

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 28 November 2013

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested technical information relating to a speed camera. Hampshire Constabulary denied holding the requested information and upheld this position at internal review.
2. The Commissioner's decision is that Hampshire Constabulary is correct when it denies holding the requested information.
3. No steps are required.

#### **Request and response**

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4. On 20 March 2013, the complainant wrote to Hampshire Constabulary (the "Constabulary") and requested information in the following terms:  
  
"Please provide the following information based upon the requirements of the Freedom of Information Act. I would add that you are required to respond to these and the previous request for information within twenty days."
  1. Please provide an explanation to confirm absolute certainty that a camera allegedly registers a complete set of data, namely the set number of distance and change of distance reading.
  2. Please confirm what recorded set of data information is collected to satisfy the requirements for compatibility with the calibration certificate pulse repetition frequency test. The data allegedly comprises

of 30 or 42 readings dependent upon speed camera specification. The manufacturer acknowledges that a shift of the aiming point, namely the registration plate, increases the likelihood of error.

3. Please confirm the minimum number of readings required by the laser aiming point on the vertical target namely the registration plate, for a reading of speed to be valid. Please qualify any statements.

4. Please confirm whether or not readings gathered from the curvature positions of a vehicle or alternative target points other than the vertical number plate are sufficient to invalidate speed reading. Please qualify any statements.

5. Please confirm whether the practice of ensuring Risk Assessments are conducted regularly for every site used for mobile speed detection and the use of generic risk assessments are completed and countersigned.

6. Please provide a copy of the Constabulary procedure for the use of the laser.

7. Please provide detailed information of the independent tests applied to the pulse data which is claimed by the manufacturer to eliminate any error that a shift of aiming point from the registration plate could cause.

8. Please provide documented information of the method adopted to ensure that the aiming point will remain constant and fixed upon the registration plate for the entire C.B (??) C.3 (??) second measurement period, which the manufacturer stresses is very important. This is particularly important when the cosine factor in the vertical and/or horizontal plane is applicable. The cosine factor encourages the aiming point to move away from the target in a vertical and/or horizontal plane, dependent upon the location of the camera. This represents an important issue to consider when contesting the accuracy of any speeding allegation.

9. Please provide all information related to the testing procedures of this speed camera for type approval.

10. Please confirm whether a printout is provided of the collected camera data, following a speeding allegation. Compatibility of the data with the calibration certificate would provide conclusive proof of camera accuracy."

5. On 3 April 2013, the Constabulary responded. It provided commentary about how it uses speed cameras and also made comments relating to the complainant's case which had prompted the request. Following the Commissioner's intervention, it issued a response under FOIA on 4 June 2013. In relation to Requests 2-4 and 6-9, it denied holding the information described in those requests, it provided commentary regarding Request 5 but denied holding a record of a procedure. It said that Request 1 was a request for an explanation and that, under FOIA, it

was not required to create information in order to respond to a request. It did not make any specific response to Request 10.

6. Following an internal review the Constabulary wrote to the complainant on 17 June 2013 with the outcome its internal review. It upheld its original position.

## **Scope of the case**

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7. Having initially sought the Commissioner's intervention regarding the Constabulary's failure to respond to his request, the complainant contacted the Commissioner on 25 June 2013 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the Constabulary is correct when it says that it does not hold any information within the scope of Requests 2 – 10. It was agreed between the parties that Request 1 was a request for an explanation rather than for recorded information. It has been excluded from further consideration in this case. During the course of the Commissioner's investigation, the Constabulary (following the Commissioner's intervention) wrote to the complainant to advise that it held no information within the scope of Request 10.

## **Reasons for decision**

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9. Section 1 of FOIA states 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."

10. The Commissioner has sought to determine whether, on the balance of probabilities, the Constabulary holds any information relevant to the request. Applying the civil test of the balance of probabilities is in line with the approach taken by the Information Rights Tribunal when it has considered the issue of whether information is held in past cases.
11. The Commissioner asked the Constabulary a number of questions about the searches it conducted. The complainant had also queried how the Constabulary would be in a position to use the equipment in question and to rely on the evidence it yielded in court proceedings without holding the requested information.

12. The Commissioner has therefore also considered whether the information is held by the supplier of the equipment on behalf of the Constabulary, even if it is not physically held by the Constabulary.
13. Section 3(2) sets out the two legal principles that establish whether information is held for the purposes of the FOIA:

“For the purposes of this Act, information is held by a public authority if—

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority.”

14. In considering this point, the Commissioner has had regard for his own published guidance and other related guidance that he has produced.<sup>1 2</sup>
15. The Commissioner’s guidance “Information held by a public authority” says:

“Factors that would indicate that the information is held solely on behalf of another person include:

- the authority has no access to, use for, or interest in the information;
- access to the information is controlled by the other person;
- the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or

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[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/information\\_held\\_by\\_a\\_public\\_authority\\_for\\_purposes\\_of\\_foia.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/information_held_by_a_public_authority_for_purposes_of_foia.ashx)

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[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/AWARENESS\\_GUIDANCE\\_12\\_INFO\\_CAUGHT\\_BY\\_FOI\\_ACT.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/AWARENESS_GUIDANCE_12_INFO_CAUGHT_BY_FOI_ACT.ashx)

[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Practical\\_application/determining\\_whether\\_information\\_is\\_held\\_foier.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Practical_application/determining_whether_information_is_held_foier.ashx)

- the authority is merely providing storage facilities, whether physical or electronic”.

16. As countervailing factors, the guidance also states:

“Factors that would indicate that the information is also held by the public authority include:

- the authority provides clerical and administrative support for the other person, whether legally required to or not;
- the authority controls access to the information;
- the authority itself decides what information is retained, altered or deleted;
- the authority deals with enquiries about the information; or costs arising from holding the information are included in the authority’s overall budget”.

17. The Constabulary said that it did not conduct any searches because it knew that this technical information is not information it held. The Constabulary explained that it uses type-approved equipment but that the procurement of that equipment to which the requests relate was undertaken by Portsmouth County Council. Both Portsmouth County Council and the Constabulary work in concert with other local bodies to promote road safety in the local area.<sup>3</sup> The Commissioner also asked whether the Constabulary was party to the contract which resulted from the tendering exercise in question. The Constabulary confirmed that it was not.

18. It also explained: “The third party [who would hold the information] is the supplier of the speed enforcement equipment. There are currently three suppliers whose equipment we use and they are approved by the Secretary of State. The technical specification is not held by Hampshire Constabulary as this aspect is not something we are required to validate or know about.

19. According to the Home Office’s website:

“Section 20(1) of the Road Traffic Offenders Act 1988 (the ‘RTOA’) as amended provides that a record produced by a prescribed device, together with an appropriately signed certificate as to the circumstances in which the record was produced, is admissible as evidence in court proceedings for certain specified road traffic offences. Under s20(4) of

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<sup>3</sup> <http://www.hampshire.police.uk/internet/advice-and-information/road-safety/>

the RTOA, a prescribed device must be of a type approved by the Secretary of State and any conditions subject to which the approval was given must be satisfied. The granting of type approval and the setting of any conditions are matters for the Secretary of State to decide in each particular case."<sup>4</sup> <sup>5</sup>

20. The Commissioner is satisfied that the Constabulary is using equipment that has been approved by the Secretary of State. This equipment was procured by another body that was in partnership with the Constabulary but the Constabulary itself was not party to the contract through which the equipment was procured.
21. Taking the above into account, the Commissioner has concluded that, on the balance of probabilities, the Constabulary does not physically hold the requested information. He is satisfied with the Constabulary's explanation as to why it did not conduct any searches for the requested information because it does not hold, nor does it have a business need to hold the technical information described in the requests.
22. He has also concluded that while the requested information may be held by the supplier of the equipment, it is not held by the supplier of the equipment on the Constabulary's behalf. The right of access under the Act therefore does not apply to that information because it is not held by a public authority that is subject to the Act.

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<sup>4</sup> <http://www.legislation.gov.uk/ukpga/1988/53/section/20>

<sup>5</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/117684/acp-o-letter-type-approval-device.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117684/acp-o-letter-type-approval-device.pdf)

## Right of appeal

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23. 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**