

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 March 2010

Public Authority: Cumbria Constabulary
Address: Police Headquarters
Carleton Hall
Penrith
Cumbria
CA10 2AU

Summary

The complainant requested the number of prosecutions for speeding offences on the M6 during 2007; this was to be broken down into 5mph speed bands from 70mph to 90+mph. Having originally refused to provide a breakdown of the numbers of prosecutions (although a total figure was provided), the public authority went on to provide the majority of the information. However, it declined to provide a breakdown of the two lowest speed thresholds, i.e. 70-75mph and 76-80mph, stating this was withheld under the exemptions at sections 31 (law enforcement) and 38 (health and safety). Some further information, which was identified during the Commissioner's investigation, was withheld under section 12 (cost of compliance exceeds appropriate limit).

The Commissioner's decision is that the exemption at section 12 was correctly cited. He also finds that section 31 is engaged and that the public interest in maintaining the exemption outweighs the public interest in disclosure. He has not therefore considered the exemption in section 38. The complaint is not upheld.

The Commissioner also identified procedural breaches of the Act.

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. There is various correspondence about this request which is unfortunately incomplete, although it appears to commence sometime around 13 May 2008. However, the complainant supplied the Commissioner with an information request dated 20 November 2008 when he submitted his complaint and this is therefore the starting point that the Commissioner will use in his investigation.
3. On 20 November 2008 the complainant wrote to Cumbria Safety Camera Unit, which is based at Cumbria Police Headquarters (the "public authority"). With his letter he included the following information request which had been previously sent to the Association of Chief Police Officers (ACPO) on 8 July 2008:

"The following information is required for the M6 motorway running through the Cumbria region:

- The number of prosecutions for speeding offences over the last twelve months (or latest twelve months data available) for speeds between

- 70-75 mph*
- 76-80 mph*
- 81-85 mph*
- 86-90 mph*

- The number of accidents with fatalities recorded."

4. He further clarified his request saying that:

- "1 All instances should relate to the M6 motorway in Cumbria Constabulary area or under their responsibility and where a fine or penalty was imposed by SAW, FPN or other.*
- 2 The information should relate to speed related offences only with the five categories previously noted (the fourth category should have been 81-85 as you noted).*
- 3 Speed excesses should relate to the 70mph limit only and not temporary reduced limits for roadworks or other reasons."*

He removed the request for the fatality information as this had previously been complied with.

5. In an undated response (which must have predated 3 December 2008), the complainant was advised that information in respect of prosecution bands was held but was exempt under section 21 (information accessible to applicant by other means). This was clarified as follows:

"Request for prosecution bands for the various speed thresholds. Information available elsewhere. Absolute class based exemption. Inform enquirer that this is available from the Association of Chief Police Officers. Guidance can be obtained from the ACPO website".

6. The public authority provided the complainant with a total number of prosecutions, but maintained that if it were to provide the further breakdown requested that this would breach the exemptions at sections 31 (law enforcement) and 38 (health and safety). Section 31 was said to apply because providing the number of offences at different speed bands would: "... *identify enforcement thresholds within the enforcement network. It is not in the public's [sic] interest to identify this*". To support its citing of section 38 the public authority advised that if drivers could identify actual speed thresholds used by the Constabulary then: "... *this could lead to a manipulation of the system causing a [sic] increase in speed and hence a danger to the driving [sic] public*".
7. The complainant wrote to the Commissioner on 3 December 2008 to complain about the handling of his request. On 17 December 2008 the Commissioner advised the complainant that he needed to ask the public authority to conduct an internal review before he would take the case further.
8. On 5 January 2009 the complainant requested an internal review. A reply was sent sometime prior to 14 January 2009 (bizarrely dated 2 June 2008). This maintained the previous stance but removed reliance on section 21.

The Investigation

Scope of the case

9. On 14 January 2009 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 in withholding the information requested. He raised the following points:

"... I am suggesting this is an all embracing stance and I would like to see evidence that the strategy would be undermined and that drivers would manipulate speeds."

"The Chief Constable of Cumbria has already stated ... that the threshold for fixed speed limits is +10% +2mph so this is known and drivers would, if they are inclined, manage their speed in such areas accordingly."

"Such a claim about manipulation could arguably apply if cameras were visible and not 'hidden' as is the case on the M6 in Cumbria – they are placed at different times and not visible to motorists so no manipulation can be pre-planned by drivers who do not know where the cameras are placed."

"The non release of such information is clearly designed to avoid any reasonable scrutiny of the actions and results of the policies and it represses information unreasonably..."

“The proper execution of speed limit enforcement and road safety is a matter of public concern and public interest and the policy planning and strategy should be open to question and it is considered perfectly reasonable to have access to such data and analysis. The analysis requested is not sensitive and is not personalised so there is no good reason why this should not be released to me”.

10. During the course of the Commissioner’s investigation the public authority released much of the information requested, broken down into the 5mph thresholds requested. However, it maintained its position in relation to the breakdown of figures in the lowest two thresholds, although the combined total was provided. The public authority further explained that it had identified an additional 570 cases where to comply with the request would exceed the appropriate limit.
11. The complainant contested the lack of breakdown of the combined figure which was provided for the speed band 70 mph to 80 mph. He also maintained that he still wanted a breakdown for the additional 570 cases which the public authority had identified. In respect of the 570 cases he asked the Commissioner to consider the following:

“Could we ascertain whether or not these 570 cases fall between 70 and 80mph or in excess of 80mph”.

12. Although this narrower request was not specifically put to the public authority, the Commissioner has considered its relevance in light of how that information requested is held.

Chronology

13. On 23 July 2009 the Commissioner wrote to the complainant to advise that he was commencing his investigation. He sought clarification regarding the scope of the complaint. The complainant responded on 27 July 2009.
14. On 30 July 2009 the Commissioner commenced enquiries with the public authority. A full response was sent to him on 28 August 2009.
15. On 19 October 2009, following further correspondence with the Commissioner, the public authority released much of the information to the complainant. This included a combined figure for the speed limit of 70 – 80 mph, i.e. it was not broken down into the 5 mph widths as originally requested. At this point the public authority also identified a further 570 cases which it had failed to previously include in its figures. In respect of these additional cases, it advised that it would exceed the appropriate limit to provide the information in the speed band widths requested.
16. On 2 November 2009 the complainant confirmed to the Commissioner that he wanted a breakdown of the remaining combined figure. On 14 December the complainant also advised that he still required a breakdown of the 570 cases where the public authority had claimed that section 12 applied.

Findings of fact

17. According to the 'Speed Enforcement Guidelines' which were approved for use by all police forces by ACPO¹ in July 2000:

“Consistency of approach does not mean uniformity. It does mean taking a similar approach in similar circumstances to achieve similar ends. Police officers are faced with many variables; the decision as to what action to take is a matter of judgement, and they must exercise their discretion. Where Police Officers believe that an offence has been committed (in this case, that a motorist has driven at any speed over the relevant speed limit), in exercising their discretion as to the appropriate enforcement action, they must consider the nature and circumstances of the offence. Depending on those circumstances they may decide to issue a summons, issue a fixed penalty notice, caution, warn or take no action. For instance, it might be appropriate to issue a summons for exceeding a speed limit at relatively low speeds over the relevant limit on roads near schools at certain times of day or when there are adverse weather conditions, whereas a similar offence committed in the middle of the night might merit the issue of a fixed penalty notice” (page 5).

18. This guidance also states, on page 6:

“Driving at any speed over the limit is an offence. The differing speed limits are generally related, and proportionate, to the risks to all road users using that road. Where police officers consider that an offence has been committed i.e. that a motorist has driven at any speed over the relevant speed limit, they should consider whether it is appropriate to take enforcement action against the offender.

The Police Service now uses technology that enables it to prove that an offence has been committed as soon as a driver exceeds the relevant speed limit by a very small margin. Motorists will therefore be at risk of prosecution immediately they exceed any legal speed limit.

The guidance to police officers is that it is anticipated that, other than in the most exceptional circumstances, the issue of fixed penalty notices and summonses is likely to be the minimum appropriate enforcement action as soon as the following speeds have been reached:

Limit	Fixed Penalty	Summons
20 mph	25 mph	35 mph
30 mph	35 mph	50 mph
40 mph	46 mph	66 mph

1

http://www.cprsp.gov.uk/resources/res.aspx?p=/PublicAttachment/attachmentFilename/23/speed_enforcement_guidelines_web_v7_foi.doc

50 mph	57 mph	76 mph
60 mph	68 mph	86 mph
70 mph	79 mph	96 mph
Fixed penalty of <ol style="list-style-type: none"> £60 (pending) Licence endorsed with 3 penalty points 		Magisterial discretion (level 2) maximum of: <ol style="list-style-type: none"> £1000 fine Licence endorsed - range of penalty points available Disqualification Compulsory re-testing

This guidance does not and cannot replace the police officer's discretion and they may decide to issue a summons or a fixed penalty notice in respect of offences committed at speeds lower than those set out in the table. Moreover, in particular circumstances, driving at speeds lower than the legal limit may result in prosecution for other offences, for example dangerous driving or driving without due care and attention when the speed is inappropriate and inherently unsafe”.

19. According to The Royal Society for the Prevention of Accidents (RoSPA)²:

“In RoSPA’s view, there is overwhelming evidence from a substantial body of national and international research which establishes beyond doubt that people who drive or ride too fast for the road and traffic conditions cause, or contribute to, one third of road crashes, resulting in the deaths of over 1,000 people on British roads each year.

Inappropriate speed (both exceeding the speed limit and driving within the limit, but too fast for the conditions) magnifies other errors, such as driving too close, driving when fatigued or distracted, momentary carelessness, etc. It multiplies the chances of these causing a crash. Speeding drivers are also more likely to commit other driving violations, such as red-light running and driving too close.

Drivers travelling at higher speeds have less time to identify and react to what is happening around them. It takes longer for the vehicle to stop. And the crash will be more severe, causing greater injury to the occupants and any pedestrian or rider hit by the vehicle. Conversely, casualties of all categories will be greatly reduced if speed is reduced, whether or not the speed is determined to be inappropriate or too fast.

Although we recognise that drivers sometimes feel frustrated by speed limits that they think are inappropriate, we believe that the current speed management and road safety strategies are based on sound evidence and data”.

² http://www.rosipa.com/roadsafety/consultations/2004/speeding_penalties.pdf

Analysis

Section 12 - cost limit

20. The public authority claimed that compliance with the request would exceed the “cost limit” as set out at section 12 of the Act. Section 12(1) provides that an authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit (£600 for central government, £450 for all other authorities).
21. Section 12 of the Act should be considered with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken in:
- (a) determining whether it holds the information;
 - (b) locating the information, or a document which may contain the information;
 - (c) retrieving the information, or a document which may contain the information; and,
 - (d) extracting the information from a document containing it.
22. Paragraph 4(4) of the Regulations states that the authority should calculate the cost of complying with a request by multiplying the time estimated by £25 per person per hour. If the authority considers that complying with the request would therefore cost more than the appropriate limit, it is not obliged to comply with the request. In the case of this public authority, the £450 limit applies, which, at £25 per hour, equates to 18 hours.
23. The public authority advised that it had identified 570 records which included cases falling into the following two categories.
- (i) Cases where, due to the speed of a vehicle, it was not appropriate to make a Conditional Offer or issue an Endorsable Fixed Penalty Notice, and the matter was dealt with by way of summons.
 - (ii) Speeding offences detected by a police officer, where an Endorsable Fixed Penalty Notice was issued to a driver at the time of the offence.
24. It further clarified that:
- “With regards to (ii) above, until recently, there has been no requirement to record the speed travelled by a vehicle on the relevant system and as such there was no mandatory requirement to record this information on the Fixed Penalty Notice. Whilst I acknowledge that some officers did still record the speed on the relevant form and/or within their pocket note book, I have been advised that in order to ascertain whether the information is recorded in these particular cases, it would be necessary to review the relevant computer relating to each offence in order to obtain the date that*

each one was committed, refer to an archive list to identify where the original Notice is stored and then manually locate the correct sugar bag containing the Notice in order to retrieve the relevant document.

It is only at that point that it would be possible to determine if the actual speed of the vehicle had been recorded on the Notice by the officer. In cases where this had not occurred, it would then be necessary to contact the officer with a view to him or her reviewing their pocket note book to see if any information was recorded, which indicated the speed of the vehicle.

It is estimated that it would take at least 10 minutes to retrieve each Endorsable Fixed Penalty Notice and thereafter it may still be necessary to carry out further work if the speed was not recorded on the Notice, to ascertain if it was recorded elsewhere.

As such, whilst it is possible to identify the number of these cases relevant to your request it is not possible to break that information down into the specified bands within the limit stated in the Freedom of Information (Appropriate Limit and Fees) Regulations 2004. It is estimated that this work alone would take approximately 95 hours and even then the likelihood is that the information would not be recorded in all cases. As such the time required to respond fully to your request would exceed the Appropriate Limit and Section 12(1) of the Act is engaged”.

25. The Commissioner accepts that, even at the lower end of the scale, locating, retrieving and extracting the information requested from each of the 570 cases concerned would clearly exceed the 18 hours allowed by the cost limit. This limit would be reached in complying with either the original request or the narrower request which was submitted to the Commissioner during his investigation.
26. In light of the above, the Commissioner is satisfied that it would exceed the cost limit to comply with either of the complainant's requests in respect of the 570 cases identified.

Exemptions

Section 31

27. In its refusal notice the public authority cited the exemptions at section 31(1)(a), (b) and (c) and 31(2)(a)(i) and (j). In later correspondence with the complainant section 31(1)(g) was added.
28. Section 31(1) provides that-

“Information which is not exempt information by virtue of Section 30 [information held for the purposes of investigations and proceedings conducted by public authorities] 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,*
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)”.*

29. Section 31(2) provides that-

“The purposes referred to in subsection (1)(g) to (i) are-

- (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.”*

30. From the explanations provided to the Commissioner, it appears that the substantive stance of the public authority was that the exemptions provided by sections 31(1)(a), (b) and (c) are engaged. In order to engage section 31(2), one of the exemptions from section 31(1)(g) to (i) must previously be cited, which was only done during correspondence with the Commissioner. The explanations provided in connection with subsection (g), and therefore section 31(2), lacked any detail. Given this, were the Commissioner to give full consideration to the stance of the public authority in relation to these subsections, it is unlikely that he would conclude that they are engaged. Given the absence of detailed explanation from the public authority in relation to these, the Commissioner has only focussed on sections 31(1)(a), (b) and (c) and, since he has concluded that use of the exemptions was justified, he has not found it necessary to reach a conclusion in respect of the remaining paragraphs in subsections 31(1)(g) and 31(2)(a)(i) and (j).
31. The Commissioner will now consider whether disclosure of the information would be likely to result in prejudice to the functions described in sections 31(1)(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.
32. The Commissioner can see that sections 31(1)(a) and (b) are interrelated within their application in this context. If motorists were aware of precise speed thresholds, or were aware of the likelihood of being ‘caught’ when travelling at a speed within the 70-80mph speed band, then this could allow them to travel at what they perceive to be the highest speed where they are likely to evade detection; this limit may nevertheless exceed the national speed limit. Speeding above the stated limit is an offence and withholding this information from the public ensures that any driver who exceeds the speed limit would maintain the perception that they are risking criminal liability. As such, the Commissioner accepts that the information requested could have the effect of encouraging motorists to exceed the national speed limit up to the limit at which they believe they are less likely to be ‘caught’, thereby prejudicing the prevention or detection of crime and the apprehension or prosecution of offenders.

33. 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 the administration of justice. He will therefore not give any further consideration to section 31(1)(c).
34. The public authority has not specified whether its stance is that prejudice *would* result, or it is that prejudice *would be likely to* result. Where the public authority does not specify the level of prejudice, the Commissioner will consider the lower threshold; which is that prejudice would be likely to result. In order for the Commissioner to conclude that prejudice would be likely to result, the likelihood of prejudice must be real and significant and more than hypothetical or remote. This is in line with the approach taken by the Information Tribunal in the case *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) in which it stated:

“the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk.” (para 15)

35. The Commissioner accepts that the level of detail sought could be exploited by an individual who wishes to travel as quickly as possible but evade prosecution. This would be likely to prejudice the prevention and detection of crime. It is reasonable to conclude, therefore, that knowledge of the likelihood of being ‘caught’ within the lowest speeding threshold, i.e. 70-75mph, would be likely to impact on the prevention or detection of crime and apprehension or prosecution of offenders. It is important to note here that the national speed limit is 70mph. Although the Commissioner accepts that ACPO has published tolerance levels about speeding, as shown above, these are only guidance. An officer can exercise *“their discretion as to the appropriate enforcement action”* and *“they must consider the nature and circumstances of the offence”*.
36. The Commissioner accepts that creating a situation where drivers are more likely to break the law through driving in excess of the speed limit would be likely to constitute prejudice to the prevention of crime. He also accepts that knowledge of precise speed thresholds could affect the apprehension or prosecution of offenders. Therefore, his overall conclusion is that disclosure would be likely to prejudice the prevention and detection of crime and the apprehension or prosecution of offenders. The exemption provided by sections 31(1)(a) and (b) is, therefore, engaged.

Public interest arguments in favour of disclosing the requested information

37. In reaching a conclusion on the balance of the public interest in this case, the Commissioner has taken into account the public interest inherent in the exemption, that is the public interest in avoiding likely prejudice to the prevention or detection of crime and the apprehension or prosecution of offenders, and the general public interest in the transparency and accountability of the public authority; as well as the specific circumstances and arguments that apply in relation to this case and the information in question. Although the Commissioner has reached the conclusion that prejudice to the prevention and detection of crime would be likely to result through disclosure, the information must still be

disclosed unless the factors in favour of maintenance of the exemption outweigh those in favour of disclosure.

38. The law surrounding speeding, particularly regarding the use of speed cameras, remains a subject of controversy and widespread debate. Although this request does not centre solely on speeding offences caught on camera, the Commissioner notes that this remains an area of public concern and he therefore attributes it some weight in favour of disclosure of speed-related information. He also notes the complainant's views (outlined in paragraph 9 above) that the proper execution of speed limit enforcement and road safety are matters of public interest and that such information should be available to further debate about policy planning and strategy.

39. The complainant has also stated that:

"The Chief Constable of Cumbria has already stated to me in a letter the policy for prosecutions stating that the threshold for fixed speed limits is +10% +2mph so this is known and drivers would, if they are inclined, manage their speeds in such areas accordingly".

40. Whilst the Commissioner has not had sight of the letter referred to by the complainant, he would here again refer to the ACPO guidance above. The guidance does not circumvent an officer's ability to act outside the suggested speed thresholds. The thresholds are for guidance only and are not in themselves statute. The Commissioner does not find that this argument carries much weight.

41. The public authority has also advised the Commissioner that:

"It is accepted that the release of the information requested by [name removed] would help the Constabulary demonstrate accountability in the way that speed enforcement in the county is undertaken. It is also accepted that the subject of speed enforcement is a high profile topic which is the subject of much debate. For that reason, the provision of accurate information would greatly inform this debate and help to raise public awareness. With this in mind, it is acknowledged that there is a public interest in releasing the information".

Public interest arguments in favour of maintaining the exemption

42. The public authority has raised the following arguments in support of its position.

- The release into the public domain of information broken down to the level requested by the applicant would enable people to make assumptions as to the likelihood of prosecution if they were to exceed the 70mph speed limit on the M6, in Cumbria.
- For example, if the volume of prosecutions in the 70-75mph threshold were zero then this could result in a significant number of motorists driving at a speed above the national speed limit, but just below a threshold speed at which they believe they are likely to be prosecuted.

- Speed is a contributory factor in a significant number of road traffic collisions which occur on roads within Cumbria and throughout the rest of the country.
 - If the figures for the lower threshold were zero, or very low, then the release of this information would be likely to result in an increase in the overall speed vehicles travel at on the M6 (and quite possibly also on other roads), which in turn would lead to an increased likelihood that road traffic collisions would occur. This could result in an increase in the number of injuries and fatalities sustained by road users. This does not apply only to those motorists exceeding the speed limit; as well as endangering their own wellbeing, their actions will inevitably lead to a greater risk to the safety of other road users, who do comply with national speed limits.
43. The public authority is of the opinion that the risk of being caught speeding, and the sanctions that can result, is a significant deterrent to persons who may otherwise commit the offence. It further believes that the release of the information at the level requested would significantly undermine this deterrent by effectively revealing the speed threshold at which it will take action against motorists. This could prejudice its law enforcement functions and increase the risk of injury and fatality to all road users.

Balance of the public interest arguments

44. As well as the general public interest in the transparency and accountability of the public authority, the Commissioner has recognised a valid public interest in favour of disclosure related to the content of the information in question, in that disclosure would add to public knowledge about speeding bands and the related fine or penalty data. If the figures are indeed either zero, or very small for the lowest speed threshold requested, then this could inform further debate as to the appropriateness of such a threshold and call into question its merit.
45. In support of his request, the complainant does not accept that there would be any harm in providing the requested information. He has said that:

“... the reasons for refusing the information is summarised as being against the public interest and against Health and Safety on the basis that it could lead to drivers manipulating the speed at which they travel to avoid detection. These reasons are complete nonsense as I would suggest it does not harm the public by knowing such information and, in fact, public interest would be served by disclosure although my intention is not to disperse this information in any extravagant way. The issue of drivers manipulating their speed is really quite bizarre as it is obvious that drivers do this anyway and the information relating to prosecutions at various speed bands will have no bearing on driver behaviour whatsoever”.

The complainant has further added that his request is not for “*duplicitous reasons*”.

46. The Commissioner would like to comment about the complainant's assertion that he does not intend to "*disperse this information in any extravagant way*" and also has no "*duplicitous reasons*" for making his request. All requests made under the Act should be treated as 'person and purpose blind'. The public authority has to treat the request as if disclosure is made to the world at large and it cannot take into account any limits on promulgation suggested by the requester.
47. The Commissioner does not agree with the complainant's view that knowing the numbers of motorists who have received a fine or penalty at the speed bands of 70-75mph and 76-80mph will have no impact on the way that motorists behave. Although ACPO guidelines indicate that motorists are seemingly 'safe' in a 70mph limit unless they are travelling at speeds of 79mph or more, the Commissioner further notes that the ACPO guidance is only what it states, i.e. guidance. The guidance itself also informs the reader that officers are able to use their own judgement. Therefore the precise threshold level is not known and the suggested figures cannot be relied on in all circumstances.
48. The total volume of fines or penalties issued at speeds within the 70-80mph band, (where it is available within the appropriate limit), has already been provided to the complainant. This is a significant volume when compared with figures for the other speed bands provided. Whilst it may be possible that this figure relates only to speeds of 79mph, as could be assumed if the ACPO guidance were relied on rigorously, in reality this is not known. However, it is the Commissioner's view that, were a further breakdown provided, some motorists might well alter their driving habits if they believed that they could evade law enforcement. RoSPA has stated, as shown above, that there is "*overwhelming evidence*" which "*establishes beyond doubt*" that driving too fast causes or contributes to one third of road crashes, "*resulting in the deaths of over 1,000 people on British roads each year*", and the Commissioner accepts that exceeding the speed limit may be a factor in a proportion of road accidents.
49. The Commissioner also finds persuasive the public authority's argument that knowledge of the threshold adopted on the M6 could have a knock-on effect of assumptions being made about other roads in Cumbria where there is a 70mph limit. This could therefore encourage motorists to use excessive speed on other roads.
50. In view of the arguments above, the Commissioner finds that the public interest in maintaining the section 31(1)(a) and (b) exemptions outweighs the public interest in disclosure in the case of this requested information. The complaint is not upheld.

Section 38

51. As the conclusion on sections 31(1)(a) and (b) relates to the entirety of the information withheld by the public authority it has not been necessary for the Commissioner to consider whether the exemption provided by section 38 is also engaged.

Procedural requirements

52. In its refusal notice the public authority did not refer to its own internal review process, although it did advise the complainant that he could contact the Commissioner if he was dissatisfied. This meant that the complainant was subjected to unnecessary delays as, on receipt of his complaint, the Commissioner advised the complainant that he should request an internal review prior to him commencing his investigation. The failure to provide details of its internal review process is a breach of section 17(7)(a).

The Decision

53. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- it correctly applied section 12(1) to some of the withheld information;
 - it correctly withheld the remaining information requested under sections 31(1)(a) and 31(1)(b).
54. However, the Commissioner has also decided that the following element of the request was not dealt with in accordance with the Act:
- by failing to notify the complainant of its internal review process it breached section 17(7)(a).

Steps required

55. The Commissioner requires no steps to be taken.

Other matters

56. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
57. There has been initial confusion in this case as the complainant was unsure where to direct his information request. Some correspondence has been directed to the Association of Chief Police Officers (ACPO) which is not yet a public authority and so not bound by the Act. The complainant has also advised that requests were made to the public authority and Cumbria Safety Cameras previously but the Commissioner has not had sight of this correspondence and no specific complaint was made which he could consider.
58. The Commissioner does however note that there is confusion regarding information which is held by Safety Camera Partnerships(SCPs), which are not

public authorities in their own right but generally comprise of staff from other public authorities such as the police and local councils. As already covered in one of his earlier decisions, available on his website³, although the SCP is not a public authority in its own right many of its partners (according to its own website⁴) are themselves public authorities. If it receives a request for anything it holds on behalf of one of these partners it is the Commissioner's view that 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 SCP then deals with the request itself or transfers it to the relevant public authority is down to local practices.

³ http://www.ico.gov.uk/upload/documents/decisionnotices/2008/fs_50140994.pdf

⁴ <http://www.cumbriasafetycameras.org/>

Right of Appeal

59. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 23rd day of March 2010

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

Section 1 – general right of access

- (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 12 – costs of compliance exceeds appropriate limit

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

Section 17 – refusal of request

- (7) 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.

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,
 - (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (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.

Regulation 4 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 provides that -

- (1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.
- (2) A relevant request is any request to the extent that it is a request-
 - (a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act, and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent apply, or
 - (b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.
- (3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-
 - (a) determining whether it holds the information, (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.
- (4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.