

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 17 July 2008**

**Public Authority:** Chief Constable of Hampshire Constabulary  
**Address:** Police Headquarters  
West Hill  
Romsey Road  
Winchester  
Hampshire  
SO22 5DB

### Summary

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The complainant, a local newspaper, requested statistical information relating to the number of NIPs (Notice of Intended Prosecution) issued for speed limit infringements at two safety camera enforcement sites on the A339 in Upper Wootton. It also requested information about the value of fines collected as a result of the issue of the NIPs. In the request, the complainant made specific reference to an earlier decision of the Information Tribunal which ordered the disclosure of similar information. The public authority took the view that the circumstances in this case were sufficiently different from the earlier case and refused to provide the requested information citing the exemptions at section 31 (Law Enforcement) and section 38 (Health and Safety). It also argued that the public interest in maintaining these exemptions outweighed the public interest in disclosure. The Commissioner has decided that the information is not exempt from disclosure under the Act and requires the public authority to disclose it to the complainant as a total figure and as annual figures where those are available for full calendar years. In failing to provide the information requested, the public authority breached section 1(1)(b) of the Act. The public authority also failed to provide an adequate refusal notice and, in doing so, breached the requirements of sections 17(1)(b) and section 17(3)(b).

## The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

## The Request

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### Background

2. The Bucks Free Press ("BFP") made a complaint to the Commissioner about Thames Valley Police's refusal to provide statistical information in relation to two cameras in High Wycombe. In that case Thames Valley Police cited the exemptions at section 31 (Prejudice to Law Enforcement) and section 38 (Endangering Health and Safety) as the basis for its refusal. The Commissioner did not uphold this complaint and issued a decision notice to that effect. BFP appealed that decision notice to the Information Tribunal (the "Tribunal") which allowed the appeal.
3. The Tribunal's decision in the BFP case is accessible via its website. [http://www.informationtribunal.gov.uk/Documents/decisions/Bucks%20Free%20Press%20v%20Information%20Commissioner%20\(18%20January%202007\).pdf](http://www.informationtribunal.gov.uk/Documents/decisions/Bucks%20Free%20Press%20v%20Information%20Commissioner%20(18%20January%202007).pdf).
4. The Tribunal ruled that disclosure of the requested information where it combines statistics from two cameras would not reveal any meaningful information about enforcement patterns as had been argued by Thames Valley Police. As such the information was not "*capable of having any effect on drivers' behaviour*" (BFP Decision paragraph 17). It added that the same result would follow if the figures were broken down into annual totals but that disclosure of information broken down into quarterly or monthly totals would have a prejudicial effect.
5. The Tribunal concluded that the exemption at section 31 was not engaged. Asserting the "*obvious*" connection between incidence of speeding and the danger of accidents it added that "*it must follow that the Section 38 exemption is not engaged*". It ordered that the information be disclosed as a total and for the full calendar year 2004.

### The complainant's request

6. On 12 March 2007, the complainant in this case requested the following information:

*"The number of tickets issued for infringements of the speed limit caught by your fixed camera or cameras on the A339 near Upper Wootton.*

*The value of these fines.*

*Please break down the information for each year of the camera(s) installation.”*

7. The complainant added that he had made a similar request the previous year but that this had been refused. However, the complainant argued that the reasons given for refusal were now redundant because of the Tribunal's decision in the BFP case.
8. The public authority refused to provide this information and explained its reasoning in a refusal notice dated 27 March 2007. It divided the request into three parts and in relation to each part stated that the requested information was exempt from disclosure by virtue of the exemptions at sections 31 and 38. The arguments it put forward in relation to these exemptions will be examined in more detail later in this notice. The Commissioner would note at this point, however, that these arguments reflect the arguments put forward by Thames Valley Police in the BFP case.
9. The complainant requested a review of this refusal in two letters dated 27 April 2007 and 14 May 2007. It again referred to the BFP decision as the basis for its appeal and stated that the public authority had not addressed the points raised in that decision in its refusal notice.
10. The public authority conducted a review of its decision and advised the complainant of the outcome in a letter dated 19 June 2007. It advised that it did not intend to overturn its earlier decision to refuse to provide the requested information and asserted that the complainant had already received a comprehensive explanation of the public authority's reasoning.

## **The Investigation**

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### **Scope of the case**

11. On 2 July 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following point:
  - That there is no material difference between the information requested here and the information requested in the BFP decision. As such the public authority has incorrectly applied the exemptions it cited and should disclose the requested information.
12. The Commissioner has therefore considered whether there is a material difference in the two requests, the relevant facts applicable in this case and whether there are any other prevailing factors which engage the two exemptions and which result in the public interest in maintaining the exemption outweighing the public interest in disclosure.

## Chronology

13. The Commissioner called the public authority to discuss its approach to this request and followed this call with an emailed letter dated 25 September 2007. The Commissioner asked for a copy of the withheld information and put a number of points to the public authority for its further comment. He asked for the public authority's further explanation as to why it believed the two requests were different. The Commissioner also challenged the public authority's view that the information in question was exempt by virtue of sections 31 and 38 and set out his reasoning in this regard. This reasoning included specific reference to the Tribunal's decision in the BFP case and is set out in more detail later in this notice.
14. The public authority responded in an email dated 23 October 2007. It provided a figure showing the combined number of tickets issued as a result of enforcement activity at both camera sites on this stretch of road. It also broke the information down into figures for each calendar year from the date of installation (the public authority later confirmed the date of installation as being 4 November 2004). It confirmed that the figures included cancelled and unfinalised tickets as well as ones that went to prosecution in court. It also provided information about the value of fines collected.
15. The public authority also maintained its position that the requested information was exempt by virtue of sections 31 and 38 and provided further arguments and evidence in support of that position.
16. The detail of the points set out by the Commissioner and an analysis of the public authority's response is described in more detail later in this Notice.

## Findings of fact

17. The cameras in question are placed 500 metres apart on a stretch of the A339 near Upper Wootton to the north west of Basingstoke. The cameras are of the Truvelo type which means they are fixed cameras which register the speed of oncoming traffic. This compares with the Gatso type which are fixed cameras registering the speed of vehicles traveling away from the camera's position.
18. Both cameras were set up on 4 November 2004.

## Analysis

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### Procedural issue

19. The Commissioner has concerns about sufficiency of the refusal notice issued by the public authority in this case. He recognises that the internal review provides public authorities with an opportunity to correct any procedural failures within a refusal notice. Therefore when making a decision about compliance with section 17 he will make a decision on the basis of the refusal as it stands at the internal

review stage. This approach reflects the decision of the Information Tribunal in the case of *King vs The Information Commission and the Department for Work and Pensions (EA/2007/0085)*.

20. The refusal notice issued by the public authority referred to sections 31 and 38 of the Act. However it did not specify the particular subsections of those exemptions. This was not rectified by the public authority at the internal review stage. In view of this the public authority breached section 17(1)(b) in failing to specify the specific subsections of the exemptions that it deemed to apply in this case. It also failed to explain why the public interest in maintaining the exemption outweighed the public interest in disclosing the information. In doing so it breached section 17(3)(b) of the Act.

## **Exemptions – Preliminary matters**

### **Comparison with BFP request**

21. As outlined in paragraph 12 the first question the Commissioner must address is whether or not there is any material difference between the BFP request and the request made in this case. He must also consider the facts that are relevant to this particular case. If there are material differences, the Commissioner must consider how these differences impact on the arguments around the application of the exemptions. If there are no material differences, the Commissioner must consider whether the public authority has put forward compelling arguments which would lead to a decision which differs from the one issued by the Tribunal in the BFP case even though there is no material difference between the two requests.
22. In the telephone conversation referred to in paragraph 13 above the public authority identified the following differences:
  - The BFP request sought information combining statistics from two cameras, this request does not seek “combined figures”,
  - The cameras in the BFP case were deployed in mobile units, the cameras here are fixed cameras,
  - The enforcement sites in the BFP case related to two different speed limits which is not the case here.
23. Taking the last two bullet points first, the public authority did not, in its written response, seek to argue further that the difference in camera types and comparison of speed limits made a material difference to the case. However, the public authority maintained its argument that the complainant had not requested combined figures.
24. The Commissioner would agree that the complainant did not use the phrase “combined figures” in its request as outlined in paragraph 6. However, the Commissioner notes the complainant uses the phrase “camera or cameras” and makes specific additional reference to the BFP decision (in his initial request and subsequently). In the Commissioner’s view it is clear that the complainant seeks information in the format agreed in the BFP case, i.e., annual combined figures for two cameras. With this in mind, the Commissioner believes the public

authority has no basis for sustaining its argument that the complainant's request was materially different in this regard.

### **Value of fines**

25. The Commissioner notes that the BFP case did not include a request for the value of fines collected as a result of NIPs issued as is the case here. The Commissioner also notes that the public authority did not seek to argue that the two requests differed materially in this respect. For the avoidance of doubt, the Commissioner considers the request for the value of fines to be an additional element in this case rather than a modifying element. In other words, it does not modify the request for information about the number of NIPs issued at the two sites such that this request is materially different from the BFP request.

### **Breakdown into annual figures**

26. There is a further difference between the original request in the BFP case and this request which was not noted by the public authority. The original request in the BFP case did not seek a breakdown of a total figure into annual figures. It was the Tribunal that determined that a total figure could be broken down into annual figures without giving rise to a prejudicial outcome. The Tribunal then specifically ordered the disclosure of annual figures by full calendar year. Given the complainant's emphasis on the Tribunal's decision in the BFP case in support of its arguments for disclosure, the Commissioner has considered in this case whether a breakdown of the total can be disclosed using full calendar year data rather than, for example, 12 month periods which commence on 4 November (the date both cameras were installed) or 12 March (the date of the request).
27. While the request in this case is more detailed than the original request in the BFP case in that information about fine values were not requested in the BFP case, the Commissioner does not consider this to be a difference which significantly affects the outcome of this case.

### **Exemptions – Analysis of exemptions cited**

28. Having concluded that there was little or no material difference between the request in the BFP case and the request in this case, the Commissioner went on to consider the public authority's arguments regarding the application of exemptions to all the withheld information. He examined whether the public authority had put forward any additional and compelling arguments which would lead to a decision which differs from the Tribunal's ruling in the BFP case. He also considered whether the particular circumstances of this case merited a different decision.

### **Section 31(1)(a) and (b) – Law Enforcement Exemption**

29. This exemption is engaged where disclosure would or would be likely to prejudice, among other law enforcement activities, the prevention or detection of crime or the apprehension or prosecution of offenders. Where information is

exempt by virtue of section 31(1)(a) and (b), it can only be withheld from disclosure if the public interest in maintaining the exemption outweighs the public interest in disclosure. Full details of the exemption at section 31 are given in a legal annex to this notice.

30. In its refusal notice, the public authority made the following arguments in relation to the application of section 31.

- Not all camera sites are active at all times – some sites will be active on a rotational basis. If site specific data is released it could give the impression that the chances of being recorded in particular locations are low, which may encourage higher speeds and hence casualties at those locations.
- For camera enforcement to be truly effective there must be the perception that the chances of being recorded are high at all sites.
- Cameras are deployed on an intelligence led basis and the disclosure of site specific information will make this approach invalid.

31. In correspondence with the public authority, the Commissioner drew its attention to paragraphs 16 and 17 of the Tribunal's decision in the BFP case. The Commissioner argued that these paragraphs addressed the points the public authority had raised. In paragraph 16 of that decision, the Tribunal had commented that

*“A high number of NIPs over a period of, say 12 months, may result from the camera site having been operative for very long periods. But it may equally be the result of very substantial offending by motorists during a relatively short period of operation. Conversely, a low number may be the result of drivers being conscious of the dangers of a particular accident blackspot, and therefore observing the applicable speed limit, even though the camera site was operative for long periods of time”.*

32. At paragraph 17, the Tribunal stated

*“It seems to us that driver behaviour is only likely to be affected when further information is provided, such as the dates and times when offences were detected (as in Hemsley) [this refers to a previous Tribunal decision Hemsley -v- Information Commissioner (EA/2005/0026)], the date or time when a particular site was operative, or the number of offences detected per hour of camera operation. We wish to make it very clear that we would be very reluctant to order the disclosure of information which would reveal the enforcement pattern for a site, or would otherwise be likely to encourage selective offending and, without hampering in any way the freedom of this Tribunal in any future cases, we can envisage circumstances in which the disclosure of the additional information mentioned in the examples we have given above might well have that effect. However, that is not the information which the BFP has requested. It seeks only the total number of NIPs resulting from camera activities at sites 265 and 266 combined.”*

33. The Commissioner suggested to the public authority that the complainant's request was sufficiently similar to BFP's request and that therefore the Tribunal's

decision in that case was a relevant precedent. The Commissioner asked the public authority for any evidence not made available to the Tribunal in the BFP case which showed that drivers are more inclined to risk breaking the speed limit at an enforcement site when they have access to enforcement data at the level requested here, i.e. data which is not specific to one site and which relates to annual numbers.

34. In response to the Commissioner's question regarding section 31, the public authority said it believed that drivers would make assumptions (accurate or otherwise) about enforcement levels where this information was disclosed and might risk breaking the law based on these assumptions. It also submitted evidence of enforcement activity from other sites which, in its view, demonstrated this point.

### **Section 31(1)(a) and (b) – Is the exemption engaged?**

35. The Commissioner acknowledges that the evidence provided by the public authority demonstrates prejudicial effects on law enforcement that can arise in circumstances similar to the examples provided. However, the Commissioner is not persuaded that the circumstances described in the examples are sufficiently similar to this case.
36. In addition to the above, the public authority made further arguments setting out what assumptions would, in its view, inevitably be made if the requested information were disclosed.
37. The Commissioner notes the public authority's concerns but is not persuaded that the assumptions it set out could reasonably be made without access to further detailed information. The complainant did not ask for further detail and the Commissioner has received no evidence to show that further detail of the type suggested by the public authority would be publicly available from another source.
38. It is clear to the Commissioner, in any event, that the public authority simply disagrees with the Tribunal's conclusion that statistical information of this level of detail is "*not capable of having any effect on drivers' behaviour*" (Paragraph 17).
39. The Commissioner would also dispute the public authority's assertion that the information requested is "site specific information". Much of the public authority's arguments are based on the consequence of disclosing "site specific information". The Commissioner understands this phrase to mean 'information which relates to enforcement activity at and/or the operation of a specific camera site'. In the Commissioner's view, the site of each camera is a site in its own right regardless of its relative proximity to the site of another camera. The Commissioner does not consider that combined figures of statistics relating to two cameras constitutes information specific to one site or "site specific information" even if those two cameras are relatively close to each other on one stretch of road.



## Section 31 - Conclusion

40. The Commissioner notes a comment in paragraph 17 of the BFP decision which is particularly pertinent to the decision he has to make in the case:

*“We wish to make it very clear that we would be very reluctant to order the disclosure of information which would reveal the enforcement pattern for a site, or would otherwise be likely to encourage selective offending and, without hampering in any way the freedom of this Tribunal in any future cases, we can envisage circumstances in which the disclosure of the additional information mentioned in the examples we have given above might well have that effect.”*

41. This comment accords with the Commissioner’s approach to this case in two ways. Firstly, the Commissioner is similarly reluctant to make such an order. Secondly, he does not consider that one of his decisions or one of the Tribunal’s judgments is necessarily binding upon his later decisions on similar subjects if the circumstances of another case dictate a different outcome. In his investigation of this case, the Commissioner examined whether there were any additional factors or circumstances which might lead to a decision about disclosure of this level of statistical detail which differs from the Tribunal’s view on a similar disclosure in the BFP case.
42. In paragraph 17 of its judgment, the Tribunal set out the sort of detail in statistics which would be likely to affect driver behaviour as follows:
- dates and times that offences are detected
  - dates and times that sites are operational
  - number of offences detected per hour by a particular camera
  - a breakdown of statistics into quarterly or monthly totals
43. None of this sort of detail was requested in this case and, to the best of the Commissioner’s knowledge, none of this sort of detail is publicly available from another source.
44. The Commissioner notes the Tribunal’s disclosure order in the BFP base was very specific. It was in two parts. The first part required the disclosure of a total combined figure from the date of installation to the date of the request and the second part required the disclosure of annual figures for the calendar year 2004. The Commissioner notes that the Tribunal did not order disclosure of annual figures using the date of installation (or the date of the request) as the starting point.
45. Having regard to all the above, the Commissioner believes that disclosure of the following information would satisfy the complainant’s request and would not require the disclosure of information which is exempt by virtue of section 31(1)(a) and (b):
- the combined total of NIPs resulting from the operation of the two safety cameras from their date of installation (4 November 2004) to the date of the request (12 March 2007)

- the total value of fines collected by the public authority as a result of the NIPs issued in this period
- the combined total of NIPs resulting from the operation of the two safety cameras for the calendar year 2005
- the total value of fines collected by the public authority as a result of the NIPs issued in this period
- the combined total of NIPs resulting from the operation of the two safety cameras for the calendar year 2006
- the total value of fines collected by the public authority as a result of the NIPs issued in this period

### **What can be deduced from this information?**

46. The Commissioner recognises that a simple calculation using the above information would determine the number of NIPs issued as a result of enforcement at both sites for the combined period 4 November 2004 to 31 December 2004 and 1 January 2007 to 12 March 2007. This calculation can be achieved by combining the 2005 and 2006 totals and subtracting that figure from the total figure for the period 4 November 2004 to 12 March 2007. This figure (the “2004/2007 figure”) would represent a combination of two partial-year figures, the first being just under two months at the end of 2004 and the second being just over two months at the beginning of 2007. As indicated in paragraph 38, the Commissioner notes the Tribunal’s concern in the BFP case about the possibility of a prejudicial outcome where partial-year information (e.g. monthly or quarterly) is disclosed.
47. The Commissioner does not believe it is possible to determine how much of the 2004/2007 figure relates to the partial 2004 period and how much relates to the partial 2007 period. In addition, the Commissioner does not consider that anything meaningful can be determined from any further subdivision of the 2004/2007 figure (e.g. to extrapolate average monthly figures or quarterly figures) because the two periods which combine to make this partial year total are not consecutive periods; they are separated by a gap of two years. The Commissioner would also emphasise that the information relates to combined figures not separate figures for each camera.
48. The Commissioner does not therefore consider that the 2004/2007 figure provides the level of detail set out in paragraph 17 of the Tribunal’s BFP judgment. As such he does not consider that the potential for calculating the 2004/2007 figure renders the information described in paragraph 45 of this notice exempt by virtue of section 31. The Commissioner also notes that a similar calculation could be made using the information disclosed following the Tribunal’s BFP judgment. The Commissioner has not been made aware of any prejudicial outcome arising from that earlier disclosure.

### **Section 31 – The balance of public interest test**

49. Given that the Commissioner does not agree that the exemption is engaged it has not been necessary for him to consider the public interest test in relation to section 31.

## Section 38(1)(a) and (b) – Health and Safety

50. This exemption is engaged where disclosure would or would be likely to endanger the mental or physical health or the safety of an individual. Where information is exempt by virtue of section 38(1)(a) and (b), it can only be withheld from disclosure if the public interest in maintaining the exemption outweighs the public interest in disclosure. Full details of the exemption at section 38 are given in a legal annex to this notice.
51. In its BFP decision rejecting the exemptions cited by the public authority, the Tribunal stated at paragraph 18 that, “*the connection between the incidence of speeding and the danger of accidents occurring is so obvious that it must follow that Section 38 is also not engaged* [where Section 31 is not engaged]”.
52. However, the Department for Transport (“DfT”) published a report about road safety in September 2006 which was not made available to the Tribunal in the BFP case. This report appears to suggest that the connection between incidence of speeding and the danger of accidents is not as clearly made. The report was entitled “Road Casualties: Great Britain – 2005”. It included an annex entitled “Contributory factors to road accidents”.  
<http://www.dft.gov.uk/162259/162469/221412/221549/227755/contributoryfactorst roadacc1802>.
53. The Commissioner notes that the two sides of the safety camera debate have both exploited these statistics for their own purpose. For example, the statistics appear to show that speeding, of itself, is not the major contributory factor in road accidents – the actual figure it gives is 5%. Anti-safety camera campaigners have focused on this headline figure. According to some commentators, the statistics seem to suggest that public health and safety is put most at risk by poor drivers or those who drive under the influence of alcohol rather than by speeding drivers. Safety camera advocates have highlighted the fact that the statistics also appear to show that while speeding is not, of itself, a major factor, it can, when combined with other factors such as poor driving or influence of excess alcohol, significantly increase the seriousness of an accident.
54. In his letter of 25 September 2007, the Commissioner invited the public authority to comment on this element of the report and the interpretation of the statistics that had been made by those who regularly commented on safety cameras.
55. In response, the public authority drew attention to what it characterised as a “health warning” in the introduction to the DfT’s report. It quoted the following extract:
- “The contributory factors are largely subjective reflecting the opinion of the reporting police officer and are not necessarily the result of extensive investigation. Some factors are less likely to be recorded since evidence may not be available after the event ... care should be taken in its interpretation [the public authority’s emphasis].”*

56. The public authority drew the Commissioner's attention to other extracts from the report which address and expand upon the same theme.
57. It also asserted that there was a consensus amongst road safety professionals, researchers and roads police officers that speed was a major factor in accident causation. It stated that: *"The speed limit is the safest maximum speed for the road and designed so that in the event of something unexpected happening the driver would still have time to stop and so prevent a collision or reduce speed enough to limit the severity of any collision. However, without a full investigation a police officer would be reluctant to tick the exceeding the speed limit box even if the nature of the collision indicated that the speed limit was exceeded."*
58. The Commissioner has subsequently noted an additional comment which was included in the 2006 version of the DfT's report on the same subject:

*"In addition, contributory factors are disclosable in court and police officers would require some supporting evidence before reporting certain factors. For each of the contributory factors given in an accident the police officer will indicate whether the factor is 'very likely' or 'possible', although in this article no distinction is made between these two categories."*

<http://www.dft.gov.uk/162259/162469/221412/221549/227755/rcgb2006v1.pdf>

DfT Report – Road Casualties Great Britain 2006 (Published September 2007) – page 36 – 7.

59. In support of its arguments regarding section 38, the public authority also made reference to and quoted from the following documents:
- "Managing Vehicle Speed for Safety" Article by Marie Taylor of the Transport Research Laboratory, 2001.
  - "Tomorrow's roads, safer for everyone" – DfT publication, March 2000  
<http://www.dft.gov.uk/pgr/roadsafety/strategytargetsperformance/tomorrow/sroadssaferforeverone>
  - "Speed: Know your limits" – DfT, March 2006  
<http://www.dft.gov.uk/pgr/roadsafety/speedmanagement/speedknowyourlimits>

### **Section 38(1)(a) and (b) – Is the exemption engaged**

60. Having considered all the above, the Commissioner is satisfied that if section 31 was engaged in this case, section 38 would also be engaged. He is persuaded by the significance of the DfT "health warning" as to unsafe conclusions that might be drawn from its statistics on the impact of speeding.
61. However, as outlined above the Commissioner is not persuaded that section 31 is engaged. He is therefore not persuaded that section 38(1)(a) or (b) is engaged either.
62. The public authority has not sought to argue that section 38(1)(a) or (b) could be engaged on its own without also engaging section 31. The Commissioner has

therefore not considered this point further, nor gone on to consider the public interest.

## The Decision

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63. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that it misapplied the exemptions under section 31 and 38 and in doing so it did not comply with its obligations under section 1(1)(b) of the Act to provide the information described in the complainant's request of 12 March 2007.
64. The Commissioner has also decided that the public authority's refusal notice did not comply with its obligations under section 17(1)(b) and 17(3)(b) of the Act.

## Steps Required

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65. The Commissioner requires the public authority to disclose the following to ensure compliance with the Act:
- the combined total of NIPs issued as a result of the operation of the two safety cameras installed on the A339 near Upper Wootton from their date of installation (4 November 2004) to the date of the request (12 March 2007)
  - the combined total value of fines collected by the public authority as a result of the NIPs issued from these cameras for the same period
  - the combined total of NIPs issued as a result of the operation of the two safety cameras for the calendar year 2005
  - the combined total value of fines collected by the public authority as a result of the NIPs issued from these cameras for the same period
  - the combined total of NIPs issued as a result of the operation of the two safety cameras for the calendar year 2006
  - the combined total value of fines collected by the public authority as a result of the NIPs issued from these cameras for the same period
66. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Other matters

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67. The Commissioner has noted in this and other cases that there can be a disparity between the number of NIPs issued and the amount of fines paid. The Commissioner has noted a number of reasons that may explain this disparity in similar cases. These include but are not confined to the following:
- The public authority is unable to identify the driver (e.g., where the driver is a non-UK resident).
  - The driver challenges the NIP at a magistrates court resulting in either the cancellation of the NIP or in the payment of a fine to the court rather than to the public authority.
  - Where alternative penalties, e.g. driving courses, are offered (although the Commissioner understands the public authority does not offer alternatives such as this).
68. The Commissioner recommends that the public authority explains any apparent disparity that might arise in the figures to assist the requester in understanding the disclosed information.

## Failure to comply

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69. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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70. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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 17<sup>th</sup> day of July 2008**

**Signed .....**

**Nicole Duncan  
Head of FOI Complaints**

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

## Legal Annex

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

- (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 2 - Effect of the exemptions in Part II

- (1) Where any provision of Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that where either—
- (a) the provision confers absolute exemption, or
  - (b) 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 public authority holds the information,
- section 1(1)(a) does not apply.
- (2) In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that—
- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
  - (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- (3) For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption—
- (a) section 21,
  - (b) section 23,
  - (c) section 32,
  - (d) section 34,
  - (e) section 36 so far as relating to information held by the House of Commons or the House of Lords,
  - (f) in section 40—
    - (i) subsection (1), and
    - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
  - (g) section 41, and
  - (h) section 44.



## Section 17 – Refusal of Request

(1) 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.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(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.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(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**

(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**

(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.

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).