

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 November 2023

Public Authority: National Highways
Address: Bridge House
1 Walnut Tree Close
Guilford
Surrey
GU1 4LZ

Decision (including any steps ordered)

1. The complainant has requested information relating to their speeding fine. During this investigation, National Highways ('NH') identified some information that could be disclosed but withheld the rest under section 31 (law enforcement).
2. The Commissioner's decision is that parts 1, 2 and 6 of the request can be withheld under section 31(1)(a), (b) and (c). However, the Commissioner has recorded a procedural breach of sections 1 (general right of access to information) and section 10 (timescale for compliance) of FOIA.
3. The Commissioner requires NH to take the following steps to ensure compliance with the legislation.
 - If it hasn't already done so, NH must disclose the information in relation to parts 3, 4 and 5 of the request.
4. The public authority 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

5. On 13 July 2023 the complainant wrote to NH and requested:
 1. The specific criteria and/or grounds that prompted a 60mph speed limit to be imposed on M25 between junctions 16 to 15 on 4 May 2023 between 11:39 and 12:21 hours.
 2. The actual evidence relied upon to reduce the speed limit to 60mph i.e. position marker readings along that stretch of road identifying volume of traffic – what were those readings and how did they fit the criteria for a 60mph restriction as opposed to a 50mph or 40mph limit.
 3. The section from the Statutory Instrument 2013 No 3167, the M25 Motorway (Junctions 16 to 23) (Variable Speed Limits) Regulations 2013 that was used to enforce the 60mph speed restriction.
 4. The local procedural criteria relied upon to invoke the speed restriction of 60mph. I want to see that the correct process was followed on that day and time based on justifiable criteria.
 5. A copy of the local procedure at 4 above.
 6. A copy of the record kept by Highways England showing the entry on 4 May 2023 between 11:39 and 12:21.”
6. NH responded on 18 July 2023. It refused the entire request under sections 31(1)(a), (b) and (c) (law enforcement) of FOIA.
7. The complainant requested an internal review on 26 July 2023.
8. NH provided the outcome to its internal review on 23 August 2023. It upheld its previous position.
9. During this investigation, NH revoked its reliance on section 31 in relation to parts 3, 4 and 5 of the request. It indicated it would be willing to disclose this information.
10. Therefore, all that’s left for the Commissioner to consider is whether parts 1, 2 and 6 of the request can be withheld under section 31.

Reasons for decision

Section 31 – law enforcement

11. Section 31(1) of FOIA states:

“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,

(c) the administration of justice.”

12. NH are relying on all of the above to withhold parts 1, 2 and 6 of the request.

13. There’s a lot of overlap between these exemptions which is logical. In order to prevent and detect crime, and administer justice, offenders must be prosecuted.

14. When applying any of the above, a public authority doesn’t need to have responsibilities to prevent or detect crime. However, it does have to demonstrate that disclosing the requested information would, or would be likely to, cause harm to law enforcement activity.

15. The VSL information that NH holds is limited and NH has explained why:

“The records NH keeps regarding this information are purely for internal operational purposes. Our records do not always accurately reflect the time / information that a sign was showing – instead, they show what time an operator (or system) entered a setting for a signal to be changed (either setting a lower speed limit or cancelling it), but not the time the signal actually showed the setting. This is crucial, as there is a time lag between the former and the latter events.

Where NH has provided this information to customers previously, they have used this to challenge the police evidence, basing their case on the argument that the perceived / apparent inconsistency was grounds for reasonable doubt. The more accurate police evidence, from Home Office Type Approved and calibrated detection equipment, should always be understood as outweighing any potentially less accurate information provided by NH. Therefore, NH providing this information to the customer (or requester), only serves to cause confusion, leading to customers seeking to challenge enforcement proceedings when they may not have otherwise chosen to do so.”

16. It's clear from the request itself that the complainant has been found guilty of a speeding offence. Whilst the Commissioner recognises that FOIA is purpose blind, this is relevant in this case.
17. NH has explained that, in the past it would have complied with the complainant's request for variable speed limit ('VSL') settings. However 'we subsequently learned from our Police partners that our provision of such records was resulting in prejudice to law enforcement.'
18. To reiterate, NH must demonstrate that disclosure of the VSL settings in this instance would, or would be likely to, cause harm relevant to section 31(1)(a), (b) or (c). It's explained:

"Experience shows that offenders who request sight of our VSL records will attempt to use these as evidence to appeal the NIP they have received from the police, despite the fact that information provided by NH cannot trump that held by the police, so their appeal will fail in court. Such appeals are costly on the public purse and defending the case for the prosecution wastes considerable police resources."
19. When NH became aware that the way they were dealing with requests for VSL settings was impacting the Police's work, it adopted a new process. NH now deals with requests for VSL information via business as usual and it directs customers to its website¹ which explains what VSL are and how they work.
20. Its website also explains that, while NH is responsible for safe management of the traffic on its motorways, including adjusting speed limits where necessary, NH is not responsible for the enforcement of such limits; and neither does it hold information which is pertinent to such enforcement. It advises the customer to contact the relevant enforcement authority, usually the police force who issued the Notice of Intended Prosecution (NIP), for further information about the alleged offence. It finally explains that any request for VSL information submitted under FOIA is likely to be refused under section 31.
21. The Commissioner notes that new process for handling requests for VSL information has been devised by NH, in collaboration with the National Police Chiefs Council and Road Safety Support (RSS)². The Commissioner understands that "Both RSS and the Police gave support to this approach as an appropriate response to their concerns about

¹ [Variable speed limits - National Highways](#)

²

prejudice to law enforcement being caused by provision of our VSL settings records under FOIA.”

22. Ultimately, the complainant is entitled to appeal their speeding offence and public authorities shouldn't withhold information to deny anyone a right to appeal.
23. The Commissioner acknowledges NH's concern that disclosure of VSL information leads to an increase in fruitless appeals against NIPs, at increased costs to the Police. However, he doesn't agree that NH can withhold the requested information because to disclose it might make the complainant more likely to appeal.
24. As far as the Commissioner is concerned the complainant might appeal the matter regardless. Furthermore, whether or not that appeal is successful is a matter for the Court, not the Commissioner. The Commissioner isn't convinced that keeping NIP appeal rates as low as possible directly relates to the prevention or detection of crime, the apprehension or prosecution of offenders and the administration of justice, especially since NH has indicated that the majority of these appeals would be unsuccessful.
25. However, as part of this investigation NH has provided the Commissioner with evidence of an email train (between a Police force, RSS and NH) which demonstrates that disclosure of VLS information has directly prejudiced the Police's ability to prosecute an offender, and thus prejudicing the prevention or detection of crime and the administration of justice.
26. The Commissioner would like to make it clear that the NIP in question isn't the complainant's. However, it shows that NH's disclosure of the VLS information directly led to the NIP being withdrawn. The Commissioner understands that this incident is one of many that led to the change in process outlined in paragraphs 19-21.
27. This isn't about denying the complainant the right to appeal their offence. They should do so if they wish. However, since the Police has repeatedly informed NH that its ability to prosecute speeding offences was being compromised, due to the information that NH was disclosing under FOIA, and the Commissioner has seen evidence of this, he feels he has no choice but to find the exemptions engaged on the lower threshold of prejudice.
28. Since section 31 is a qualified exemption, the Commissioner must now go onto consider where the balance of the public interest lies.

The public interest test

Factors in favour of maintaining the exemption

29. Ultimately, NH is concerned that disclosure would be likely to dilute the work the Police does to prosecute in such circumstances and:

“We need the enforcement and prosecution of speeding offences to be robust and effective to ensure the safety of our road users and operatives.”

Factors in favour of disclosure

30. There is always a public interest in transparency, openness and public authorities providing as much information as possible about their processes and work.
31. At the time of raising their complaint with the Commissioner, the complainant noted, the ‘Police’s speeding prosecution in this case was wholly reliant on the correct application on VSL criteria by NH which the latter refused to justify hiding behind Section 31 of the FOIA 2000. As such there was absolutely no transparency in the prosecution process. I consider my speeding conviction was therefore unfair and unreasonable.’

Balance of the public interest

32. The Commissioner has decided that the balance of the public interest lies in maintaining the exemption.
33. It’s not the role of the Commissioner to comment on any offence that the complainant might have received. However, he notes that the complainant is trying to ascertain why a certain speed limit was in place at a specific location, date and time.
34. Ultimately, the Commissioner concurs with NH when it says:
- “The police, RSS and NH share the view that it does not matter why a speed limit was set or cancelled - driving in excess of the displayed mandatory speed limit is a strict liability offence - drivers must comply with the speed limit regardless of why it was set. NH providing an explanation as to why the speed limit was set can cause drivers to challenge a Notice of Intended Prosecution (NIP) on the basis that they perceive that there was insufficient reason for the speed displayed. Such challenges waste police and court time, at significant cost to the public purse, when legally the reason behind a setting is of no consequence and strict liability applies.”

35. The Commissioner considers the requested information is of very limited public interest. It is relevant to the complainant and potentially any other individual who was caught speeding at the same time, date and in the same location as the complainant.
36. Furthermore, the Commissioner acknowledges that the VLS information may still be relevant to any appeal. However, it should be disclosed via the proper appeal channels and processes, whereas its premature disclosure under FOIA could compromise law enforcement work.
36. Ultimately, it would be remiss of the Commissioner to ignore the fact that disclosure of VSL information has had such a detrimental effect on law enforcement activities, that the Police, RSS and NH all collaborated to introduce a change of process.
39. In line with this new process, the Commissioner is satisfied that the information requested at parts 1, 2 and 6 can be withheld under section 31(1)(a), (b) and (c) respectively.

Procedural matters

35. Section 1(1)(a) of FOIA states that a person who asks for information is entitled to be informed whether the information is held. If it is held, section 1(1)(b) states that the person is entitled to have that information communicated to them.
36. Section 10(1) of FOIA states a public authority must comply with section 1(1)(a) and section 1(1)(b) within 20 working days upon receipt of the request.
37. In failing to disclose the non-exempt information during the statutory timeframe, NH breached section 1 and section 10.

Right of appeal

38. 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

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

39. 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.
40. 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

Alice Gradwell
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