

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 6 October 2010

Public Authority: The Home Office
Address: 2 Marsham Street
London
SW1P

Summary

The complainant requested information regarding concerns that vehicles travelling from the opposite direction could cause false activations of speed cameras. The Home Office responded that it did not hold the requested information. The Commissioner has concluded that the Home Office was correct to state that it did not hold the requested information. He requires no 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.

Background

2. In respect of speedometer devices, Type Approval is a requirement of the Road Traffic Offenders Act 1988. This provides that safety cameras used to enforce compliance with speed limits must be of a type approved by the Home Secretary before evidence from them can be used in court.

3. The Gatso BV Type 24 + AUS speedometer device (the "Gatso" camera), manufactured by Gatsometer BV, was type-approved with effect from 1 July 1992.
4. According to its product brochure, a choice of accessories is available to complement Gatsometer's range of photo enforcement equipment, including poles, cabinets and dummy equipment.
5. In putting this request into context, the complainant cited a Home Office freedom of information request that revealed that an emergency services driver reported concern about the activation of Gatso camera flashes on approach.

The Request

6. On 9 September 2009, following earlier correspondence regarding concerns that vehicles travelling from the opposite direction could cause false activations of speed cameras, the complainant wrote to the Home Office requesting the following:
 - *"(Point 1) Under FOI please provide a copy of subsequent communications to partnerships or interested parties which alerts them to these potentially dangerous features;*
 - *(point 2) The Home Office advise that 'dummy cameras' exist and are allowed to flash into the faces of oncoming motorists. In my view this is unacceptably dangerous. Please provide disclosure of a document that authorises such 'dummy cameras' to be used, or advise me who has provided permission;*
 - *(Point 3) The Type Approval (TA) process has to be reliable and thorough. Under FOI please provide a copy of the TA pages that mention the 'directional switches' and describes the sensitivity of the cameras from both directions; and*
 - *(Point 4) Please provide a copy of payments made to ACPO [Association of Chief Police Officers] or individual police forces for assessing the Type Approval of Gatso speed cameras".*
7. The Commissioner understands the features referred to in point 1 are false flashes by dummy cameras and directional settings.
8. The Home Office responded on 7 October 2009 advising the complainant that it did not hold the requested information.

9. The complainant requested an internal review on 30 November 2009. In this correspondence, the complainant told the Home Office that, in his view, there must be some information on directional switches.
10. On 21 January 2010, the Home Office sought clarification as to whether the TA pages the complainant was seeking were in relation to dummy cameras or Gatsos. The complainant confirmed on the same day that he was seeking this information in relation to Gatsos and not dummy cameras.
11. The Home Office provided its internal review response on 15 March 2010. In relation to point 3, the Home Office told the complainant that, while the specific Type Approval information requested was not held, it held some information within the operator's manual of the Gatso camera, supplied by the manufacturer at the time of the type approval process, regarding "directional switches" and the sensitivity of the camera. This information was provided to the complainant. With regard to points 1, 2 and 4, the Home Office upheld its original decision that it did not hold the requested information.

The Investigation

Scope of the case

12. On 15 March 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
13. Although the complainant raised new issues in correspondence with the Commissioner, he did not dispute the directional switch information the Home Office provided. The Commissioner has therefore not addressed point three of the request further.
14. The Commissioner notes that, in correspondence with the Commissioner during the course of his investigation, the complainant made what amount to new requests for information that the complainant considered the Home Office may hold. The Commissioner advised the complainant to make these requests directly to the Home Office.

Chronology

15. The Commissioner wrote to the Home Office on 8 June 2010 asking it to provide more information about its stance that it did not hold the requested information. In addition to asking the Home Office about the

searches it had conducted in this case, the Commissioner also asked whether it had a business need to hold the information.

16. The Home Office provided a substantive response on 6 July 2010.

Analysis

Substantive Procedural Matters

17. Section 1(1) of the Act creates a general right of access to information held by public authorities. Section 1(1) of the Act states:

'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.'

18. The test which the Commissioner applies in determining whether a public authority holds any requested information is the balance of probabilities. This is in line with the approach taken by the Information Tribunal in the case of *Bromley & others v the Environment Agency* (EA/2006/0072), in which it stated:

"...we must consider whether the IC's decision that the EA did not hold any information covered by the original request, beyond that already provided, was correct. In the process, we may review any finding of fact on which his decision is based. The standard of proof to be applied in that process is the normal civil standard, namely, the balance of probabilities..." (paragraph 10) because

"...there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records" (paragraph 13).

19. In deciding where the balance lies in cases such as this one, where the complainant has asked him to consider the public authority's response with regard to whether or not the requested information is held, the Commissioner will look at both:

- the scope, quality, thoroughness and results of the searches; and

- other explanations offered as to why the information is not held.

The nature of the searches

20. With regard to the searches undertaken, the Home Office has provided the Commissioner with details of the nature and scope of the searches it carried out. Specifically, it provided details of the systems searched and the search terms used. The Commissioner notes that the searches catered for electronic and paper files and correspondence.
21. The Home Office advised the Commissioner that the searches would have been expected to reveal the requested information had the Home Office held it.
22. Having considered the evidence put before him, the Commissioner is satisfied with the scope and thoroughness of the searches undertaken.

Other explanations offered as to why the information is not held

23. In its initial correspondence, when the Home Office told the complainant that it did not hold the information he had requested, it offered the following brief explanations as to why this was the case:

Point 1 - *"we have no reference to alerts of potentially dangerous features".*

Point 2 - *"We have no information on dummy cameras. That is up to the forces or safety camera partnerships".*

Point 3 - *"We do not have TA [Type Approval] pages that refer to directional switches describing the sensitivity of cameras from both directions".*

Point 4 - *"The police and ACPO are not paid for their type approval work, Home Office officials never receive costs from companies and the Home Office does not keep information on any such payments".*

24. The Commissioner considers these explanations to be inappropriately brief. It was only at the internal review stage, and in response to arguments raised by the complainant in his request for an internal review, that the Home Office provided more expansive explanations. In the Commissioner's view, this level of explanation should have been provided earlier.

Point 1 - subsequent communications

25. In its internal review correspondence of 15 March 2010, the Home Office confirmed that, having conducted a thorough examination, it did not hold the "subsequent" communications the complainant referred to

at point 1 of his request. Responding to the complainant's view that ignoring the report of a potential danger would be "neglect of duty", the Home Office also told him in its internal review correspondence that, as dummy cameras are not subject to type approval process, it has no involvement with them.

26. The complainant has told the Commissioner he finds it "disturbing" that there is no evidence of any actions being taken. However, the Home Office told the Commissioner that it has no business purpose to hold the information regarding alerts and subsequent communications "*as the department is not involved in use or approval of dummy cameras*". The Commissioner considers that the Home Office has provided a satisfactory response to the complainant's issue.

Point 2 – authorisation of dummy cameras

27. When requesting an internal review in relation to point 2 of his request, the complainant expressed surprise that the Home Office did not have an interest in, or information on, dummy cameras. In his view, "*this again appears to be neglect of duty*".
28. Having initially told the complainant that it held no information on dummy cameras because "*that is up to the forces or safety camera partnerships*", the Home Office re-iterated this in its internal review correspondence. At that stage, it also advised the complainant that although dummy cameras operate in the same way as Gatso speed cameras and fit in the same housings, as they do not record the speed of vehicles they do not require type approval testing. Consequently, the Home Office told him it has no requirement to be involved in their use and deployment.
29. The complainant told the Commissioner that he cannot believe that the Home Office "*can be so negligent*" in allowing police forces to use dummy cameras.
30. The Commissioner has consulted the Department for Transport's website in this respect. Under the heading "*Who is responsible for the deployment and operation of safety cameras?*", the website has the following information:

"Safety Cameras are deployed and operated by local partnerships usually made up of local authorities, Police and HM Courts Service. If you have any questions relating to safety cameras operating in your area you should contact your local partnership".

31. In correspondence with the Commissioner, the Home Office has confirmed that dummy cameras are deployed and operated by local police forces. It has further argued that, as it does not give approval or otherwise to dummy cameras, there would be no business need for it to hold a document approving the use of dummy cameras.
32. Taking these factors into account the Commissioner considers that the Home Office has provided a convincing response to the complainant's concerns.

Point 4 – payments to ACPO

33. The Home Office told the complainant that the police and ACPO are not paid for their type approval work. It further explained to him that ACPO and the police carry out the type approval process as standard practice. In support of this argument, it confirmed to the Commissioner that any assessment of speed cameras is funded from the central budget of the public authorities required to carry out this process.
34. The Commissioner has considered whether there was any legal requirement or business need at the time of the request for the Home Office to hold this information, but could identify no such requirement.

Conclusion

35. In reaching a decision in this case the Commissioner has considered if the requested information was what he would expect the Home Office to hold and whether there is any evidence that the information was once held.
36. In correspondence to the Commissioner dated 6 July 2010, the Home Office argued strongly that it had no business need to hold the requested information. It told the Commissioner, from the outset, that it was not likely to hold the information requested as "*the Home Office is not the responsible body for monitoring speed cameras*".
37. Whilst appreciating the complainant's frustration in this case, in the circumstances, the Commissioner has decided that there is no evidence that would justify refusing to accept the Home Office's response that it does not hold the information requested. The Commissioner therefore concludes that, on the balance of probabilities, the Home Office does not hold any information falling within the complainant's request.

Procedural Requirements

38. Section 1 of the FOIA provides:

"Any person making a request for information to a public authority is entitled –

- to be informed in writing by the public authority whether it holds the information of the description specified in the request, and*
- if that is the case, to have that information communicated to him."*

Section 10(1) of the FOIA provides:

"...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."

39. In other words, if the authority does not hold the information requested it does not need to issue a refusal notice. However, within 20 working days, the authority must confirm in writing that it does not hold the information requested.

40. In this case, the request for information was made on 9 September 2009 and the response provided on 7 October 2009. As the Commissioner has concluded that the Home Office was correct to advise that it did not hold the requested information, he does not find any evidence of a breach of section 1 of the Act.

The Decision

41. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

42. The Commissioner requires no steps to be taken.

Other matters

43. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 100 working days for an internal review to be conducted, despite the publication of his guidance on the matter.

Right of Appeal

44. 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 6th day of October 2010

Signed

**Jon Manners
Group Manager**

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