

**Decision 094/2007 Mr Russell Findlay of the
Sunday Mail and the Chief Constable of Tayside
Police**

*Request for information relating to the number of vehicles caught
and the revenue raised by fixed safety cameras in the Tayside area.*

**Applicant: Mr Russell Findlay of the Sunday Mail
Authority: Chief Constable of Tayside Police
Case No: 200600075
Decision Date: 28 June 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
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Decision 094/2007 Mr Findlay and the Chief Constable of Tayside Police

Request for information about the number of vehicles caught speeding and the revenue raised by two fixed safety cameras on the A9, as well as revenue data on all fixed safety cameras in Tayside area – withheld on the basis of section 39(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) – Commissioner found that Tayside Police had partly complied with Part 1 of FOISA

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002 sections 1(1) (General entitlement); 2 (Effect of exemptions); 15(1) (Duty to provide advice and assistance); 17(1) (Notice that information is not held); 35(1) (Law enforcement) and 39(1) (Health, safety and the environment).

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Decision 030/2006 Mr David Ewen of the Evening Express and the Chief Constable of Northern Constabulary

Facts

Mr Russell Findlay, a journalist with the Sunday Mail, emailed the Chief Constable of Tayside Police (Tayside Police) requesting information on the numbers of vehicles caught, and the revenue raised, by two fixed safety cameras on the A9. In addition, Mr Findlay requested information on the total number of fixed safety cameras in the Tayside area and the total revenue generated by each of these cameras in each of the last five years (as of September 2005). Tayside Police informed Mr Findlay that there were 17 fixed safety cameras in the Tayside area but withheld the rest of the information he requested in terms of section 35(1)(a) and (b) and section 39(1) of the Freedom of Information (Scotland) Act 2002 (FOISA).

Following an investigation, the Commissioner found that Tayside Police had largely dealt with Mr Findlay's request for information in line with Part 1 of FOISA because most of the information requested was exempt from disclosure under the exemption in section 39(1). However, with respect to one part of Mr Findlay's request, the Commissioner found that Tayside Police had breached the requirements of sections 15(1) and 17(1) of FOISA. The Commissioner required information relating to the revenue generated by paid fixed penalty notices issued from fixed safety cameras to be disclosed to Mr Findlay.

Background

1. This decision is concerned with information relating to the operation of fixed cameras by the Tayside Safety Camera Partnership (the Partnership). Before going on to consider the specific request in more detail, it is worth providing some background information on the Partnership and its operations.
2. The Partnership was launched in July 2003 and comprises Angus Council, Dundee City Council, Perth and Kinross Council, the Scottish Executive and Tayside Police with support from NHS Tayside, Tayside Fire Brigade and the Scottish Ambulance Service. The Partnership aims to reduce the number of road casualties on Tayside's roads by encouraging and educating motorists to drive within permitted speed limits.
3. Tayside Police is the lead agency in the Partnership, and the information under consideration in this case is held for the purposes of FOISA by Tayside Police.

The Information Request

4. On 1 September 2005, Mr Findlay submitted an information request to the Tayside Police requesting information about fixed safety cameras in the Tayside area. Mr Findlay requested:
 - a) The number of vehicles that have been issued with fixed penalty tickets from a specific fixed safety camera (Camera A) on the northbound lane of the A9, since this camera has been in place (to the date of the request) .
 - b) The total amount of revenue raised by Camera A since it has been in place.

- c) The number of vehicles that have been issued with fixed penalty tickets from a specific fixed safety camera (Camera B) on the northbound lane of the A9, since this camera has been in place.
 - d) The total amount of revenue raised by Camera B since it has been in place.
 - e) The total number of fixed safety cameras in the Tayside area.
 - f) The total revenue raised in each of the last five years (as of September 2005) from fixed safety cameras in Tayside.
 - g) The amount of revenue raised by each fixed safety camera in each of the last five years (as of September 2005)
5. Tayside Police responded to Mr Findlay on 28 September 2005, providing an answer to request e) but refusing the remainder of his requests in terms of sections 35 and 39 of the Freedom of Information (Scotland) Act 2002 (FOISA). However, I note that this refusal notice contained no reference to the public interest as required by section 16(2) of FOISA.
 6. Mr Findlay requested a review of its decision on 29 September 2005 but he did not receive a response within 20 working day period specified in section 21(1) of FOISA, and on 11 January 2006 he contacted my Office to ask me to investigate this matter.
 7. On 19 January 2006, my staff issued an Information Notice to Tayside Police, requiring it to inform my office of the reason for its failure to respond to Mr Findlay's request for review.
 8. Tayside Police wrote to Mr Findlay on 3 February 2006, apologising for the delay and notifying him of the outcome of a belated review of his request. Tayside Police upheld its original decision to withhold the requested information, but advised Mr Findlay that the information was now being withheld in terms of sections 34(1)(a) and (b) and 39(1) of FOISA. Tayside Police therefore appeared to withdraw its reliance on the exemptions provided for in section 35. The reviewer also went on to explain in some detail the reasons for his conclusion that the public interest in maintaining the exemptions cited outweighed the public interest in the disclosure of the information.
 9. As part of its review, and in response to request f), Tayside Police provided Mr Findlay with copies of the Fixed Penalty Notices Hypothecation reports for the first two years of operation of the Partnership (2003/04 and 2004/05), which contained details of the combined annual revenue raised by the Partnership from both mobile and fixed safety cameras in Tayside.

10. Mr Findlay wrote to my office on 4 February 2006 applying for a decision as to whether Tayside Police had breached Part 1 of FOISA in withholding information in response to his requests a), b), c), d), f) and g). Mr Findlay's new application was then validated by establishing that he had made a valid information request under FOISA to a Scottish public authority (i.e. Tayside Police) and had appealed to me only after asking that authority to review its response to his request. The case was then allocated to an investigating officer.

The Investigation

11. A letter was sent to Tayside Police on 7 April 2006, in terms of section 49(3)(a) of FOISA, giving notice that an appeal had been received and that an investigation into the matter had begun. Tayside Police was asked to provide, among other items, a detailed analysis of its use of the exemptions under section 34(1)(a), 34(1)(b) and 39(1) of FOISA. Tayside Police was also asked to provide a detailed analysis of its consideration of the public interest test in relation to these exemptions, and was invited to comment on the matter raised by Mr Findlay and on the application as a whole.
12. In its response of 28 April 2006, Tayside Police informed me that it wished to withdraw its use of the exemptions in sections 34(1)(a) and 34(1)(b) and that it now (again) wished to rely upon the exemptions in sections 35(1)(a) and (b) alongside that in section 39(1). Tayside Police also asserted that it did not hold any recorded information which could be provided in response to request f), beyond that described under paragraph 9 above.
13. Additionally, Tayside Police provided an explanation of its decision to withhold the information in terms of sections 39(1), 35(1)(a) and (b) of FOISA and it provided evidence to support its decision, including extracts from two reports that offer statistical information on fixed-site safety cameras.
14. In further correspondence between January and June 2007, the investigating officer asked Tayside Police to provide further background information on the information it held relating to revenue raised by safety cameras.

15. In its submissions to my office, Tayside Police noted that the subject matter of this case was near identical to that considered in my previous decision 030/2006 Mr David Ewen of the Evening Express and the Chief Constable of Northern Constabulary. In that decision, I accepted that information about the number of drivers caught speeding at each fixed camera location in Grampian in 2004-5 was exempt from disclosure under the terms of sections 35(1)(a), 35(1)(b) and 39(1) of FOISA. The arguments put to me in that case were broadly similar to those made by Tayside Police in this case.
16. My decision 030/2006 provides background information on the operation of fixed safety cameras. The deterrent effect of these devices is a product of their visible presence, combined with drivers' awareness that they *may* be operational at any time. It is generally known, however, that only some safety cameras will be operational at any time. In its submissions in this case, Tayside Police have also drawn my attention to some of the statistical evidence set out in 030/2006 about the effectiveness of fixed safety cameras in reducing both the number of speeding vehicles and accidents at sites where they are located. I will not repeat this background information here.

The Commissioner's Analysis and Findings

17. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Findlay and Tayside Police and I am satisfied that no matter of relevance has been overlooked.

The application of 39(1) – Health and safety

18. In order for a public authority to be able to rely on this exemption, it must show that disclosure of the information would, or would be likely to, endanger the physical or mental health or the safety of an individual. I consider that this exemption is sufficiently broad to cover information that may indirectly harm a person or group of persons. It is broad enough to cover harm which would occur in the future as well as immediate harm. Danger to physical health could mean a danger to a person as a result of physical injury, illness or disease.

19. The exemption contained in 39(1) is also a qualified exemption which means that the application of this exemption is subject to the public interest test required by section 2(1)(b) of FOISA. Where a public authority finds that this exemption applies to information that has been requested, it must go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption. If the two are evenly balanced, the presumption should always be in favour of disclosure.
20. I shall now consider Mr Findlay's unfulfilled requests in terms of section 39(1) of FOISA.

Requests a) and c) The number of vehicles that have been issued with fixed penalty tickets from two separate fixed safety cameras (Camera A and Camera B) on the northbound lane of the A9

21. Tayside Police contended that release of information of this type would allow drivers to predict which locations they are less likely to be caught speeding at, and may encourage drivers to increase their speeds at those locations where it is perceived that there is a lesser likelihood of being issued with a fixed penalty notice.
22. Tayside Police argued that if the general public were made aware of how many fixed penalty tickets had been issued by Camera A or Camera B, then individuals would be able to conduct a crude risk assessment of how likely they were to be caught speeding at those locations. Further, if they then cross-referenced this knowledge with publicly available information on traffic volume, a more informed risk assessment could take place. Tayside Police asserted that the release of this information could lead to more drivers increasing their speed at particular safety camera sites, as a result of their fear of being caught being lessened.
23. Tayside Police further argued that as the selection of safety camera sites is based on a combination of the incidence of speeding at the location as well as the history of accidents, any information that encourages the use of higher or excessive speeds at those sites is likely to result in an increase in injuries to pedestrians and road users. The Police asserted that clearly this would endanger the physical health and safety of individuals in those situations, and that the requested information should therefore be exempt in terms of section 39(1) of FOISA.
24. After considering the arguments, I concur with Tayside Police's view that the disclosure of information of this type would or would be likely to result in a change in driver behaviour, and that any such change would be likely to endanger the physical health or safety of individuals. I am therefore satisfied that the information requested by Findlay in request a) and c) is exempt under section 39(1) of FOISA,

Requests b), d) and g) The total amount of revenue raised by Camera A and Camera B since they have been in place and the amount of revenue raised by each fixed safety camera in each of the previous five years

25. Tayside Police argued that if the total amount of revenue raised by Camera A and Camera B is known, then it would be relatively straightforward for someone to determine how many fixed penalty notices had been issued by each camera, as they would simply have to divide the total revenue raised by the cost of a fixed penalty notice. The information sought by request g) would allow a similar calculation to be made for all fixed safety cameras in the Tayside Police area.
26. I accept that this is the case, and therefore I am satisfied (for the same reasons set out above) that the information requested by Findlay in request b), d) and g) is also exempt under section 39(1) of FOISA.
27. As I am satisfied that the information sought in relation to request a), b), c), d) and g) is exempt under section 39(1), I am now required to go on to consider the public interest test.

Public Interest Test

28. In considering the public interest test, Tayside Police looked at the public interest in disclosing the information and the public interest in withholding the information. It then sought to balance this to determine whether the public interest in withholding the information outweighs that in disclosing the information. The arguments raised by Tayside Police are detailed below:

For disclosure

- **Accountability:** It would be in the interest of the public to be aware of how Tayside Police implemented its safety camera programme and how public funds in this area are raised and utilised.
- **Public awareness:** it would be in the interest of the public to be aware of the deployment of fixed safety cameras and to have accurate information in this area of public debate.

Against disclosure

- **Health and safety of individuals:** It is not in the interest of the public for Tayside Police to release information that leads to an increase in the number of injuries to road users and pedestrians caused by speeding vehicles.

After balancing the arguments in favour of and against disclosure, Tayside Police concluded that the prevention of crime and safeguarding of health and safety of individuals are more important than release of information to enable public awareness and accountability. Tayside Police asserted that as it disclosed information to Mr Findlay about the total revenue raised by both mobile and fixed safety cameras by the Partnership in 03/04 and 04/05, it has addressed issues of public accountability.

29. In taking into account the submissions from Tayside Police and Mr Findlay, I have considered the public interest arguments in favour of disclosing the information. I have also taken into account the general public interest in ensuring that authorities are as open and accountable as possible in their dealings with the public. However, on consideration of these issues, it is my view that the argument put forward by Tayside Police - that it is not in the interest of the public to release information which leads to an increase in the number of injuries to road user and pedestrians caused by speeding vehicles - significantly outweighs the countervailing public interest arguments in favour of disclosure.
30. I am therefore satisfied that Tayside Police has applied the public interest correctly in this case and that the exemption should be maintained.

The application of 35(1)(a) and (b) in respect of requests a), b), c), d), and g)

31. Given my findings in relation to the exemption in section 39(1), and the conclusions of my previous decision 030/2006, I do not consider it necessary to address the application of 35(1)(a) and 35(1)(b) cited by Tayside Police in relation to the information requested in Mr Findlay's a), b), c), d), and g) and will not do so.

Request f)

32. In the course of my investigation, Tayside Police indicated that it does not hold information that would satisfy part f) of Mr Findlay's request. This sought the total revenue raised in each of the last five years (as of September 2005) from all fixed safety cameras in Tayside.
33. Following its review of Mr Findlay's request, Tayside Police released to Mr Findlay copies of Fixed Penalty Notices Hypothecation reports for the first two years of operation of the Partnership (2003/04 and 2004/05). These reports contained details of the annual revenue raised by the Partnership by both mobile and fixed safety cameras in Tayside. These reports did not identify the portion of that revenue raised solely by fixed safety cameras. Tayside Police's response to Mr Findlay's request for review noted that this was the case, but it did not make clear whether equivalent information concerning fixed safety cameras only was held.

34. The investigating officer contacted Tayside Police in January 2007 to clarify whether it held the annual total revenue for fixed safety cameras for the time period specified by Mr Findlay. In response, Tayside Police asserted that it did not hold the requested information.
35. In a series of exchanges, Tayside Police explained that once a speeding offence from a fixed-site camera occurs, the details are entered into its computerised system. After the driver has been identified, Tayside Police will issue the driver with either a conditional offer (£60 fine and 3 penalty points) or a notification of prosecution. As soon as the conditional offer is paid, the Court updates the Tayside Police computer system. If the conditional offer is not complied with within the time limit a report will be sent to the Procurator Fiscal. Tayside Police is not notified of the outcome of any cases which are dealt with by the Procurator Fiscal and its computerised system is not updated.
36. Therefore, Tayside Police argued that it cannot provide Mr Findlay with the 'total revenue' raised by fixed safety cameras in Tayside (as of September 2005) as its computerised system only keeps a record of the monies raised through paid conditional offers, and it has no record of the monies raised following a referral to the Procurator Fiscal. The figures set out in the Fixed Penalty Notices Hypothecation reports therefore do not represent the total revenue raised by the cameras, but only that returned to the Partnership. Tayside Police informed me that monies raised through the Courts are returned to the Treasury in full, and are not paid back into the Partnership.
37. I accept that, on a strict and narrow reading of Mr Findlay's request, Tayside Police has correctly asserted that it does not hold details of the 'total revenue' raised by fixed safety cameras in the Tayside region. As such, the overall sum requested by Mr Findlay is not held by Tayside Police for the purposes of FOISA. However, I have found Tayside Police's interpretation and handling of this part of Mr Findlay's request to be unhelpful to Mr Findlay.
38. I would first of all note that by failing to clearly advise Mr Findlay that this information (as strictly interpreted by Tayside Police) was not held, Tayside Police failed to comply with the requirements of section 17(1) of FOISA. This section requires that where information requested is not held by an authority, the authority notifies the applicant of that fact. Neither Tayside Police's initial response nor its response to Mr Findlay's request for a review made clear that it believed that the total revenue raised by individual or all safety cameras was not held.

39. I have also judged that in its handling of this part of the request, Tayside Police failed to comply fully with its duty to provide advice and assistance to applicants under the terms of section 15 of FOISA. During my investigation, it became clear that, while Tayside Police may not hold details of the 'total revenue' raised by fixed safety cameras, it does hold information on the sums raised by paid fixed penalty notices over the period from the financial year 2003-04 when the Partnership first came into existence.
40. In partial response to Mr Findlay's request, Tayside Police provided Fixed Penalty Notices Hypothecation reports detailing the total monies raised over two financial years by paid fixed penalty notices issued by mobile and fixed safety cameras. By providing this information, Tayside Police clearly recognised that it would go some way towards providing Mr Findlay with information that was relevant to his interests. However, no mention was made that the Police also hold this same information broken down according to the type of camera from which the fines were raised. Had a more helpful approach or generous interpretation been taken in relation to Mr Findlay's request, I believe this information, to the extent that it was held, would have been identified also as relevant to Mr Findlay's interests and request.
41. In its submissions to my office, Tayside Police confirmed that it does hold details of the total monies raised in the financial years 2003-04 and 2004-05 solely by fixed safety cameras in response to paid fixed penalty notices, but that it considered this information to be exempt under section 35 and 39 of FOISA. This was not made clear in Tayside Police's correspondence with the applicant, in which its explanations of the application of exemptions to information requested all referred to the harmful effects of disclosure of individual camera-related data. No reasons were given as to why this more general data should be withheld.
42. In explaining to my office why it considered this more general information to be exempt, Tayside Police argued that if the amount of money raised by paid conditional offers issued by fixed safety cameras were released to the public, there would be a real risk that this information may be used to encourage further acts of criminal vandalism. Tayside Police maintained that there is an escalating campaign of fixed camera vandalism in both Scotland and England and that in 2006 Tayside Police lost one fixed camera through criminal vandalism. Tayside further argued that vandalism of fixed cameras is a major concern as they are placed at sites with a history of road traffic collisions and casualties, and that criminal damage places all road users at risk.

43. I have considered these points and I am not persuaded that any exemption applies to information held regarding the revenue generated by fixed penalty notices prompted by fixed safety cameras. Information is already in the public domain about the global sums raised by the Partnership's cameras and I have seen no evidence to suggest that a further disclosure of the total for fixed cameras only would prompt an increase in vandalism against these units. As these sums do not relate to individual sites, I do not consider the arguments for the application of section considered earlier in this decision to be relevant to my consideration of this more general information.
44. In the circumstances, I believe it would have been reasonable under the terms of section 15 of FOISA for Tayside Police to respond to part f) of Mr Findlay's request by explaining:
- a) That it was unable to provide a definitive figure revealing the total revenue raised by its fixed safety cameras;
 - b) Why this was the case given the arrangements for the distribution of revenue raised through fines prompted by safety camera activities;
 - c) That it did hold information about the fines paid in response to fixed penalty notices issued following detection by fixed safety cameras for the financial years for which the Partnership had been in existence
 - d) That these figures would underestimate the total revenue generated by these cameras, because a portion would have been paid directly to the Treasury by the courts.
45. I have concluded that Tayside Police has interpreted part f) of Mr Findlay's request in a manner that is incompatible with the duty under section 15 of FOISA. In order to rectify this situation, I now require Tayside Police to write to Mr Findlay providing an explanation of the scope and limitations of the information it holds in relation to the revenue raised by its fixed safety cameras on an annual basis.
46. Having judged this information to be
- a) relevant to (albeit not enabling a complete fulfilment of) Mr Findlay's request f, and
 - b) not exempt from disclosure,
- I also require Tayside Police to provide to Mr Findlay details of the total revenue returned to the Partnership following payment of fixed penalty notices in the financial years 2003-04 and 2004-05 following detections by fixed safety cameras.
47. I require Tayside Police to take these steps within 45 days of the receipt of this decision.

Technical breaches of FOISA

48. From the points summarised in paragraphs 6 to 8 of this decision, it is clear that Tayside Police did not respond to the applicant's request for review within the twenty working days stipulated in section 21(1) of FOISA. I am satisfied therefore that the initial failure to provide a response to Mr Findlay's request for review of 29 September 2005 constituted a breach of section 21(1) of FOISA.
49. I accept, however, that there was no deliberate attempt on the part of Tayside Police to deny the applicant the right to review. Rather, there was a breakdown in the administration systems within Tayside Police. I am advised that this has since been remedied and that no further lapses are anticipated.
50. I am satisfied that Tayside Police subsequently conducted a review of Mr Findlay's request (and apologised for its initial oversight in this respect), and I do not require any steps to be taken in response to this technical breach.

Decision

I find that the Chief Constable of Tayside Police (Tayside Police) dealt with Mr Findlay's requests for information partly in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in that it correctly applied (and subsequently maintained) section 39(1) to the information withheld in response to his requests a), b), c), d) and g).

However, I find that Tayside Police acted in breach of the requirements of Part 1 of FOISA in its handling of part f) of Mr Findlay's request.

Tayside Police failed to advise Mr Findlay that it did not hold complete details of the total revenue raised by fixed safety cameras in Tayside. In doing so, it failed to comply with the requirements of section 17(1) of FOISA.

I also find that Tayside Police failed to comply with its duty under section 15 of FOISA to provide advice and assistance Mr Findlay in relation to this part of his request, by interpreting this request in a highly restrictive manner and by failing to identify and explain that information was held that could provide a partial response to his request. I now require Tayside Police to take the steps set out in paragraphs 45 and 46 of this decision within 45 days of the receipt of this decision notice.

In addition, I find that Tayside Police failed to comply with Part 1 of FOISA by failing to respond to a valid request for review within twenty working days as required by section 21(1) FOISA. I do not require Tayside Police to take any action as a consequence of this technical breach.

Appeal

Should either Mr Findlay or Tayside Police wish to appeal the decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
28 June 2007

Appendix

Relevant Statutory Provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
 - (a) the provision does not confer absolute exemption; and
 - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

17 Notice that information is not held

- (1) Where –
 - (a) a Scottish public authority receives a request which would require it either –
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 1(1),if it held the information to which the request relates; but
 - (b) the authority does not hold that information

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

35 Law enforcement

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially –

- (a) the prevention or detection of crime;
- (b) the apprehension or prosecution of offenders;

39 Health, safety and the environment

(1) Information is exempt information if its disclosure under the Act would, or would be likely to, endanger the physical or mental health or the safety of an individual.