

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 1 October 2009

Public Authority: Chief Constable of Lancashire Constabulary
Address: Lancashire Constabulary
PO Box 77
Hutton
Preston
Lancashire
PR4 5SB

Summary

The complainant requested figures for information about the installation of imaging units; the number of Notes of Intended Prosecution (NIPS) issued at camera sites L4911, L4912 and K4946; and a breakdown of the outcome of the cases that resulted from these NIPS. The public authority refused to provide this information citing section 31(1)(a), (b) and (c) (Law Enforcement Exemption) and section 38(1)(a) and (b) (Health and Safety Exemption) as the basis for its refusal. The Commissioner decided that the public authority was correct to determine that the information was exempt under section 31(1)(a) and (b). He also found that section 31(1)(c) was not engaged in this case. As the Commissioner upheld the use of section 31(1)(a) and (b) he did not go on to consider the application of section 38(1)(a) and (b). The Commissioner does not require any remedial steps to be taken.

The Commissioner's Role

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

2. The complainant initially made a request to Lancashire County Council on 27 April 2007. He did this because he believed the Council held the information that he was requesting.

"I am interested in information relating to several cameras around the County.

The cameras locations are;

- *A679 Hyndburn Road, Accrington.*
- *Blakewater Road, Whitebirk, Blackburn &*
- *A680 Manchester Road, Baxenden.*

The information I would like is as follows

Over the past 12 months how many times has an imaging unit been installed in each camera? How many vehicles have been caught by each camera?"

3. The complainant also clarified his request to Lancashire County Council on 30 April 2007.

"With regards to the information I requested and the clarification request that you sent.

I am seeking information on the number of vehicles 'caught' by the cameras I can clarify this by requesting the number of notices sent out to registered keepers after a vehicle has had a picture taken of it.

I would also like to know the breakdown of the outcomes of these cameras. How many prosecutions have there been in the past twelve months, how many people accepted without contest and how many times has any further action been dropped?

With regards to the imaging device being installed, if there is one in each camera at all times how many times has the film been changed?

If there is not then how many times has the camera been active with film in it?"

4. On 14 June 2007 Lancashire County Council redirected the requests to the public which actually held the information, in line with Part iii of the Commissioner's section 45 Code of Practice. For clarity, the public authority referred to throughout this notice is Lancashire Constabulary.
5. The public authority replied to these requests on 11 July 2007. Its position was that all the information requested was exempt from disclosure under section 31(1)(a),(b) and (c), and section 38 of the Act.
6. It stated that:

"The release of information which contains the working practice of speed cameras in the public domain would have a significant impact upon operational policing. It is common knowledge that not all camera sites are

active all the time. Some sites will be active on a rotational basis. If information concerning specific site data is released it could give drivers the impression that the chance of being recorded speeding in particular locations was 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 at [sic] high at all sites. Cameras are deployed on an intelligence led basis and the disclosure of sites will make this approach invalid.”

7. The complainant requested an internal review on 14 July 2007 and received a response dated 27 July 2007. This review upheld the public authority's original position and stated:

“There is considerable research to suggest that pro-active traffic policing and speed cameras have had a positive effect on accident rates. Therefore, releasing intelligence on how often these cameras operate could potentially have a detrimental effect upon the constructive work done in this area.”

The Investigation

Scope of the case

8. On 30 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 whether the public authority was correct to rely on the exemptions it cited.
9. There was confusion about the date of the request because the complainant provided the Commissioner with only copies of correspondence that had been auto-updated on his computer. This is relevant because the request contained the words 'over the past twelve months'. Generally, the Commissioner can confirm the scope of requests with the parties, but the scope itself cannot be changed. In this case the complainant and the public authority were prepared to agree to the scope applying to the year 30 June 2006 to 30 June 2007. However, the outcome in this case is not altered, whichever twelve month period is applicable.
10. The Commissioner wrote to the complainant and the public authority on 5 March 2008 and clarified the request into three separate enquiries to enable clarity within this notice. The complainant wrote to the Commissioner on 16 March 2008 and accepted the clarification of request as follows:

*“For the following camera locations:
A679 Hyndburn Road, Accrington. [Camera code – L4912]
Blakewater Road, Whitebirk, Blackburn. [Camera code – K4946]
A680 Manchester Road Baxenden. [Camera code – L4911]*

1. *Information has been requested about the regularity of the police placing imaging units within the cameras and the amount of film used (in the year beginning 30 June 2006 and ending 30 June 2007).*
 2. *Information about the number of notices [NIPs] issued from them within the year beginning 30 June 2006 and ending 30 June 2007.*
 3. *A breakdown of the outcome of these cases: including how many people accepted without contest and in how many cases no further action was taken."*
11. The Commissioner will structure his investigation to determine whether the public authority was correct to rely on the exemptions to withhold the information corresponding to these three categories.

Chronology

12. On 30 July 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
13. The Commissioner then wrote to the complainant on 5 March 2008 for further clarification.
14. The Commissioner also invited the complainant to submit his arguments about why he felt the exemptions did not apply. The complainant submitted his arguments when he accepted the scope of the investigation on 16 March 2008.
15. The Commissioner also wrote to the public authority on 5 March 2008 to ask for its comments and a copy of the withheld information.
16. The public authority provided comments to the Commissioner on 1 April 2008, which he has considered when drafting this Decision Notice.
17. The Commissioner wrote to the public authority on 1 April 2008 for further information. This was provided by the public authority on 29 April 2008, when it made an offer to disclose the combined total of NIPS of the three sites.
18. On 29 April 2008, the Commissioner wrote to the complainant and asked if this offer would satisfy his request for information. On 3 June 2008, the complainant informed the Commissioner that the compromise was not acceptable.
19. On 12 September 2008, the Commissioner wrote to the public authority to ask some further questions. On 25 November 2008 he received answers to these questions.

Findings of fact

20. The Commissioner has identified the camera codes from the Lancashire Safety Partnership's website which corresponded to the complainant's request. These were L4911, L4912 and K4946.

21. Also using the website, the Commissioner noted that the three cameras within the scope of the request were all installed in 2004. He asked the public authority to provide the accident figures at the sites before and after installation to help him to assess the impact of these cameras in reducing accidents
22. The public authority also helpfully during his investigation provided the Commissioner with the specific camera contexts as well as photos and maps of the sites. The context of the cameras is replicated below:

“A679 Hyndburn Road, Accrington. [Camera code – L4912]

Hyndburn Road is a busy stretch of road which links to Accrington town centre to Dunkenhalgh Way (which is a dual carriageway which meets the M65). Travelling towards Accrington, on the left hand side near the speed camera housing unit there is an average sized residential area. On the right hand side prior to the site is Accrington Fire Station. Slightly past the site is a Children’s playground and a Primary School too, therefore due to the obvious risks in the area, it is essential that speeds are kept to 30 mph.

Blakewater Road, Whitebirk, Blackburn. [Camera code – K4946]

Areas of concern include Greenbank Police Station which covers the whole policing area of Blackburn and serves as the Divisional Headquarters too. In addition to this there is a Primary School in the close proximity of the site which is marked on the map.

A680 Manchester Road Baxenden. [Camera code – L4911]

This is based in a large residential area. In addition to this there are two local schools, one primary and one large secondary school that has a number of pupils.”

What recorded information is held by the public authority that is relevant to the request?

23. During his investigation the Commissioner has established that the public authority has the following three sources of information that are relevant to the scope of the complainant’s request.
 - It records information for both the number of activations (number of photos taken) and the number of Notices of Prosecution issued (number of offences) in relation to its stewardship of the cameras. It also holds three photographs in relation to each NIP issued.
 - It holds recorded information about the dates and times of when a camera has been placed into a unit and when it was taken away, where necessary. From this it would be possible to work out the number of times a camera was in the unit.

- It also holds relevant recorded information on the breakdown of NIPS. It is able to extract this information within the costs limit by using a computerized system called Cognos. Alternatively it also holds the paper trail as well.

Analysis

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

Exemptions

25. The public authority asserted that the release of the requested information would prejudice law enforcement (section 31(1)(a),(b) and (c)) and would be likely to endanger the health and safety of any individual (section 38(1)(a) and (b)). Full copies of the exemptions can be found in the legal annex attached to this Notice.
26. Both exemptions are qualified exemptions and are subject to a public interest test. The public authority asserted that the public interest in maintaining both exemptions outweighed the public interest in releasing the requested information about individual cameras.

Section 31(1)

27. Section 31(1) states that:

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice

- a) the prevention or detection of crime,*
- b) the apprehension or prosecution of offenders,*
- c) the administration of justice.."*

28. The public authority has chosen to rely on three limbs of section 31(1) simultaneously in this case - subsections (a), (b) and (c). The Act is drafted in a way that makes each limb stand alone. This means that the Commissioner must assess the likelihood of prejudice in relation to each of the limbs.
29. The Commissioner can see that sections 31(1)(a) and (b) are interrelated within their application in this context. A safety camera can serve numerous functions simultaneously:
- (i) it deters people from speeding;
 - (ii) it detects those who speed;

- (iii) it allows the prosecution of offenders.
30. However, the Commissioner does not consider that the information requested in this case engages section 31(1)(c), since it does not relate specifically to the process of administering justice. He will therefore not give any further consideration to section 31(1)(c).
31. There are two possible thresholds for the exemption to be engaged; 'would prejudice' and 'would be likely to prejudice.' Each has a separate legal test.
32. Following the Information Tribunal in *McIntyre v The Information Commissioner* [EA/2007/0068], the Commissioner will apply the lower threshold 'would be likely to prejudice' where the public authority has not specified either way. In this case the public authority identified potential harm from disclosure but did not specify which threshold it was applying.

Is the release of this information likely to prejudice the prevention and detection of crime?

33. In reaching a decision on the question of prejudice the Commissioner has been mindful of the test of 'likely to prejudice' as enunciated by Mr Justice Mundy in the case of *R (on the application of Lord) V Secretary of State for the Home Office* [2003] EWHC 2073, and followed by the Tribunal in the case of *John Connor Press Associates Limited V ICO* [EA/2005/0005] at paragraph 15. The Tribunal interpreted the expression 'likely to prejudice' within the context of the section 43 exemption as meaning that the chance of prejudice being suffered should be more than hypothetical or a remote possibility, and that there must have been a real and significant risk. The Tribunal in that case indicated that the degree of risk must be such that there 'may very well' be prejudice.
34. It is widely known that not all speed cameras in any given policing area are activated for enforcement at all times. The public authority believes that a driver should assume that the speed camera they are approaching is active. The Commissioner is persuaded that drivers are more inclined to comply with speed limits in an enforcement zone if they believe that a camera is active or likely to be active, but he also accepts that even inactive cameras may reduce the speed of motorists.
35. The Commissioner is persuaded that the information for a specific camera may allow comparison with equivalent information for other camera sites in order to provide motorists with a means for assessing the relative risk of being prosecuted for speeding from one location to another. While the Commissioner accepts that the exact pattern might not be apparent, he believes that drivers could use the information to assist them in evading speeding regulations. Driving at speeds in excess of the stated speed limit is a criminal offence and assistance in breaching speed limits is therefore likely to prejudice the prevention of crime.
36. The Commissioner has examined the *Bucks Free Press v The Information Commissioner and Thames Valley Police* [EA/2008/0071] case and especially that the Tribunal said in relation to annual totals of NIPS, in paragraph 16:

“Against that background the number of NIPS issued over a reasonably lengthy period of, say twelve months, may result from the camera site having been operative for very long periods. But it may also equally be the result of very substantial offending by motorists in a short period of operation. Conversely, a low number may be the result of drivers being conscious of the dangers of a particular accident black spot and therefore observing the applicable speed limit, even though the camera site was operative for a long period of time.”

37. The complainant argues that this reasoning means that the information he requested should be disclosed. The Commissioner notes that in that other case the Tribunal was addressing the annual total of NIPS for two cameras.
38. In the public authority's additional arguments, it considered the effect that releasing this information would have on public authorities dealing with future requests for information. In *Mr P Hemsley v The Information Commissioner and Northamptonshire Police* [EA/2005/26], the Tribunal was persuaded by the Commissioner's point that, while every request has to be dealt with on its merits, the point of precedent should be considered. The Commissioner's view is that to allow annual numbers without providing the framework of the year (eg 1 January – 31 December) would enable the possibility of all enforcement patterns to be exposed by multiple requests.
39. The public authority pointed to paragraph 15 of the *Bucks Free Press* decision that developed the *Hemsley* point and laid out a three stage test where, if all answers are 'yes' then there would be sufficient prejudice due to the precedent argument to engage the exemption. The public authority indicated that for these three cameras all three enquiries ought to be answered in the affirmative.
40. This three-stage test has been considered by the Commissioner:
- “(i) Do we accept that a decision in favor of disclosure in this case would set a precedent that would encourage and enable others to obtain equivalent data in respect of other camera sites?*
- (ii) If so do we consider that the prospect of several of those who have made such requests combining the information received into a single comparative view for publication is a far-fetched notion, or a risk of real substance?*
- (iii) If so, do we believe that the result of such a publication would prejudice either the prevention of crime or public health and safety?”*
41. In answering this three stage test, the Commissioner is mindful that, while the single request for annual totals might not provide sufficient data on which to estimate enforcement patterns, he must consider the request in context. The Commissioner is wary of a 'mosaic effect'. This is due to the lack of a consistent time framework for individual requests (for example 1 January – 31 December).

42. The Commissioner believes that this 'mosaic effect' could result in further information being acquired that could result in the indirect exposure of enforcement patterns for a site. This request encompasses the dates 30 June 2006 to 30 June 2007; the Commissioner is conscious that if this is released there would be no reason to prevent another person from asking for 30 July 2006 to 30 July 2007. In this way a strong indication of the monthly enforcement pattern can be found as the difference can be found for any monthly period in consecutive years. The Commissioner is also aware that this period can be reduced to even shorter periods.
43. Due to these concerns the Commissioner believes that the first and second parts of the three stage test are answered affirmatively. This is because he is satisfied that to allow this information to be disclosed would set a precedent and he is satisfied that there is a real risk of a single comparative view being formulated. He is also satisfied that the third part is answered positively because the publication of such information would expose enforcement patterns, which would prejudice law enforcement.
44. The Commissioner notes that paragraph 17 of the *Bucks Free Press* decision shows that the Tribunal would be very reluctant to release information which would reveal the enforcement pattern of a site, and this point is particularly pertinent to the decision he has to make in this 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."

45. The Commissioner has also taken into account the following further points by the complainant.
 - The public authority chooses to publicise its enforcement patterns for other offences. The Commissioner does not believe that this affects the issue of whether it should publicise the enforcement pattern of safety cameras.
 - The information is about retrospective offences and does not reasonably reflect the exemption which is about future prevention of crime. The Commissioner has considered this issue and believes that enforcement patterns relate both to the past and to the future. He accepts that the exemption can be engaged where there is a risk of the enforcement pattern being revealed.
 - The complainant is very skeptical about whether speed is a contributory factor in accidents. The Commissioner notes that the criminal activity is the speeding and therefore he did not need to consider this point further in considering whether the exemption is engaged. However, he does note that for the three sites there was a considerable fall in accidents that accompanied the presence of the speed cameras. He also accepts there is a valid, independent evidence base to support

the public policy decision to use speed restrictions to reduce accidents¹. Whilst he does not wish to discuss the detail of this debate or give firm opinions on the issue the Commissioner accepts the public policy intention of using speed restriction to reduce accidents is well established and will be considered in relation to the public interest in maintaining the exemption.

- The camera boxes face away from the driver so they are unable to know whether an imaging unit is present even if the figures are released. The Commissioner accepts that while drivers might not know, they can develop an estimate of likely future enforcement patterns and adjust their driving speed accordingly by a similar analysis of this data. He notes once again that driving at speeds in excess of the stated speed limit is a criminal offence.
46. The public authority has also informed the Commissioner that it believes that if the information such as that requested in this case was released, it would be necessary for it to take countermeasures to negate the increased risk of speeding and this would entail an increase in public expenditure and would take resources away from other departments and this would be another reason why it would be likely to prejudice the prevention of crime. The Commissioner is also satisfied that this is a valid argument that the exemption is engaged in this case.
47. The Commissioner's view is that the release of this information may very well prejudice the prevention and detection of crime. His view is that the release of any part of the disputed information would potentially reveal the enforcement patterns as outlined above and he is therefore satisfied that the exemption is engaged in relation to all three parts.

Is the release of this information likely to prejudice the apprehension and prosecution of offenders?

48. The Commissioner believes that it follows from his reasoning in the preceding paragraphs, that the release of the same information would equally be likely to prejudice the apprehension and prosecution of offenders. The exemption is therefore also engaged on this ground too.

The public interest test

49. As the exemption is engaged the Commissioner must then go onto to consider whether or not the public interest in maintaining the exemption outweighs the public interest in disclosure. The Commissioner is only able to consider factors that arise from the nature of the exemption.
50. In this case, because of the nature of safety cameras he believes that the same public interest test can be applied in relation to both parts of section 31(1) – 31(1)(a) and (b).
51. This is because of the nature of safety cameras mean that the possible disclosure of the information therefore could simultaneously lead to the two prejudices

¹ <http://www.dft.gov.uk/pgr/roadsafety/speedmanagement/safetycamerasfrequentlyasked4603?page=1#a1001>

identified above and the factors to be considered have equal relevance when considering the application of the public interest test.

52. The Commissioner will go on to assess whether the public authority conducted its public interest determination correctly and whether the public interest test favors the maintenance of the exemption in this case.

53. The public authority in its refusal notice dated 11 July 2007 performed a public interest test. The factors it identified that favoured disclosure were:

Awareness – this information could assist individuals in gaining an understanding of road safety in areas where the cameras are located. This would therefore help them gain awareness regarding road safety issues.

Accountability – Safety Camera Partnerships and Police Forces should be accountable for the decisions they make in relation to camera sites.”

54. The factors favoring non-disclosure that it identified were:

Exemption Applies – it is in the interest of the public that our roads are kept safe. The ability for safety camera technology to impact on road safety would be diminished by the disclosure of such information and therefore prejudice law enforcement.

Efficient and Effective Conduct of Road Safety Partnership activities and Police Forces – the aim of such partnerships is to make roads safer by encouraging people to keep within the speed limits, hence reducing speeds, reducing collisions and consequently, reducing the number of people killed and injured. The consequence of the release of this information would be to compromise this aim.”

55. The public authority then performed a balancing test:

“The Constabulary places a huge amount of importance on the issue of road safety and it has been proven that speed camera [sic] reduce the number of accidents at blackspots. The impact on the cameras by disclosing tactical information would be detrimental. In turn this could potentially cause more accidents, which is not in the public’s interest. As a result, I feel that the public’s interest is best served by withholding the requested information.”

56. The complainant, as noted above argued that the information he wanted was retrospective and that this fact therefore negates the two factors that favour non-disclosure, since it by its nature it will not apply to the future. The Commissioner does not agree since the information has the potential to expose the technique used for future offences.

57. The Commissioner works from a default position that information should be available to the public unless the public authority can show that the public interest maintains the exemption. In this case he has considered each category of

information separately and looked at the balance of the public interest for each one.

(1) Information has been requested about the regularity of the police placing imaging units within the cameras and the amount of film used (in the year beginning 30 June 2006 and ending 30 June 2007).

58. For clarity the Commissioner will go back to the original words of the complainant in relation to this category of information:

'Over the past 12 months how many times has an imaging unit been installed in each camera?... With regards to the imaging device being installed, if there is one in each camera at all times how many times has the film been changed?'

59. The Commissioner is satisfied that to reveal the number of times an imaging unit has been installed over an annual period would be sufficient to enable the enforcement pattern of a site to be revealed within the context of the annual period not being fixed by any guidelines. This is due to the 'mosaic' effect as identified in paragraph 41 of this Decision Notice.
60. The Commissioner agrees that the increased likelihood that the criminal law would be broken more often as an indirect consequence of the release of the requested information is, of itself, a powerful public interest argument against disclosure.
61. The Commissioner has also acquired the accident figures before and after they were in operation for the sites in question and has noted that in all three cases the cameras have accompanied a considerable fall in accidents at these sites. He feels that the prevention of accidents is another powerful public interest argument against disclosure. This is so because accidents on the roads are the cause of about 3000 deaths a year in the UK and the public interest lies in the number of accidents leading to fatalities being reduced. The intention behind the allowing prosecution for speeding offences is to protect the public from injury in road accidents.
62. The Commissioner recognises that the public authority does not keep safety cameras active permanently because it believes that the potential risk of enforcement is as strong a deterrent as the certainty of enforcement. There are strong public interest arguments in supporting this policy. Chief among these is greater value for money. Administration of traffic enforcement is much cheaper using intermittent rather than permanent enforcement zones because fewer penalty notices are actually issued (each requiring administrative work). It also encourages voluntary compliance with the law which makes the work of the public authority in this area much easier and allows it to focus resources elsewhere.
63. The Commissioner notes that there are some public interest factors that favour disclosure. The first is to provide an additional layer of accountability for the public authority. This would assist the public authority in legitimizing the cameras' purpose. The second is to inform public debate. The Commissioner can see that

having access to information such as that requested in this case would enhance public debate, and should any safety camera be technically defective then that would be highlighted. The Commissioner is also aware that as the ticket emanating from safety cameras amounts to a criminal sanction it is important that the process is as transparent as possible.

64. In balancing the factors the Commissioner does not think that the public interest arguments in favour of disclosure are at least as great as those in favour of maintaining the exemption. This is because in this case the public interest arguments relating to the mosaic effect, and an increased likelihood of the criminal law being broken are persuasive. While there is a default position of disclosure, it is overridden in this case.
65. The Commissioner therefore believes that the public authority was correct in determining that the public interest lies in maintaining the application of the exemption in this case.

(2) Information about the number of notices [NIPs] issued from them within the year beginning 30 June 2006 and ending 30 June 2007.

66. The Commissioner is also satisfied that to reveal the number NIPS issued over an annual period for site specific requests about single cameras enable the enforcement pattern of a site to be revealed within the context of the annual period not being fixed by any guidelines. This is due to the mosaic effect identified in paragraph 40 of this Notice.
67. The Commissioner also believes that to reveal this information for site specific requests would negatively affect the police's ability to use cameras as a deterrent. This would undermine Road Safety Partnership activities; as the public authority pointed out. This is because the request could reveal that the camera is inactive and drivers may alter their future behavior accordingly. The Commissioner is convinced that the deterrent effect is in the public interest and that the public interest is not served by encouraging selective offending.
68. The Commissioner has considered the Information Tribunal decision in *Bucks Free Press* in particular paragraphs 16 and 17 (identified in paragraph 35 and 43 of this notice). The Commissioner considers that the principle identified in paragraph 17 of this decision when the Tribunal was considering prejudice can also be seen as being indicative of where the public interest issue lies in this case, as the Tribunal was very reluctant to release information that would expose the enforcement pattern of a site and providing the information for this request would reveal them, which would be against the public interest.
69. The Commissioner acknowledges further factors in favour of disclosure, as with the previous section. The number of NIPS would enhance accountability and provide some indication about the operation of the public authority's road safety policy. It would also provide additional information about the patterns of criminality and allow the public to understand what the weight of the problem is in relation to this site. It may also counter the perception that speed cameras are used simply to raise revenue.

70. In balancing the factors, the Commissioner has concluded that the balance favors the maintenance of the exemption in this case. The Commissioner therefore concludes that the public authority was correct in determining that the public interest the maintenance of the exemption in this case.

(3.) A breakdown of the outcome of these cases: including how many people accepted without contest and in how many cases no further action was taken.'

71. The public authority has indicated that all the same arguments apply as in (2.) as this information would be an indirect way of determining the annual number of NIPS issued at a single site.
72. The Commissioner is aware that there is an additional public interest consideration to those above, as the information would allow the public to understand the reliability of specific safety cameras.
73. However, the arguments above still apply. Because the request is for the number of tickets, the number of annual NIPS would be exposed. This together with the mosaic effect leads to the exposure of the enforcement pattern. Due to the possibility of additional crime and the undermining of deterrence, the Commissioner feels that the weight of public interest still lies in maintaining the exemption in this case.
74. The Commissioner therefore believes that the public authority was right in determining that the public interest lay in maintaining the exemption.
75. Having decided that the public authority was correct to exempt the information under section 31(1)(a) and (b), the Commissioner has not found it necessary to consider whether section 38(1)(a) and (b) also applies in this case.

The Decision

76. The Commissioner's decision is that the public authority correctly withheld the requested information by reference to section 31(1)(a) and 31(1)(b).

Steps Required

77. The Commissioner requires no steps to be taken.

Right of Appeal

78. 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.
Website: 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 14th day of September 2009

Signed

**Steve Wood
Assistant Commissioner**

**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 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,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the [1976 c. 14.] Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.

(2) The purposes referred to in subsection (1)(g) to (i) are—

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.

(3) 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, prejudice any of the matters mentioned in subsection (1).

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).