

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 April 2017

Public Authority: Chief Constable of West Yorkshire Police
Address: PO Box 9
Laburnum Road
Wakefield
WF1 3QP

Decision (including any steps ordered)

1. The complainant has requested information relating to speeding cameras on the M62 from West Yorkshire Police ("WYP"). WYP provided some of the information but refused the remainder citing sections 31(1)(a) and (b) (law enforcement) of the FOIA. The Commissioner's decision is that sections 31(1)(a) and (b) are properly engaged and that the public interest favours maintaining the exemption. No steps are required.

Request and response

2. On 31 July 2016 the complainant wrote to WYP and requested information in the following terms:

"Please can you provide the following information.

1) Number of active cameras West Yorkshire Police enforce on the M62 within West Yorkshire
2) Location of these
3) Breakdown of speeding offences captured per month, by each camera since January 2016".
3. WYP responded on 15 September 2016. It provided responses to parts (1) and (2) of the request but refused the remainder citing the exemptions at sections 31(1)(a) and (b) of the FOIA as its basis for doing so.

4. Following an internal review WYP wrote to the complainant on 5 December 2016. It maintained its position.

Scope of the case

5. The complainant initially contacted the Commissioner on 31 October 2016 to complain about the way his request for information had been handled. The Commissioner required further information which was provided on 19 January 2017.
6. The complainant asked the Commissioner to consider that other forces publish the information he has asked for, for example stating that Kent Police provide the data for their M25 cameras. He added that WYP had previously released information relating to average speed cameras on the M6 as seen in the local press – and that this is exactly what he wanted WYP to provide to him.
7. The Commissioner will consider whether WYP is entitled to rely on the exemptions cited as a basis for refusing to provide the withheld information.

Reasons for decision

Section 31 – law enforcement

8. WYP is relying on sections 31(1)(a) and (b). These state 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...”*
9. Section 31 is a prejudice based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed but, before the information can be withheld, the public interest in maintenance of the exemption must outweigh the public interest in disclosure.
10. In order to be engaged, the following criteria must be met:
 - the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the

information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and

- it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

11. The relevant applicable interests cited in this exemption are the prevention or detection of crime and the apprehension or prosecution of offenders.

12. WYP has explained:

"Disclosing the requested information would enable the public to establish when speed is being enforced at this site and therefore, when excessive speed is likely to result in a fine. Safety cameras are not always active and the Police rely on the perception by drivers that camera housings could be active and would therefore adjust their speed so as not to contract a fine. If this information was disclosed then drivers would know when they can and cannot pass this specific site at a speed above the statutory limit. This would render the purpose of the camera site at this location obsolete.

If drivers are able to establish when they can avoid being detected speeding on this road, this will undermine police enforcement of the established speed limit. Disclosure would therefore hinder law enforcement. It would also require an increased Police presence in this area which would put an unnecessary strain on its resources".

13. With regard to the first criterion of the three limb prejudice test described above, the Commissioner accepts that potential prejudice to law enforcement activity relates to the interests which the exemptions contained at sections 31(1)(a) and 31(1)(b) are designed to protect.

14. With regard to the second criterion, having considered the contents of the withheld information the Commissioner is satisfied that its disclosure would clearly have the potential to harm law enforcement were the numbers of offences disclosed. For example, were the figures very low, or even non-existent, this could encourage illegal motoring behaviour thereby increasing the likelihood of accidents. In turn, this behaviour would also require the police to devolve more patrol officers to police this stretch of motorway.

15. The complainant is of the view that there is no way of predicting which cameras could be active at any point in the future and, because many other police forces provide this data, there can be no harm in WYP doing

the same for the data he has requested. However, having viewed the information in full, the Commissioner does not agree and accepts that there is a causal link between disclosure of the information and the interests which the exemptions contained at sections 31(1)(a) and (b) are designed to protect. Moreover, given the potential consequences of disclosure, the Commissioner is satisfied that, on this occasion, the resultant prejudice which WYP considers would be likely to occur is one that can be correctly categorised as real and of substance.

16. Having had the benefit of examining the withheld information the Commissioner is satisfied that its disclosure would be likely to represent a real and significant risk to law enforcement. Therefore, the Commissioner is satisfied that the exemptions contained at sections 31(1)(a) and (b) are engaged.

Public interest test

17. Section 31 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemptions contained at sections 31(1)(a) and (b) outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

18. The Commissioner notes it is important that the general public have confidence in the police service which has responsibilities for enforcing the law. Accordingly, there is a general public interest in disclosing information that promotes accountability and transparency in order to maintain that confidence and trust.
19. WYP have also argued that disclosure would inform the public as to how the West Yorkshire Casualty Reduction Partnership ("WYCRP") tackles the issue of road safety.

Public interest arguments in favour of maintaining the exemption

20. WYP has argued that, because it is already widely known that safety cameras are not always active, disclosing the requested information would enable the public to establish how often speed is being enforced at this location. As the police rely on the perception by drivers that camera housings could be active at any time, if this information was disclosed then drivers would know when they can and cannot pass this specific site at a speed above the statutory limit. It concluded that: *"this would render the purpose of the camera site at this location obsolete"*.
21. WYP also argued:

"If drivers are able to establish when they can avoid being detected speeding on this road, this will undermine police enforcement of the

established speed limit. Disclosure would therefore hinder law enforcement. It would also require an increased Police presence in this area which would put an unnecessary strain on its resources.

Not all sites are constantly enforced and camera operators attend on a rotational basis. I can confirm that operators are deliberately deployed to ensure that certain sites receive more "live" enforcement time than others, simply due to there being a greater road safety need at those sites. This is simply due to there being a greater history of collisions and speeds at some sites compared with others. The effectiveness of speed enforcement relies on the perception that the chances of being recorded are high at all sites. The release of this type of information would encourage further similar requests which would lead drivers to being able to deduce by a process of elimination those locations where the risk of being caught is more or less likely. This would reduce the ability of safety camera technology to impact on road safety."

22. WYP also believes that disclosure of the requested information, would make it possible for an unscrupulous driver to estimate, or think they could estimate, likely future enforcement patterns and adjust their driving behaviour accordingly by a similar analysis of this information which is camera specific for a 7 month period.

Balance of the public interest test

23. The Commissioner accepts that the subject matter of this case is of general interest to the public. It is of interest to ascertain how effective the cameras are and to monitor their success as a deterrent. She also notes that WYP have disclosed some information in an effort to satisfy the public interest, namely the numbers and locations of cameras.
24. It is widely known that the majority of safety cameras in any given policing area are not activated for enforcement at all times. It is the desire of the police that a driver should assume that the safety camera they are approaching is active. The Commissioner accepts that drivers are more inclined to stick rigidly to the law in an enforcement zone if they believe that a camera is active or likely to be active. Furthermore, if disclosure were to reveal that some cameras were more active than others then this may lead to erratic driving as motorists expect to evade detection by driving at varying speeds or by joining / leaving the motorway at particular junctions. Such behaviour is more likely to increase the risk of accidents for other motorists who choose to adhere to the speed restriction.
25. The Commissioner recognises that the increased likelihood that the law would be broken as an indirect consequence of the release of the requested information is, of itself, a powerful public interest argument in

favour of maintaining the law enforcement exemption. She further recognises that the police do not keep safety cameras permanently active because they believe that the potential risk of enforcement is as strong a deterrent as the certainty of enforcement. There are strong public interest arguments in supporting this policy. Chief among these is greater value for money. Administration of traffic enforcement is much cheaper using intermittent rather than permanent enforcement zones because fewer penalty notices are actually issued (each requiring administrative work). It also encourages voluntary compliance with the law which makes the work of the police in this area much easier and allows them to focus resources where there is greater need.

26. The Commissioner considers that there is stronger public interest in ensuring that the overall effectiveness of speed cameras is not undermined or compromised. Whilst there is a public interest in knowing that WYP takes its law enforcement duties seriously it is also important to ensure that the public's safety is not compromised by disclosure of information.
27. Based on the arguments above, the Commissioner has concluded that, in all of the circumstances of this case, the public interest in maintaining the exemption at sections 31(1)(a) and (b) outweighs the public interest in disclosing the withheld information.

Other matters

28. This information request was actually made to WYCRP rather than directly to WYP, which is not in itself a separate public authority for the purposes of FOIA. However, its work is undertaken on behalf of various public agencies on police premises. In such circumstances, the Commissioner expects the partnership to work out its own methodology for dealing with FOI requests and to decide who is the 'host' public authority. On this occasion, WYCRP clearly states on its website that:

"All responses from West Yorkshire Casualty Reduction Partnership under the Freedom Of Information Act are copied as a matter of course to the Freedom Of Information officers of West Yorkshire Police ... who take the lead in FOI matters".

29. The Commissioner is satisfied with this approach.

Right of appeal

30. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. 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.
32. 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

Carolyn Howes
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