whole tape would allow identification of the speed threshold thereby impacting on law enforcement and risking health and safety. The Commissioner notes that neither of the exemptions covering these areas have been cited by the public authority so he has not further considered them.

69. Given that general thresholds are published and that officer discretion would depend on different circumstances in each case it seems unlikely that the tape would reveal a particular enforcement threshold. As there is a significant element of discretion it seems likely that an officer may decide that a particular speed exceeded by a motorist in one set of circumstances warrants a penalty when the same speed in different conditions does not.

70. Revelation of the speed threshold set on this particular occasion would not enable a positive determination of thresholds which may be used on a

different day or time or indeed in different weather conditions. The Commissioner would wish to point out however, that where there is less officer discretion or a fixed threshold is always being applied by a public authority then he may have a different opinion.

71. The ACPO guidelines entitled "Speed Enforcement Guidelines- Joining Forces for Safer Roads" can be viewed at the following link:
http://www.acpo.police.uk/asp/policies/Data/speed_enforcement_guidelines_web_v7_foi.doc
72. The Commissioner also notes the considerable amount of information that is already in the public domain about the techniques and procedures used to operate both mobile and static speed cameras. This information appears on police and safety camera partnership websites as well as those created by groups interested in sharing information about speed cameras. In view of this, and having regard to the significance of the contents of the tape which he has reviewed, the Commissioner does not consider that it reveals anything about the techniques used which would be likely to harm the investigation of alleged offences in this case or in future similar cases.
73. In view of all of the above the Commissioner does not consider this argument in favour of maintaining the exemption has much weight.

Public interest test conclusion

74. Having considered all of the competing public interest factors the Commissioner is satisfied that the public interest arguments in favour of maintaining section 30(1)(a) outweigh those in favour of disclosure. In particular the Commissioner would re-iterate that he does not consider that there is any evidence to support the complainant's assertions about the operator 'fishing' which would add to the weight of the accountability and transparency argument. Further, he has also attributed less weight to this factor in view of the fact that the IPCC have investigated the matter and determined that there was no wrongdoing.
75. In addition in reaching this conclusion the Commissioner considers that the argument that there is a public interest in allowing the public authority to pursue 'live' investigations and to determine what, if any, evidence related to them is released, has particular weight.

Section 40(2)- Third party personal data

76. In view of the fact that the Commissioner has determined that section 30(1)(a)(i) applied to all of the withheld information it has not been necessary for him to consider section 40(2).

The Decision

77. The Commissioner's decision is that the public authority breached section 1(1) in failing to respond to the complainant's initial requests.
78. The Commissioner finds that the public authority breached sections 17(1)(b) and 17(3)(b) of the Act as set out in paragraphs 46 and 47 above.
79. The Commissioner's decision is that the public authority correctly applied the section 30(1)(a)(i) exemption to the information requested in this case.

Steps Required

80. The Commissioner requires no steps to be taken.

Other Matters

Disclosure of information outside of the Act

81. Where a public authority decides that information requested under the Act is exempt there is nothing to prevent it from offering applicants a right of access to information outside of the Act. Any such access would be limited to the individual and could be subject to conditions. In contrast, in order to be released under the Act, information must be deemed suitable for disclosure to the general public without condition.

Refusal notice

82. The Commissioner notes that the requests were made when the legislation was in its infancy and procedures were still being worked on by many authorities. By the time it had completed its second internal review the additional experience gained resulted in the response adequately covering the former shortfalls. Whilst future non-compliance will be monitored the Commissioner has not identified similar issues with this particular public authority to date.

Right of Appeal

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

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX
Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.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 23 day of October 2008

Signed

**Nicole Duncan
Head of FOI Complaints**

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

Legal Annex

Access to information

Section 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.

Public authorities

Section 3

- (1) In this Act “public authority” means -
- (a) subject to section 4(4), any body which, any other person who, or the holder of any office which –
 - (i) is listed in Schedule 1, or
 - (ii) is designated by order under section 5, or
 - (b) a publicly- owned company as defined by section 6.
- (2) For the purposes of this Act, information is held by a public authority if –
- (a) it is held by the authority, otherwise than on behalf of another person, or
 - (b) it is held by another person on behalf of the authority”.

Request for information

Section 8

- (1) In this Act any reference to a “request for information” is a reference to such a request which -
- (a) is in writing,
 - (b) states the name of the applicant and an address for correspondence, and
 - (c) describes the information requested.
- (2) For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request –
- (a) is transmitted by electronic means,

- (b) is received in legible form, and
- (c) is capable of being used for subsequent reference”.

Refusal of Request

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 17(7) provides that –

“A notice under section (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.”

Investigations and proceedings conducted by public authorities.

Section 30(1) provides that –

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of -

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained -
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it,

- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.”