

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 November 2020

**Public Authority:** Hertfordshire County Council  
**Address:** County Hall  
Pegs Lane  
Hertford  
Hertfordshire  
SG13 8DQ

#### Decision (including any steps ordered)

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1. The complainant requested speed data from a SID (Speed Indicator Device). Hertfordshire County Council (the council) responded that it did not hold the information.
2. The Commissioner's decision is that the council does hold the requested information.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the complainant.
4. The council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 13 February 2020 the complainant made the following request to the council:

*"I would be interested in any information held by the Highways department about a SID located on Darley Road, Breachwood Green, Hitchin. The information I require is the speed data captured by this device from its installation. I do not need the vehicle registration numbers.*

*I would like the information to be emailed to me in electronic form, in a format which is understood."*

6. On 14 February 2020 the complainant clarified *"I require speed data per time and day if possible."*
7. The council responded on 28 February 2020 stating that it did not hold the requested information.
8. The complainant requested an internal review on 13 March 2020 as he considered that the information was available but at a cost and he provided an email detailing that the data could be downloaded at a price.
9. On 2 April 2020 the council provided its internal review upholding its original response. It stated that the information being sought had never been downloaded or retained. If the data was to be downloaded, it would not be in any understandable format and a third party would be required to download the information and convert it to a useable format.

## Scope of the case

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10. The complainant contacted the Commissioner dissatisfied with the council's response.
11. The scope of the case is to determine whether the information requested was held or not by the council.

## Reasons for decision

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### Section 1(1) of the FOIA – Information held / not held

12. Section 1(1) of the FOIA 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.”*

13. In this case the council did not consider it held the information and it was of the opinion that it did not hold the building blocks for this information to be produced as requested, without manipulation by third party software, due to the fact that there was not the necessary skillset in-house to create that information. It considered it would be necessary to create “new information” to satisfy the request.

14. The Commissioner confirms that the FOIA does not require public authorities to create new information to satisfy a request.

15. The Commissioner therefore enquired further with the council on this matter in order to determine whether the council’s conclusion that it would be creating new information was correct or whether it did in fact hold the requested information for the purposes of the FOIA.

16. The Commissioner therefore considers she needs to determine firstly whether the council held information recorded on the SID and secondly, if so, whether providing the information requested by the complainant would have amounted to the creation of new information.

*Did the council hold the information recorded on the SID for the purposes of the FOIA?*

17. The council has told the Commissioner that it owns the SID that this request relates to.

18. It has explained that they are used as a traffic calming measure by using a pre-configured message for on-coming vehicles in relation to their speed. However they are not used or installed for the purpose of measuring and recording speeds as they are not sufficiently accurate to provide a useful measure of speed.

19. These devices will also detect and reflect the speed of many different objects from cars, including pedestrians and animals.
20. The council stated that the recording functionality is a by-product of the device and not the reason that these devices were chosen to be used. The council says that the data is so unreliable that it does not collect the data for any of its own uses or reporting requirements.
21. The council has told the Commissioner that a SID does store up to 200,000 entries from the moment it is switched on, however once it reaches its maximum number of entries it no longer logs recordings, but will continue to work as a speed indicator.
22. The council explained that the way the raw data on the SID is stored is not usable or understandable without further processing by specialist software. The council stated that it does not own the required software because it does not require the information recorded on the SID.
23. So in order to provide the information requested, it would require a visit to the SID to download whatever data is held in its memory and then use a third party to translate it into a usable format.
24. The council has used the example of *Glen Marlow v the Information Commissioner (EA/2005/0031; 15 August 2006)*<sup>1</sup> as a reason why it considers it does not hold the information within the scope of this request.
25. The council cited as part of its consideration that, the Tribunal differentiated *"between the information that the public authority had selected for use and all the other information held within a database"*.
26. The council considers the database in that Tribunal decision is, in essence, the same as the information held on the SID. So only the information selected, downloaded and saved to the council computer system would be information that is considered held for the purposes of the FOIA.

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<http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i97/Marlow.pdf>

27. The council's position is therefore any information on the SID is not held by the council as it has not selected to use or download that particular information.
28. However, the Commissioner points out that the two scenarios have a significant difference, because the database referred to in the cited Tribunal case was not a database owned by the public authority.
29. The public authority in that Tribunal case had subscribed to an online legal library and the only information the Tribunal found was held by the public authority was the information it had selected to use under licence.
30. The terms of the public authority's licence were quite restrictive and the Tribunal did not rule out the possibility that the public authority would hold the entire database it had subscribed to, if it had a completely unrestricted right to use and exploit the contents.
31. With regards to this case the council owns the SID outright. They have not subscribed to use only part of it. They have, as the Commissioner understands, access to any of the information on the SID should they ever choose to access it.
32. The Commissioner considers this a significant difference and is of the view that the council do therefore hold any data recorded on the SID regardless of whether or not it is choosing to make use of this data.
33. The council has also told the Commissioner that its County Councillors are able to access the SID information, for a fee.
34. For the council to say that the information is not held, but also that it is accessible by Councillors, appears contradictory in the Commissioner's view.
35. The Commissioner is therefore satisfied that, in general, any information recorded by the SID is held by the council.
36. However, in order to provide the information as requested by the complainant, that being "... *speed data per time and day...*", the council stated that it would require a third party to convert the raw data in to a readable format.
37. It considered that converting this raw data would constitute creating new information in order to satisfy the request.

*Is providing the requested information creating new information?*

38. In order to determine this, the Commissioner needs to consider the skill and judgement that would be required to produce the information.

39. The skill and judgement to extract the information comes down to the ability to identify and retrieve it. Once retrieved it may be necessary to then also manipulate the building blocks in some way to present the information in the way it has been requested.
40. What is involved in carrying out these tasks will have a bearing on whether the information requested is held or not.
41. The Commissioner highlights that as her guidance<sup>2</sup> on "Determining whether information is held" states at paragraph 23:

*"...neither the home office nor the MoJ needed to produce the statistics that had been requested for their own business needs. Nevertheless a public authority will hold the information, if it holds the necessary building blocks and they can be identified, retrieved and manipulated using only a reasonable level of judgement."*

42. In this case the council has told the Commissioner that identifying and retrieving the building blocks, or raw data on the SID, would require its Highway Maintenance Contractor to visit and access the SID to download the data using a remote smartphone app.
43. This raw data would need to then be provided to a third-party consultant who has access to a specific piece of bespoke software. The data would be run through this software and the outputted data would be returned to the council officer that had requested it.
44. The council has cited a decision notice FS50880316<sup>3</sup> issued by the Commissioner which states, in the Other Matters section of the decision notice, that:

*"The Commissioner recognises that there are circumstances where a public authority may not hold particular information, but*

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<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1169/determining\\_whether\\_information\\_is\\_held\\_for\\_eir.pdf](https://ico.org.uk/media/for-organisations/documents/1169/determining_whether_information_is_held_for_eir.pdf)

<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617327/fs50880316.pdf>

*could create it on request and for a fee. In such circumstances, the requestor is essentially paying for the service of creating the new information – rather than the information itself.”*

45. The council argues that this supports its case that it would also be creating new information rather than carrying out a simple function of combining building blocks to produce the requested information.
46. In that previous decision notice the council was initially relying on section 21(2)(a) of the FOIA to provide the information for a fee. However the decision notice found that that council did not even hold the building blocks or raw data in the first place and so should not have been citing section 21 of the FOIA.
47. In this case, as already concluded, the Commissioner is satisfied that the council does hold the raw data being recorded in the SID.
48. The Commissioner's guidance on "Determining whether information is held" at paragraph 19 states:

*"In most cases when information is held in electronic files and can be retrieved and manipulated using query tools or language within the software, that information is held for the purposes of FOIA and the EIR. The use of query tools or languages does not involve the creation of new information. Their use should be viewed simply as a means of retrieving information that already exists electronically."*

49. The Commissioner's guidance<sup>4</sup> on section 12 of the FOIA states at paragraph 19:

*"...if a public authority is able to evidence that its existing software is unable to do the job but that it could purchase other specialist software which would allow the requested information to be retrieved, then the full costs of purchasing that specialist software could be reasonably included in the estimate."*

50. This is also relevant to a situation in which, as is the case here, the position of the public authority is that it would be necessary to pay for

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<sup>4</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

the services of a third party consultant's software in order to extract the information.

51. The Commissioner highlighted this part of her section 12 guidance because she is of the view that purchasing software, or paying a third party for their software services are both a viable way of making held information accessible. However, there may be a cost implication that may invoke section 12. However, the cost of accessing the information does not negate the fact that the information is held.
52. Lastly the council has stated that variables must be manually changed to reflect where the original information was downloaded from, including the speed limit of the road and other site-specific measures.
53. The Commissioner is not convinced that these variables would require complex judgement or skill to manually change. She is also not convinced that they would even be required in order to extract the requested information.

### *Conclusion*

54. On review of the council's submissions above, the Commissioner understands that the main obstacle in providing the complainant with the information requested is that the raw data from the SID would need to be converted by a third-party using bespoke software.
55. The Commissioner appreciates that the council does not have a business use for the data that the SID is collecting, but the issue here is simply whether, as a matter of fact, the council holds the information that has been requested.
56. As noted above from the Commissioner's published guidance "*The use of query tools or languages does not involve the creation of new information. Their use should be viewed simply as a means of retrieving information that already exists electronically.*"
57. The Commissioner's view on the process explained by the council is that the information can be identified, retrieved and manipulated using only a reasonable level of judgement and skill.
58. Whilst there may be a cost implication in having to use a third party to manipulate the raw data, the Commissioner does not consider that converting the raw data through third party software in to a usable format is creating "new information".



59. The Commissioner therefore finds that the council does hold the requested information. At paragraph 3 above the council is now required to issue a fresh response to the request predicated on the information requested being held by the council.

## Right of appeal

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60. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

61. 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.
62. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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