

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 November 2010

Public Authority: Surrey Police
Address: Police Headquarters
Mount Browne
Sandy Lane
Guildford
Surrey GU3 1HG

Summary

The complainant requested the prosecution thresholds for speeding vehicles in Surrey as compared to ACPO (Association of Chief Police Officers) guidelines. Surrey Police confirmed it holds the requested information but refused to provide it on the basis that it was exempt from disclosure by virtue of sections 31 (law enforcement) and 38 (health and safety).

The Commissioner's decision is that section 31 is engaged and that the public interest in maintaining the exemption outweighs the public interest in disclosure. As a result of this finding, he has not considered the exemption in section 38. The Commissioner found procedural breaches in the handling of the request.

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.

Background

2. "*Speed Enforcement Guidelines*", issued by the Association of Chief Police Officers (ACPO), were approved for use by all police forces by ACPO in July 2000.

The Request

3. The complainant wrote to Surrey Police on 6 July 2009 with the following request:

"What are the prosecution thresholds for speeding vehicles in Surrey as compared to the ACPO guidelines?"

I would like to know at what speeds a fixed penalty notice is issued and what the threshold is for a court appearance at 20, 30 and 40 mph please".

4. Surrey Police responded on 4 September 2009. It refused to disclose the requested information, citing the exemption in section 31(1)(a) and (b) (law enforcement) of the Act. Although reference was made to section 38 (health and safety) of the Act, it is not clear whether this was also being cited.
5. The complainant requested an internal review on 13 October 2009. In this correspondence, the complainant questioned Surrey Police's policies and practices regarding law enforcement and speeding.
"In Surrey, prosecution in one form or another not only depends on what kind of officer is doing the recording, but also what mechanism is used to record the speed".
6. Surrey Police upheld its decision in an internal review which was sent to the complainant on 12 November 2009. The Commissioner notes that Surrey Police, whilst upholding its decision not to disclose the requested information, sought to address the complainant's concerns about what he perceived as a lack of police activity in tackling speed.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner on 16 December 2009 to complain about the way his request for information had been handled. In particular, he raised the following point:

"The information I've requested will, I believe, give numeric and factual evidence as to how Surrey Police are not serving the community they are charged to protect".
8. Having taken account of the wording of the request, the Commissioner notes that it asks for prosecution thresholds for speeding vehicles in Surrey. Surrey Police has advised that this therefore brings the speed cameras operated by Surrey Safety Camera Partnership within the county into the scope of the request.
9. The Commissioner explained to the complainant that both he and the First-tier Tribunal (Information Rights) have addressed the issue of speed thresholds on previous occasions. He advised accordingly on the unlikelihood of disclosure. Nevertheless, the complainant required the Commissioner to issue a Decision Notice in this case.
10. The Commissioner has therefore proceeded to address this case in light of the established position with respect to speed thresholds.

Chronology

11. The Commissioner wrote to Surrey Police on 19 April 2010 asking it for further explanation of its reasons for citing the exemptions in sections 31 and 38 of the Act in relation to the request, including its reasons for concluding that the public interest in maintaining the exemptions outweighed the public interest in disclosure of the information requested.
12. Surrey Police provided an initial response on 12 May 2010.
13. Having considered the correspondence on the case, and having advised the complainant in respect of the likelihood of disclosure, the Commissioner sought an informal resolution to the complaint. In this respect, he notes that Surrey Police wrote to the complainant on 27 August 2010, providing him with an explanation of its approach to traffic enforcement. In that correspondence, Surrey Police went to

some length to address the specific points raised by the complainant in his request for an internal review.

14. The Commissioner wrote to the complainant on 31 August 2010. In his correspondence, the Commissioner again advised the complainant about the likelihood of disclosure in this case. He told him that he had addressed the matter of speed thresholds in an earlier Decision Notice, (FS50225815, available on his website). He also told the complainant that that Decision Notice had been appealed and that, in the recent outcome of the First-tier Tribunal (Information Rights) hearing, the Tribunal had upheld his decision.
15. After some delay, the complainant contacted the Commissioner requesting a Decision Notice in this case. The complainant confirmed in a subsequent telephone call that he would like the Commissioner to issue a Decision Notice.
16. Having advised Surrey Police that his investigation was ongoing, the Commissioner received a prompt response from Surrey Police in respect of further explanation of its reasons for citing the exemptions in this case.

Analysis

Exemptions

Section 31 Law enforcement

17. In this case, Surrey Police is citing section 31(1)(a) and (b) of the Act.
18. Section 31 of the Act states that:

"Information which is not exempt information by virtue of section 30 [investigations and proceedings] 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",*

Engagement of the exemption

Applicable interest

19. In order for section 31 to be engaged, Surrey Police must show that disclosure would, or would be likely to, prejudice the stated interest. Accordingly, the Commissioner has only considered as relevant those arguments about whether or not disclosure of the withheld information could be prejudicial to the prevention or detection of crime or the apprehension or prosecution of offenders.
20. The Commissioner addressed the issue of the disclosure of speed thresholds in Decision Notice FS50225815. In that case, the complainant requested information about enforcement of speeding offences within speed bands.
21. As was the case in that Decision Notice, the Commissioner accepts that sections 31(1)(a) and (b) are interrelated within their application in the context of this case.

"If motorists were aware of precise speed thresholds..... 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". (Decision Notice FS50225815).

Nature of the prejudice

22. The Information Tribunal in *Hogan and Oxford City Council v The Information Commissioner* (EA/2005/2006 and EA/2005/0030) commented:

"An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice and the prejudice is, as Lord Falconer of Thoroton has stated 'real, actual or of substance' (Hansard HL (VOL. 162, April 20, 2000, col. 827))".

23. When making his assessment regarding the prejudice test, the Commissioner must consider not only whether the prejudice identified can be said to have a real, detrimental or prejudicial effect but also

whether or not the nature of the prejudice can be adequately linked back to the disclosure of the information in question.

24. Surrey Police acknowledges that, while ACPO have published guidelines relating to prosecution thresholds, some forces enforce at different levels. It told the complainant that it is down to each Chief Constable to set the enforcement level within their own Force area. In this respect, the Commissioner notes that the First-tier Tribunal commented in *Cole v IC* (EA/2010/0071):

"It is also clear to the Tribunal that the ACPO guidelines are exactly that: guidelines and nothing more".

25. Surrey Police told the Commissioner that disclosure of the requested information in this case would have an impact on operational policing. The Commissioner recognises that ACPO's guidance is an issue of operational policy and not of law.
26. In withholding the information, Surrey Police told the complainant disclosure will advise individuals of the level which they can exceed the speed limit without fear of prosecution. In its view, *"it is probable that the information will be used by some individuals to assist in the exceeding of speed limits"*.
27. In this respect, the Commissioner notes that the request was framed so that disclosure of the information would reveal whether the public authority complied with the ACPO guidance.

Likelihood of prejudice

28. With regard to disclosure resulting in any prejudice to the functions described in section 31(1)(a) or (b), Surrey Police told the Commissioner that it considers the higher threshold is relevant in this case for both paragraphs (a) and (b).
29. When addressing the issue of likelihood of prejudice in relation to speed thresholds in Decision Notice FS50225815, the Commissioner found that prejudice *"would be likely to occur"*. In that case he accepted 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 accepted that knowledge of precise speed thresholds could affect the apprehension or prosecution of offenders.
30. In this case, the Commissioner considers the arguments put forward by Surrey Police to be similar to those he has considered on that previous

occasion. He therefore considers it appropriate, in this case, to engage the exemption provided by sections 31(1)(a) and (b) on a "would be likely to" basis.

31. He has carried this lower level of likelihood through to the public interest test.

Public interest test

Public interest arguments in favour of disclosing the requested information

32. The Commissioner considers that many of the public interest arguments in favour of disclosing the requested information expressed in Decision Notice FS50225815 also apply in this case.
33. Specifically in this case, the complainant has argued that:

"The Surrey Police defence against releasing the information is that it is not in the public interest for them to know at what speed they can travel in Surrey without fear of penalty or prosecution. My understanding is that the Surrey Camera Partnership cannot be bothered to enforce ACPO guidelines therefore each year thousands, or maybe tens of thousands of offending motorists escape any form of sanction because of such inadequacy. This is clearly NOT in the public interest".

34. Surrey Police acknowledges that disclosure of the requested information would enable members of the public to "see the rationale behind the application of the various speed enforcement limits across the county".

Public interest arguments in favour of maintaining the exemption

35. Surrey Police has argued that:

"it is in the interest of the public that our roads are kept safe. The disclosure of local thresholds could increase the amount of speeding and so potentially increase casualties".

36. The Commissioner also notes Surrey Police's argument that:

"There should be no confusion in the mind of drivers as to what the speed limit is on a particular stretch of road..... Disclosure of the information requested would lead to some motorists treating the enforcement threshold as the speed limit knowing that they could drive without fear of prosecution".

Balance of the public interest arguments

37. In balancing the opposing public interest factors in this case, the Commissioner recognises a valid public interest in favour of disclosure in that disclosure would add to the debate about speeding and speed enforcement.

38. The complainant argued that:

"In Surrey alone between 400 and 500 people are either killed or seriously injured on the roads each year. This is way in excess of those killed or seriously injured by knife crime, burglary, gun crime and armed robbery combined. If these deaths and serious injuries were as a result of knife crime, there would be task forces and initiatives in abundance".

39. The Commissioner acknowledges the complainant's frustration at what the complainant considers to be *"the inconsistent and lamentably lax enforcement and the incoherent policies and practices of Surrey Police"*. However, he must consider whether or not it is appropriate for the requested information to be released to the general public.

40. In reaching his conclusion, the Commissioner has taken account of the comments made by the Tribunal in the case of *Cole v IC* (EA/2010/0071):

"The Tribunal is satisfied to the required evidential standard (the balance of probabilities) that the disclosure of the disputed information would be likely to prejudice the prevention of crime as it could encourage drivers to make judgements of the probabilities of enforcement at speeds within a certain margin above the speed limit".

41. Having carefully balanced the opposing factors involved in this case, the Commissioner finds that the public interest in maintaining the section 31(1) and (b) exemptions outweighs the public interest in disclosure.

Section 38 Health and Safety

42. As the Commissioner has concluded that Surrey Police correctly applied section 31, he has not gone on to consider its citing of section 38.

Procedural Requirements

Section 10 Time for compliance

Section 17 Refusal of request

43. Section 1(1) of the Act provides that

“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.”

44. Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

45. In this case, the complainant's request for information was received by Surrey Police on 8 July 2009 but Surrey Police did not issue its refusal letter until 4 September 2009. The Commissioner notes that, in this correspondence, Surrey Police apologised to the complainant for the delay in responding to his request, explaining that this was due to it receiving *“an unprecedented number of requests”* during the past few months.

46. Nevertheless, despite the requirements of the Act, it took Surrey Police 40 working days to respond to the information request. Accordingly the Commissioner finds that, in failing to confirm or deny within 20 working days whether it held the requested information, Surrey Police breached the requirements of section 10(1) and that it also breached section 17(1) by failing to provide the details required by that section within 20 working days.

47. Section 17(1) provides that:

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) *states that fact,*
- (b) *specifies the exemption in question, and*
- (c) *states (if that would not otherwise be apparent) why the exemption applies."*

48. In this case, it was not clear from the refusal notice whether Surrey Police was citing section 38 in addition to section 31, nor was this clarified at the time of the internal review. Accordingly, the Commissioner has concluded that it breached its obligations under section 17(1)(c).

The Decision

49. The Commissioner's decision is that Surrey Police dealt with the following elements of the request in accordance with the requirements of the Act:

- it correctly applied the exemption in section 31(1)(a) and (b).

50. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- it breached section 10(1) by failing to inform the complainant whether it held the requested information within 20 working days of the request; and
- it breached section 17(1) by failing to issue the refusal notice within the statutory time limit and section 17(1)(c) by issuing an inadequate refusal notice.

Steps Required

51. The Commissioner requires no steps to be taken.

Right of Appeal

52. 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 sent.

Dated the 22nd day of November 2010

Signed

**Jon Manners
Group Manager**

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

Legal Annex

Section 31(1) provides 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,
- (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 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.”