

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

### **Decision notice**

**Date:** 7 February 2022

**Public Authority:** Chief Constable of West Midlands Police

**Address:** Police Headquarters

Lloyd House

Colmore Circus

Birmingham

B4 6NQ

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

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1. The complainant has requested from West Midlands Police ("WMP"), information about speed enforcement action that he understood to have taken place. WMP denied holding any information.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, no information is held and therefore that WMP complied with the requirements of section 1 of FOIA in this case. No steps are required.

### **Request and response**

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3. On 8 April 2021, the complainant wrote to WMP and requested information in the following terms:

"On Sunday, 21<sup>st</sup> March 2021 on or about noon, a West Midlands Police Mobile Speed Camara Van parked on or near Knowle and Dorridge Cricket Club on Lugtrout Lane (near Field Lane), Catherine-de-Barnes, Solihull B91.

I am looking into the control of speeding on Lugtrout Lane, near Damson Parkway and the data on the enforcement of 30 mph speed limit.

Please send me the data collected from the mobile speed camera van parked whilst parked on Lugtrout Lane, as follows:

1. The time and duration the mobile speed camera van was operational.
  2. The number of which exceed the 30-mph speed limit, travelling in the direction of Hampton Lane.
  3. Of those vehicles the speed they were travelling at, broken down into 5 or 10 mph bands.
  4. Of those vehicles the number of heavy goods vehicles.
  5. The total number of vehicles which drove within the 30-mph speed limit.
  6. The number of which exceed the 30-mph speed limit, travelling in the direction of Damson Parkway.
  7. Of those vehicles the speed they were travelling at, broken down into 5 or 10 mph bands.
  8. Of those vehicles the number of heavy goods vehicles.
  9. The total number of vehicles which drove within the 30-mph speed limit".
4. On 14 April 2021 WMP responded. It denied holding the requested information and advised the complainant that this area fell outside its policing jurisdiction; WMP suggested that the complainant approached Warwickshire Police instead.
  5. The complainant requested an internal review on 22 April 2021, advising that the area did fall within WMP's jurisdiction. He provided a copy of a screen shot of the area boundary in support of his position, which he had taken from WMP's website.
  6. WMP provided an internal review on 6 May 2021 in which it maintained that no information was held but further explained its position. It advised that it had contacted relevant policing departments which had all denied holding any information.
  7. During the Commissioner's investigation, WMP clarified that the location does fall within its boundary.

## Scope of the case

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8. The complainant contacted the Commissioner on 19 May 2021 to complain about the way his request for information had been handled. In his correspondence he advised the Commissioner:

“On the 22nd March 2021 West Midlands Police contacted Parish Councillor [name redacted] to advise that the speed monitoring had taken place the previous day and subject to recourses would repeat the exercise.

On the 7th April 2021 Councillor [name redacted] advised me that a PC [name redacted] and Collar number [redacted] were planning on conducting more speed checks dependant on resources.

In light of the fact that I was incorrectly advised that Lugtrout Lane was not the jurisdiction of West Midlands Police I have little faith that a full and prudent search has been conducted.

... It was only later that I recalled the email from the Parish Councillor identifying PC [name redacted]”.

9. He also included an extract of an email sent by the named officer to the Parish Councillor which showed that enforcement at the location was being considered; he was forwarded details of that email on 7 April 2021, prior to making this request.
10. The complainant asked the Commissioner to consider whether a full and prudent search had been undertaken by WMP. The Commissioner will consider this below.
11. 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 FOIA. FOIA is concerned with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

## Reasons for decision

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### Section 1 – general right of access

12. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to them.
13. In this case, the complainant suspects that WMP holds information from which it could answer the request. WMP's position is that it does not. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
14. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held based on the civil standard of proof of the balance of probabilities.
15. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, WMP holds any recorded information within the scope of the request. Accordingly, he asked WMP to explain what enquiries it had made in order to reach the view that it did not hold the information.
16. In respect of searches undertaken WMP explained that:

“The force made enquiries with the Police Camera Enforcement Unit, the Central Motorway Police Group (CMPG) who incorporate the Road Harm Reduction Team, and Solihull Neighbourhood Policing Unit (NPU).

The reasons that these departments were contacted are as follows:

As the applicant referred to a West Midlands Police Mobile Speed Camera Van being parked at the location carrying out enforcement - The FOI unit contacted the West Midlands Police Camera Enforcement Unit, as they are the department that most frequently

use mobile speed camera vans and were deemed the department best able to assist and provide the requested information as they deal with speed enforcement.

As the CEU [Camera Enforcement Unit] did not hold any information, the FOI Unit contacted CMPG as they incorporate the Road Harm Reduction Team, but they advised that they do not have any speed camera vans in their fleet.

The FOI Unit further contacted the Local Policing Chief Inspector for Solihull to try and ascertain if local speed enforcement had been carried out and if they held the relevant information. We were advised that if vehicles are deployed to conduct speed enforcement that data was not shared/sent/collated centrally so they were also unable to provide the requested information”.

17. When raising his investigation enquiries, the Commissioner also shared the information that the complainant had provided when making his complaint, as cited in paragraph 9 above, for WMP’s consideration.
18. In its response WMP advised that, had it been made aware of this additional information, it could have contacted the named parties to readily ascertain whether or not any information was held. It further commented that, had it been able to do so, then “the whole process would have been expedited more quickly, we may have been able to retrieve some useful/relevant information, and it would likely not have been escalated to the ICO” and commented that “due to the time period that has lapsed since submitting the request and sharing the pertinent information, any relevant information that **may** have been held at the time of the request is no longer available”.
19. WMP further added:

“Due to the applicant sharing the officer’s [sic] names I have now been able to contact the named individuals and have been advised by one of the officers as follows:

They do not cover the rural area any more but know the speeding on Lugtrout Lane was raised to them around this time. They attended the location to conduct a brief speed check to see if it was worth adding to a list of hotspots that they would continue to visit along with starting a speed watch. However, when attending the location, they found it difficult to find a safe and proactive area to park and conduct this check. When an area was found it was noted that various residents park along the route and would cause oncoming vehicles to have to slow and let other vehicles through.

They have advised that the speed gun they could use at the time is not suitable for issuing tickets. When these vehicles did have a stretch to pick up speed they found little to no actual speeding that was largely over the limit. The officer has advised that they do remember keeping a tally of speeding vehicles but this was on paper and as they have since moved stations it is no longer retained”.

### **The Commissioner’s conclusion**

20. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs, above, the Commissioner is required to make a finding on the balance of probabilities.
21. The Commissioner considers that WMP contacted the relevant parties to ascertain whether or not any information was held in respect of the request. It is unfortunate that the complainant did not provide WMP with the information he had about the officers involved in the speed check. Had he done so then there is a possibility that any paper records they had generated may still have been held while the request was being considered. Having said that, as this was an ‘informal tally’ it would have been unlikely to satisfy the complainant’s request, as the type of speed gun used by the officers did not allow for the recording of such details. The informal nature of the records, and the particular circumstances of the exercise, would also account for the searches that were conducted not locating anything; the Commissioner accepts that it would have been necessary to contact the officers directly, at the time, to obtain this information.
22. Based on the explanation provided, the Commissioner is satisfied that, on the balance of probabilities, no recorded information within the scope of the request was held. He is therefore satisfied that WMP has complied with the requirements of section 1 of FOIA in this case.

## 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: 0203 936 8963

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)

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 .....**

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**