

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 11 December 2006

Public Authority: The Chief Officer of Cheshire Constabulary
Address: Constabulary Headquarters
Clemonds Hey
Winsford
Cheshire
CW7 2UA

Summary

The complainant requested information related to the number of prosecutions that came about as a result of a particular safety camera. The Police withheld this information under sections 31 and 38. After consideration of whether these exemptions were applied correctly, including consideration of the public interest, the Commissioner has upheld the decision of the public authority to withhold this information. However, the Commissioner does find that section 17 was breached when the public authority failed to issue an adequate refusal notice.

The Commissioner's Role

1. 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 the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

2. The request, dated 28 September 2005, asked for the following information:
 - "1. The accident record at the **[A34 Congleton Rd/Chelford Rd, Monks Heath]** junction in the 12 months prior to the installation of the camera.
 2. The accident record over the last period of 12 months – or the period in which the camera has operated, if less than 12 months.
 3. The number of prosecutions for the offence of passing on red over the period relating to number 2 above."

3. The public authority responded to this request on 12 October 2005. This response stated that the information identified in part 3 of the request would not be provided as it was not in the public interest to do so. This response did not identify under which section of the Act information had been withheld and did not state the reason for claiming that the public interest favoured the withholding of the information requested.
4. The public authority responded to parts 1 and 2 of the request, providing to the complainant the information requested. The responses to parts 1 and 2 of the request are not considered in this notice.
5. Following further correspondence exchanged between the complainant and the public authority, the public authority responded on 2 December 2005. This response identified the exemptions applied as sections 31 and 38 and also stated the reasons why the public interest was not considered to favour disclosure. Given that this response was the culmination of an exchange of correspondence between the complainant and the public authority in which the complainant sought clarification of why information had been withheld, the Commissioner considers this to have fulfilled the purpose of an internal review and has not required the complainant to contact the public authority again to specifically request an internal review.

The Investigation

Scope of the case

6. On 6 December 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - The withholding of information as exempt.
 - The failure to adequately explain the reasons for withholding information.

Chronology

7. The public authority was contacted in connection with the complaint on 15 June 2006. This letter asked for a copy of the withheld information and for any submissions that the public authority wished to make in support of their stance.
8. The public authority responded on 29 June 2006. This response included the information that had been withheld and also gave further clarification about the position of the public authority in relation to the information request and about their considerations of the public interest. The public authority advanced the following arguments in favour of withholding the information requested:
 - Public awareness of enforcement frequency and patterns at camera sites would lead to increased average speeds.

- This increase in average speed would jeopardise the safety of road users.
 - This stance is supported by guidance from the Association of Chief Police Officers.
 - The public authority also cited evidence showing the effectiveness of safety cameras in reducing road accidents and emphasised that this effectiveness relies of the public being unaware of when the camera is in operation.
 - The public authority stressed that all camera sites, including that about which information has been requested, have a history of a high accident rate.
9. The Commissioner contacted the complainant by letter dated 15 June 2006. The Commissioner referred the complainant to a previous Decision Notice issued by the Commissioner in a comparable case; Hemsley and the Information Commissioner and The Chief Constable of Northamptonshire. In this comparable case, the Commissioner had ruled that information relating to a specific safety camera should be withheld. This ruling was later upheld by the Information Tribunal. The complainant was invited to reply with his arguments as to why he believed that the information withheld from him should be disclosed. Links to the Decision Notice and Tribunal Judgement in the case of Helmsley and the Information Commissioner are given below.
- http://www.informationtribunal.gov.uk/our_decisions/documents/hemsley_judgment.pdf
- http://www.informationcommissioner.gov.uk/cms/DocumentUploads/Decision_Note_66050.pdf
10. The complainant responded on 26 June 2006. The complainant advanced the following arguments for why he believed that the information withheld should be disclosed to him:
- The complainant believed that the case of Hemsley and The Information Commissioner and Northamptonshire Police differed from this case to such an extent that any precedent set in the Hemsley case was not relevant to this case.
 - The Hemsley case referred to a safety camera put in place to monitor speed; in this case the camera is intended to monitor compliance with traffic lights.
 - The complainant believed that the camera in question was intended to be a 'revenue machine' and did not serve any genuine safety purpose.
 - The complainant believes that many of the prosecutions that come about as a result of the camera in question are not serious as they involve a vehicle passing through the traffic lights on the change over between amber and red. The complainant does not believe that such an offence would jeopardise health and safety as a vehicle passing through the traffic lights during the change from amber to red would be well beyond the junction prior to the corresponding lights changing to green.

Findings of fact

11. The public authority cited sections 31 and 38 of the Act and believes that the public interest favours the withholding of the information that these sections applies to.
12. The public authority did not identify the sections of the Act under which information was withheld when initially responding to the information request. Neither were details of its consideration of the public interest test provided at that time.
13. The complainant does not believe that the camera at this site fulfils a genuine safety purpose and thus it would not jeopardise safety to release details about prosecutions at this site.
14. The complainant believes that the camera at this site is intended only to generate revenue.

Analysis

Procedural matters

15. Section 17(1) of the Act requires that, where a public authority is citing an exemption, it should state that an exemption applies, identify the section of the Act which provides the exemption in question and state why the exemption applies. Section 17(3) requires that, where the exemption is subject to the public interest test, the public authority should state why it considers that the public interest does not favour disclosure.
16. In this case, the public authority did not state which exemptions were believed to apply, nor did it give any details of its considerations of the public interest.

Exemption

17. Section 31 of the Act provides an exemption from the requirement to disclose information that prejudices law enforcement. The public authority in this instance has cited sections 31(1)(a), which relates to information the disclosure of which would be likely to prejudice the prevention or detection of crime, and section 31(1)(b), which relates to information the disclosure of which would be likely to prejudice the apprehension and prosecution of offenders.

Is the release of this information likely to prejudice law enforcement?

18. 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 is persuaded 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.
19. The public authority believes that analysis of the requested information, which shows how many drivers have been prosecuted for offences in a particular location, would indicate how often offences at that location are acted upon. It would be 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 data.
 20. In this case, the complainant has requested “non comparative” information. That is, the information requested related only to a single site, rather than several. The Commissioner recognises that this information, in isolation, could not be used to build up a picture of comparative enforcement rates between camera sites. However, he believes that if information is released about this camera site, the public authority would find it difficult to resist a request for prosecution figures relating to other sites on the A34 in the Alderley Edge / Congleton area. By comparing prosecution figures from more than one camera site, it would be possible to build up a picture of the comparative likelihood of prosecution at individual camera sites.
 21. In *Hemsley vs The Information Commissioner and Northamptonshire Police*, the Information Tribunal made the following comment regarding precedent setting:

“Moreover, we are impressed by the argument as to setting a precedent. Whilst every request must be dealt with on its merits, if this request were granted, it is not hard to envisage the difficulties faced by police authorities in dealing with future requests for such information, justified more or less plausibly, as designed to test the efficacy of signs, the hazards posed by weather conditions or the vigilance of drivers at particular times of day. It might be difficult to distinguish between the public spirited motivation of such as the appellant [who had concerns about adequacy of signage at the site in question] and others whose purpose was less admirable, for example the creation of a commercial website selling forecasts on the operation of safety cameras.” (Paragraph 23).
 22. The Commissioner is satisfied that the exemption under s31 applies. As stated above in paragraph 20, the Commissioner believes that the release of information in this case could set a precedent resulting in the release of information relating to other camera sites. As the above comment from the Information Tribunal shows, the Tribunal is concerned about precedent setting in cases where information relating to safety cameras has been requested.

Public Interest Test

23. 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. The Commissioner recognises that the police do not keep safety cameras on permanently 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.

24. It is not the Commissioner's role to adjudicate in the ongoing debate about the purpose and efficacy of safety cameras although he recognises that there is a public interest in informing this debate at both a local and national level. He acknowledges that many road users have genuine concerns about national road safety policies and strategies and wish to challenge those policies using relevant information.
25. However, in the Commissioner's view, the release of the information requested here would not contribute significantly to that debate. He is satisfied that in the circumstances of this case, the public interest in maintaining the law enforcement exemption outweighs the public interest in disclosing the requested information.

Is the release of this information likely to endanger the health and safety of any individual?

26. If, after analysing the requested information, a driver chooses to ignore a red light, is there, as a consequence, likely prejudice to the health and safety of any individual? It is clear that ignoring a red light would be likely to prejudice health and safety and this persuades the Commissioner that the s38 exemption applies. In other words, the Commissioner is satisfied that the release of this information would be likely to result in increased accident numbers where drivers, making use of the requested information, risk ignoring a red light.

Public Interest Test

27. The Commissioner also believes that the increased likelihood of risk to the health and safety of any individual is, of itself, a powerful public interest argument against disclosure, as is the increased likelihood that the criminal law would be broken as an indirect consequence of the release of the requested information.
28. The complainant has advanced 2 arguments for why the information should be released. Firstly, he has suggested that cars that pass through the traffic lights on the change over between amber and red will be well beyond the junction by the time the corresponding light has changed to green. The complainant believes that this indicates that many offences of ignoring a red light are not serious. The Commissioner notes, however, that passing through a set of traffic lights on the change over between amber and red is an offence, regardless of the complainant's opinion that such an offence would not be serious.
29. Secondly, the complainant has argued that the camera was installed solely to generate revenue rather than as a safety measure. There is no evidence

available to the Commissioner that suggests that this is the case and so this argument is not considered persuasive. The Commissioner also notes the information about finances given in the 2006 annual report of the Cheshire Safety Camera Partnership, which can be read at <http://www.cheshiresafecam.org.uk/media/documents/pdf/2006%20annual%20report.pdf>. This report explains that, in common with other Safety Camera Partnerships, the funds generated from fines issued as a result of safety cameras are paid to the Department for Transport. The Safety Camera Partnership must then claim "legitimate running costs" from the Department for Transport. Figures included in the aforementioned annual report confirm that the amount granted to the Safety Camera Partnership for "legitimate running costs" is significantly less than the amounts generated through the payment of fines. The Safety Camera Partnership does not have direct access to the funds generated by safety cameras.

30. The Commissioner believes there is a strong public interest in avoiding the likely increased risk to the health and safety of any individual and the likely increase of non-compliance with road traffic laws. The Commissioner believes that this outweighs the arguments in favour of the release of the requested information.

The Decision

31. The Commissioner's decision is that the public authority complied with the Act when withholding information under sections 31 and 38.
32. However, the Commissioner also finds that the public authority failed to comply with section 17 by not issuing an adequate refusal notice.

Steps Required

33. The public authority are not required to take steps in connection with their breach of section 17 as this issue was resolved when the public authority provided the reasons for the refusal in their letter to the complainant of 2 December 2005.
34. The Commissioner does not, therefore, require steps to be taken.

Right of Appeal

35. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 11 day of December 2006

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**