

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 7 September 2009

Public Authority: The Chief Constable of Cambridgeshire Constabulary
Address: Cambridgeshire Constabulary
Hinchingsbrooke Park
Huntingdon
PE29 6NP

Summary

The complainant made four requests to the public authority. The Commissioner's investigation has been confined to requests (A), (C) and (D). In relation to request (A) the public authority withheld this information under section 31 and section 38 of the Act. In relation to request (C) the public authority informed the complainant that this information was exempt under section 40(2). In relation to request (D) the public authority provided some information but insisted that the other information was not held. During the Commissioner's investigation the public authority informed him that it did not hold any information in relation to request (C) and he is satisfied that no information relating to request (C) was held by the public authority at the time of the request.

For request (A) the Commissioner finds that the information was correctly withheld under section 31(1)(a) and (b). The Commissioner also found that the public authority did not hold any information in relation to request (D). The Commissioner has also concluded that it would not have been reasonable to expect the public authority to have provided further advice and assistance to the applicant and therefore the public authority did not breach section 16(1). The Commissioner does not require any remedial steps to be taken in this case.

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 complainant made a series of requests to the public authority, and has complained to the Commissioner about how the public authority responded to four of them. For ease of reference these will be referred to as requests (A) to (D) throughout the rest of this Notice.

Request (A)

3. On 4 May 2007 the complainant requested the following in an email to the public authority:

"Please provide me with information in respect of the GATSO Speed Camera located at the Avenue, March, Cambridgeshire.

1. *How many speeding offences did it detect, by time, along the Avenue, March Northbound on [date redacted].*
 2. *How many speeding offences did that same camera detect, by time, along the Avenue March South Bough on [date redacted].*
 3. *Please specify in each direction of the offences detected on both North Bound and South Bound in the following groups 30mph to under 35 mph, 35 mph to under 40 mph and over 40 mph.*
 4. *How many of the drivers detected speeding at or under 40 mph have been notified of the Safety Partnerships intention to [prosecute] them."*
4. On 22 May 2007, the public authority responded to request (A). It informed the complainant that section 31 and section 38 applied, and therefore the information was exempt from disclosure. In its public interest test it indicated that it was citing parts (a) and (b) of section 31. It failed however to mention the subsection of section 31(1). The failure to cite the exemption fully will be discussed in paragraph 43 below. It also provided arguments as to why it believed the public interest in maintaining the exemption outweighed the public interest in disclosure. It also referred the complainant to three of the Commissioner's earlier Decision Notices on requests for information about site specific speed camera information.¹
 5. On 22 May 2007 the complainant requested an internal review into the handling of this request. He made three comments about the applicability of the exemptions:
 - In the three Decision Notices that the public authority referred to the requests for information were not date specific. His case was different as it specified one date in the past.

¹ FS50098965, FS50086169 and FS50066050. These are available on the Commissioner's website at www.ico.gov.uk

- Section 31 could not apply as the crimes were already committed and the suspects already prosecuted, as it was a date set in the past.
- Section 38 could not apply as the crimes were already committed and any harm had already occurred.

Request (B)

6. On 5 May 2007 the complainant requested the following in an email to the public authority:

- “1. Please provide me with a Certified True Copy of the contempt interview under caution statement/ interview notes in respect of CF0317240605 held at Ramsey Police Station on 25th July 2005. Present at that interview were [Sgt’s name redacted, PC’s name redacted, Solicitor’s name redacted, trainee solicitor’s name redacted] and my good self.*
- 2. Please supply me with an unredacted Certified True Copy of Full Crime Report CF0317240605 created on 10/06/2005. I have all the personal data of [name redacted] and [name redacted] as they are both public employees. I am particularly interested in [Sgt’s name redacted] and [name redacted] of the Crown Prosecution Service formal input in this Crime Report.*
- 3. I am aware that [Sgt’s name redacted] and [PC’s name redacted] attended a meeting at Ramsey Town Council on 9th June 2005 in respect of this Crime CF0317240605 and I require a copy of the minutes, in particular their input, of that meeting. The Town Clerk passes a copy to Ramsey Police Station as a matter of course.”*

7. On 17 May 2007 the public authority provided a partial response to request (B). In relation to the first two parts it informed the complainant that this was his personal data. It also noted that it had previously dealt with the first two parts of this request under section 7 of the Data Protection Act 1998 (the “DPA”) and provided additional information about that process. Finally it informed him that the third part of his request was still being considered under the Act.

8. On 5 June 2007 the complainant requested an internal review into the handling of request (B). He also made further comments:

Part one: he informed the public authority that his request complied with the formal requirements under the Freedom of Information Act and the DPA and that he was dissatisfied with the response under the DPA.

Part two: he informed the public authority that he was dissatisfied with the response under the DPA.

Part three: he said that:

1. He believed there was a closed meeting on 9 June 2005 where the council discussed the meeting on 8 June 2005.
2. *“Cambridgeshire Constabulary DO have a typed copy of the ‘contemporaneous notes’ of the meeting held at the Ramsey Community Centre between Cllr [name redacted], Town Clark [person redacted] and my good self. Those ‘contemporaneous notes’ however were drafted sometime after the Meeting and not ‘contemporaneous hand written’ at the meeting attended by [name redacted], [person redacted] and myself on 8th June 2005 between 15:30 and 16:00. In summary those ‘contemporaneous notes’ are not a true and fair witness statement of the Meeting held on Wednesday 8th June 2005. I wish to make a strong Appeal on this question....in short the Public Interest Test to disclose all the information totally outweighs the test to withhold.”*
9. On 5 July 2007, the public authority provided its response to the third part of this request and responded to the comments made in the complainant's request for internal review. It informed him that no meeting had taken place on 9 June 2005, although a meeting had taken place on 8 June 2005. It noted that it had already provided him with a typed copy of the notes of that meeting. The complainant has confirmed to the Commissioner on 16 May 2008 that he had received these typed notes of the meeting dated 8 June 2005.

Request (C)

10. On 11 May 2007 the complainant requested the following in an email to the public authority:

“Incident number 05052005/210

On or about 10th May 2005 [name redacted] attended Ramsey Police Station and handed a letter to [Sgt's name redacted]. The letter from [name redacted] was typed by [name redacted] and signed by [name redacted]

1. *Please confirm that the Constabulary still hold that letter.*
 2. *Please confirm that that letter has not been passed to [name redacted] of [company's name redacted].”*
11. On 7 June 2007 the public authority issued a refusal notice stating that it believed this information was exempt under section 40(2) of the Act. It informed the complainant that the exemption applied as it was, “a request for personal information made by a third party.” It stated that it believed that disclosure of this information would breach at least one of the principles of the DPA.
12. On 7 June 2007 the complainant requested an internal review into the handling of request (C). He informed the public authority that the information contained in that letter was Environmental Information, as defined by the Environmental Information Regulations (EIR) and the response provided should have been

qualified with a public interest test. He then informed the public authority that he considered that the decision to disclose outweighed the decision not to.

13. While it is unclear what the complainant was arguing in this request for review, the Commissioner believes he meant that the public interest considerations in favour of disclosure outweigh the public interest considerations in maintaining the exception. In this case the relevant exception for third party personal information would be found in Regulation 13(1) of the EIR (by virtue of Regulation 13(2)(a)).
14. Regulation 13(1) is an exception that applies when information is the personal information of third parties and to disclose the information would either contravene a data protection principle, as defined by the DPA, or go against a notice that satisfies the requirements of section 10 of the DPA. It is not subject to a public interest test.

Request (D)

15. On 29 June 2007 the complainant requested the following in an email to the public authority:

“Reference my telcon [sic] of [today’s] date with [Officer’s name redacted] my request was for the contemporaneous notes i.e. hand written notes of the Meeting with the [name redacted] notes of which were taken between 1530 and 1600 at the Ramsey Community Centre on 8th June 2005. This clarifies my previous request(s) on this information. As I was the last at the [surgery] you may hold minutes of other meetings before mine. Please confirm or deny you have them as I may have to revert back to the Town Clerk. Please contact me if you require further clarification on my request. The Officers who may have these notes/minutes are [Sgt’s name redacted] or [Sgt’s name redacted].”

16. On 2 July 2007 the public authority informed the complainant that it did not hold the original notes and that he should write to the Town Clerk for Ramsey Town Council, who may be able to help with his query.
17. On 2 July 2007 the complainant informed the public authority that he had serious concerns about the handling of request (D). He informed the public authority that:

*“I am looking for a public interest test by the two public bodies [*Cambridgeshire Constabulary and Ramsey Town Council] involved in this request to establish, beyond any reasonable doubt the handling of and audit trail off the original contemporaneous notes of the meeting held on 8th June 2005 between 1530 and 1600.”*

The Commissioner notes that this is not the correct test under the Act. The correct test is that the public authority must be satisfied on the balance of probabilities that it does not hold the recorded information. There is no public interest test involved. The Commissioner has gone on to consider whether this information is held on the balance of probabilities in the analysis section of this notice.

18. On 27 July 2007 the public authority conducted one internal review into the handling of the four requests above.
19. In relation to request (A) the public authority upheld its use of section 31 and section 38. It clarified that it was relying upon section 31(1) 'prejudice to law enforcement' and section 38(1)(a)(b) and (2) 'prejudice to health and safety'. It did not note any subsection for section 31(1) in its internal review.
20. In relation to request (B) the public authority stated that it was refusing the information on the following grounds:
 - part 1 of the request – section 40(1), as this information fell under the scope of his personal data.
 - part 2 of the request – as this information had previously been provided.
 - part 3 of the request – “No Information Held.”

It also informed him that if he was to make a subject access request for part 1 of the request it would be prepared to provide it without charge.

21. In relation to request (C) the public authority upheld its original decision to withhold this information under section 40(2) of the Act.
22. In relation to request (D) the public authority confirmed that it believed that this had been complied with in full, as no information was held.
23. Finally, the public authority also informed the complainant of his right to complain to the Commissioner.
24. On 21 September 2007 the complainant contacted the public authority to indicate that there were parts of the internal review that he was dissatisfied with. On 9 October 2007 the public authority explained the wording of its internal review to the complainant, explained the difference between the DPA and the Act and indicated that it felt that any further contact about the minutes that were requested in request (D) would be considered vexatious. It maintained its position that the request was complied with and referred to an earlier letter dated 12 September 2007. The Commissioner will consider this issue in the other matters section of this notice.

The Investigation

Scope of the case

25. On 20 September 2007 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

- The public authority had failed to provide him with appropriate advice and assistance.
 - The public authority had failed to take into account his valid and material considerations within its internal review.
 - The public authority had not correctly applied the exemptions.
26. The Commissioner has also considered whether the public authority has complied with its procedural obligations under section 10 and section 17 of the Act.
27. The complainant also raised other issues in relation to other public authorities that are not addressed in this Notice because they cannot be dealt with in this section 50 Notice.
28. On 16 May 2008 and 21 May 2008 the Commissioner informed the complainant that the scope of his investigation would be to investigate how the public authority had handled requests (A), (C) and (D) only. Information about why request (B) has not been further considered can be found in paragraphs 31 to 33 below.

Chronology

29. On 21 April 2008 the Commissioner asked the public authority to provide him with a copy of its arguments relating to the public interest test it had carried out in relation to request (A). This was provided to the Commissioner on 25 April 2008.
30. On 28 April 2008 the Commissioner wrote to the complainant. In relation to request (A) he referred the complainant to the Tribunal decision in *Hemsley v The Information Commissioner and the Chief Constable of Northamptonshire* [EA/2005/0026], which had upheld the application of section 31 in a case about safety cameras. He asked the complainant whether, after considering this Tribunal decision, he wished to continue with his complaint about request (A) and, if so, to provide submissions about why the case is different.
31. In this letter the Commissioner also clarified what the scope of his investigation would cover. He explained that his investigation would focus on Requests (A), (C) and (D). He stated that he would not look at request (B) because he considered the first two parts of it were likely to be his personal data and therefore exempt under section 40(1) of the Act. He also noted that the public authority had dealt with this part of his request under the correct regime (the DPA). He also informed the complainant that the third part of request (B) had been slightly reworded in request (D) and from his understanding of the complainant's previous submissions did not need to be looked at separately.
32. On 16 May 2008 the complainant replied to the Commissioner. He provided some information about various complaints against this and other public authorities. He also informed the Commissioner that he felt that request (A) was distinct from *Hemsley*, and that his other requests; (B), (C) and (D) related to the alleged

- persecution of him. In relation to (B) he confirmed that he had received the information after making a subject access request for part one and provided details about how the information in part 2 affected him. He accepted that request (D) asked for the same information as part 3 of request (B).
33. The Commissioner replied to the complainant on the same day. He informed the complainant that his investigation would only focus on how this public authority dealt with his requests for information under the Act. He emphasised that he could only look at Freedom of Information matters. He also reiterated to the complainant that the scope of his investigation would be requests (A), (C) and (D). He informed the complainant that he would not look at request (B) for the reasons stated in his earlier letter dated 28 April 2008. The Commissioner received no further communications from the complainant about the scope of his investigation.
 34. On 21 May 2008 the Commissioner informed the public authority of the scope of his investigation. He also asked the public authority detailed questions about how the information that was relevant to the request was held, for copies of the withheld information and for its arguments about its use of sections 31, 38 and 40(2).
 35. On 17 June 2008 the public authority provided detailed responses to the Commissioner's enquiries. It also provided additional information to enable the Commissioner to understand how the complaints had arisen. In this letter it indicated to the Commissioner that in trying to respond to his questions about the application of section 40(2) it had made a mistake in not obtaining the recorded information before issuing a refusal notice. It informed the Commissioner that had it done so it would have realised it did not hold the information and would have issued a not held response.
 36. On 30 June 2008 the Commissioner wrote to the public authority for clarification about its position in relation to request (C). The Commissioner asked the public authority to clarify the position in relation to its assertion that the information requested was not held and asked it to issue a further response to clarify its position to the complainant.
 37. On 4 July 2008 the public authority replied to the Commissioner and provided clarification of its position in relation to request (C). It informed the Commissioner that it had sent a further response to the complainant. This notice stated that it did not hold the letter at the time the request was made. It explained that this was because the letter was likely to have been amongst a large amount of information that had been destroyed during the refurbishment of Ramsey Police Station in June 2006. It added that it had no recorded information about whether or not the letter had been handed to the named individual. It also provided further information to support this statement, which is detailed at paragraph 50 to 58 below.
 38. On 7 January 2009, the Commissioner wrote to the public authority in order to obtain relevant documentation and to clarify three points about its handling of request (A) and its initial submissions dated 17 June 2008. The documentation

was provided on 8 January 2009 and the public authority clarified the three points about the handling of request (A) on 15 January 2009.

39. On 28 January 2009 the complainant submitted additional arguments that have been considered within this notice. On 18 March 2009 the Commissioner asked to be provided with the relevant part of the Constabulary's retention and disposal scheme for request (C). On 30 March 2009, he received the relevant part of the policy and an explanation about its relevance.

Findings of fact

40. The public authority (unlike some other public authorities) does not publicise its tolerance zones in relation to enforcement cameras.
41. The public authority does not publicise directly its enforcement strategy. It is however possible to derive from the response that it provided to the complainant that it may have an intermittent enforcement strategy. This can be done by looking at the public interest arguments that it used, which included the following three sentences:
1. *'Not all camera sites will be active all the time - some sites will be active on a rotational basis.'*
 2. *'Cameras are deployed on an intelligence lead basis.'*
 3. *'The disclosure of specific data on camera sites would make the camera deployment less effective.'*

Analysis

Procedural Elements

Section 17(1)(b)

Request (A)

42. In its refusal notice, the public authority cited section 31 of the Act as its reason for withholding all of the requested information. In a separate document where it outlined its public interest test it cited parts (a) and (b) of the exemption, but failed to cite the subsection number. In its internal review it cited just 31(1) and not the part of the subsection it was relying on. The public authority should have stated the exemption it relied on in full. This would be stating that it was relying on section 31(1)(a) and (b) in this case.
43. In failing to cite an exemption that it was relying on in full, the public authority breached the requirements of section 17(1)(b). The Commissioner does not require any remedial steps in relation to this breach.

Section 1 - What recorded information is held by the public authority?

44. The Commissioner has investigated in detail what recorded information is held by the public authority for each request:

Request (A)

45. The public authority does hold the information requested by the complainant in relation to this request. The public authority applied sections 31 and 38 to this information. The Commissioner's findings in relation to the application of these exemptions are provided further on in this notice.

Request (C)

46. The Commissioner can only look at what was held by the public authority on the date that the request was made, on 11 May 2007.

47. In investigating this request the Commissioner considered if the public authority correctly applied exemptions to the two elements of the request:

I Please confirm that the Constabulary still hold that letter.

II Please confirm that that letter has not been passed to [person redacted] of [company redacted].

48. The public authority initially relied upon section 40(2) in not providing this information to either element of the request. However it did this without conducting a full search for the letter in question or considering whether there was any information which might clarify where the letter had been passed to, if anyone. The public authority did not locate the requested information before providing a response to the request dated 11 May 2007. Instead they emailed the relevant station and asked for the officer's opinion about this matter.

49. As the Commissioner's investigation proceeded it became apparent that the public authority did not hold the letter on 11 May 2007 (element one of request (C)) and did not hold any recorded information about what happened to the letter (element two of request (C)). The public authority indicated to the Commissioner that it had applied the exemption incorrectly and that they should have told the complainant that it did not hold the letter in element one and that it held no recorded information for element two.

50. The Commissioner therefore decided to investigate whether the public authority did hold any recorded information that was relevant to the request.

51. In investigating cases where there is a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal in the case of *Bromley and Others and the Information Commissioner v Environment Agency (EA/2006/0072)*. In this case the Tribunal indicated that the test for establishing

whether information was held by a public authority was not certainty, but rather whether on a balance of probabilities, the information is held.

52. The Commissioner has been provided with detailed information about why the public authority feels that it does not hold the letter or any information about it. The public authority provided this information in its response dated 17 June 2008.
53. Firstly the public authority provided the Commissioner with the incident comments and police officer's notebook entries about the incident which generated the letter. These entries make the public authority's view clear that this was seen as a civil matter and not something that the public authority was going to look at in detail. The Commissioner is satisfied that there was no imperative business, legal or other relevant interest for the letter to be retained by the public authority.
54. The public authority informed the Commissioner that the relevant police station had undergone refurbishment in June 2006 and that it had been through three different sergeants. It also stated that during the refurbishment a lot of historical paperwork and redundant files were destroyed via the confidential shredder and that its view was that this is what happened to the letter. It was unable to provide a record of the destruction however.
55. The Commissioner also asked for the public authority's retention and disposal schedule. He was provided with the relevant part of it entitled 'General Administration'. The relevant section was part 9.7 that discussed letters and responses. This indicated that the information should be retained for 2 years and current. Current in this context means an issue that the Constabulary believe is ongoing. The Constabulary informed the Commissioner that it felt this letter related to an incident which did not require a response and therefore may not have been treated as a piece of correspondence. Further as the issue was a civil one, it did not open a crime file and therefore the letter was not attached to an investigations file and retained as part of it. The Commissioner notes however that there is less than two years between the date of the letter and its destruction and in light of its retention and disposal schedule has decided to make further comments about this issue in the other matters section of this notice.
56. The public authority also provided the Commissioner with a detailed chain of emails that indicated the steps that it had taken to look for the letter. It also provided the Commissioner with a detailed background to show that it had covered all of the areas where the letter may have got to. The Commissioner as a result of these emails is satisfied that on the balance of probabilities the letter is not held any more by either Ramsey Police Station or in the central unit that is based in St Ives.
57. The public authority also provided the emailed response of the officer at the relevant police station that it consulted when it originally answered the request. It also indicated that there was a considerable volume of correspondence with the complainant. The Commissioner is satisfied that the public authority did not have the relevant recorded information at the time of the request. However it did not conduct a thorough enough search on receiving the request for information prior to applying the exemption. Therefore the mistaken application of the exemption

on 7 June 2007 did not confirm that there was recorded information held. He is satisfied that the search subsequently conducted by the public authority in response to the Commissioner's investigation is comprehensive.

58. The Commissioner is satisfied that on the balance of probabilities the public authority did not hold any recorded information that is relevant to this request at the time of request.
59. In view of his decision that the information caught by request (C) is not held he has not considered the application of section 40 any further in this notice. The Commissioner also did not consider whether the information was Environmental Information, when it was held, as defined by Regulation 2(1) of the EIR.

Section 1(1)(a)

60. Section 1(1)(a) (full wording in the legal annex attached to this notice) of the Act requires a public authority to correctly confirm or deny whether it holds relevant recorded information.
61. The Commissioner finds that the public authority has breached section 1(1)(a) because it failed to inform the complainant that the information was not held within twenty working days from receiving request (C).
62. On 4 July 2008 the public authority sent a new notice to the complainant. This indicated that it did not hold the letter at the time of the request in response to element one and that it did not hold any recorded information that was relevant to the second element of request (C). The Commissioner does not require any further remedial action in relation to this breach.

Section 10(1)

63. Section 10(1) (full wording in the legal annex) requires the public authority to comply with section 1 of the Act within twenty working days of receipt of the request.
64. As stated above, section 1(1)(a) of the Act requires the public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. The public authority did not correctly deny that it held relevant recorded information for 13 months after receiving request (C). This is a breach of section 10(1).

Request (D)

65. The complainant confirmed to the Commissioner in his letter of 16 May 2008 that the public authority had provided him with a copy of the handwritten notes made of the meeting under his Subject Access request and a typed copy of these notes that the public authority made subsequently.
66. The complainant made it clear however that he was looking for the contemporaneous handwritten notes of the meeting. The Commissioner

understands he is therefore seeking access to the original copy of the notes made at the time of the meeting.

67. The public authority provided the Commissioner with a slightly redacted copy of the copy of the handwritten notes that they had provided to the complainant, a full copy of a copy of the handwritten notes and a redacted and full version of the typed notes of that meeting.
68. The public authority informed the Commissioner that it did not hold the contemporaneous version of these notes and that it felt that they were held by the holders of the original information, Ramsey Town Council who provided the public authority with their copy in June 2005.
69. It told the Commissioner that it would not need the original copy for its record management purposes as the copy was sufficient. It also informed the Commissioner that it had contacted the Council and that it had been made aware that there was another case for the same notes that the Commissioner was investigating about the Council. This case was considered by the Commissioner separately under the reference FS50131707. This complaint was made against a different public authority and cannot be included in this Notice. However the Commissioner concluded in that case that there was insufficient evidence to establish the original notes were held.
70. The Commissioner is satisfied that on the balance of probabilities the public authority does not hold the contemporaneous notes that constitute the subject of request (D).

Section 16(1) – Advice and assistance provided by the public authority

71. The complainant in his complaint to the Commissioner specifically mentioned that he felt that the public authority had not complied with its obligations under section 16(1) of the Act.
72. Section 16(1) (full copy in the legal annex) provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
73. The requests the complainant made to the public authority were clear in scope and the Commissioner is satisfied that further clarification was not needed. Additional assistance as outlined in paragraphs 8 to 11 of the Code was not required in this case.
74. The requests also did not attract the fees limit. Additional assistance as outlined in paragraphs 13 to 15 of the Code was not required in this case.
75. The public authority acknowledged the complainant's requests promptly and informed him of the relevant regimes when he made his request. It also offered to

waive the fee and provide the information as a SAR when it was apparent that the requested information was the complainant's personal data.

76. The public authority also provided the complainant with additional clarification after the internal review as part of its complaint procedure.
77. The public authority provided some advice and assistance in relation to request (D). It first of all explained its procedure and then it suggested that the complainant visit the relevant Council, naming the relevant person. It also informed the Council the complainant would visit the Council and while it did not hold the contemporaneous notes, it also provided to the complainant with a copy of the handwritten notes and with a typed copy of them that it held.
78. The public authority also swiftly issued a correct refusal notice in relation to request (C) when it became clear that it had made a mistake.
79. The Commissioner has therefore concluded that it would not have been reasonable to expect the public authority to have provided further advice and assistance to the applicant and therefore the public authority did not breach section 16(1). Further advice and assistance was not required in this case to satisfy the Section 45 Code of Practice as none of the provisions were relevant in the circumstances of this case.

Exemptions

Request (A)

80. In its internal review dated 27 July 2007, the public authority asserted that the release of the requested information would, or would be likely prejudice law enforcement (Section 31(1)) and would, or would be likely to endanger the health and safety of any individual (Section 38(1)(a)(b) and (2)). Within its public interest determination within its refusal notice dated 22 May 2007, it had previously informed the complainant that it was relying on categories (a) and (b) in relation to section 31.
81. Both exemptions are qualified exemptions and are subject to a public interest test. The public authority asserted that the public interest in maintaining both exemptions outweighed the public interest in releasing the requested information about individual cameras. This information is often referred to as "site specific" information.
82. On 15 January 2009 the public authority confirmed to the Commissioner that in relation to its application of section 31, it was relying on subsections 31(1)(a) and 31(1)(b).

Section 31(1)

83. Section 31(1) states that:

“Information which is not exempt information by virtue of Section 30 [information held for the purposes of investigations and proceedings conducted by public authorities] 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, ...”

84. The public authority relied on both parts (a) and (b) of section 31(1) in this case. While the two parts are connected, the Commissioner must assess the likelihood of prejudice in relation to each. This is because the Act is drafted so that the purposes stand alone.
85. There are two possible thresholds for the exemption to be engaged; ‘would prejudice’ and ‘would be likely to prejudice’; each has a separate legal test. In this case, the public authority did not indicate in its refusal notice dated 22 May 2007 or its internal review dated 27 July 2007 which threshold it was relying on.
86. The Commissioner asked for it to clarify its position in his letter dated 7 January 2009. In its response to the Commissioner’s enquiries dated 15 January 2009, it specified that it wishes to rely on the lower threshold of ‘would be likely to prejudice.’

Would the release of this information be likely to prejudice the prevention and detection of crime?

87. In reaching a decision on the question of prejudice the Commissioner has been mindful of the test of ‘likely to prejudice’ as enunciated by Mr Justice Mundy in the case of *R (on the application of Lord) V Secretary of State for the Home Office [2003] EWHC 2073*, and followed by the Tribunal in the case of *John Connor Press Associates Limited V ICO (EA/2005/005)* at paragraph 15, where the Tribunal interpreted the expression ‘likely to prejudice’ within the context of the section 43 exemption as meaning that the chance of prejudice being suffered should be more than a hypothetical or a remote possibility, that there must have been a real and significant risk. The Tribunal in that case indicated that the degree of risk must be such that there ‘may very well’ be prejudice to those interests, even if the risk falls short of being more probable than not.
88. For clarity the Commissioner feels that it is necessary to break the requested information into two categories as was done by the public authority in its refusal notice:
- (i) The ‘enforcement threshold’ or ‘triggering speeds’ – the speed at which the partnership may prosecute (which may be exposed by the structure of the information requested).
 - (ii) Camera site specific data – the number of offences detected at a particular site on a single day.

(i) The enforcement threshold

89. The request includes a breakdown of the number of offences into speed categories. Having examined the request and the possible information that would be generated the Commissioner is satisfied that such a breakdown would have the potential to expose the enforcement threshold of the site.
90. The Commissioner informed the complainant that it would be unlikely that he would receive this information because it would reveal 'trigger speeds' i.e. at what point over the enforced limit this particular camera was likely to be activated. The complainant felt that this would be in the public interest, as it would expose the procedural irregularities in his case and allow his case to be decided judicially in open court.
91. The public authority also informed the Commissioner that it would never publish the tolerances because it would lead to drivers choosing to drive marginally over the limit assuming that they could evade detection. Even if a driver evades detection, he/she is breaking the law if the stated speed limit is exceeded. Through enabling additional speeding offences not to be recorded, this would lead to the likely prejudice of their function in preventing the crime of speeding.
92. The Commissioner notes that the request was framed so that disclosure of the information would reveal whether the public authority complied with the ACPO guidance. This guidance states the operational rule they set of 10% (of the speed limit) + 2mph being the level that they advise prosecuting from. The Commissioner notes that this guidance is an issue of operational policy and not of law.
93. The Commissioner in considering in detail the purposes of prevention of crime, is inclined to agree that the release of the information 'may very well' prejudice the prevention of crime. This is because he is satisfied that placing the enforcement threshold within the public domain would lead to more than a remote chance of additional speeding up to that threshold. Speeding above the stated limit is an offence and withholding this information from the public ensures that any driver who exceeds the speed limit would maintain the perception that they are risking criminal liability. The Commissioner is satisfied that preventing crime unobtrusively in this way is not something that he would wish to discourage and that the release of this information 'may very well' prejudice the prevention and detection of crime in this case.

(ii) Camera site specific data

94. It is widely known that the majority of speed 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 speed camera they are approaching is active. The Commissioner is persuaded that drivers are more inclined to stick rigidly to the speed limit in an enforcement zone if they believe that a camera is active or likely to be active.

95. The key to the arguments of the public authority to justify why this information should be withheld is the fact that it will set a precedent which it will have to follow when dealing with similar requests in the future. The prejudicial effect comes not from the disclosure of the specific data of a single day in relation to a single camera but rather from the matrix of information which could be developed following disclosure about when a particular camera was active that would expose the enforcement pattern at a given site. In *Mr Paul Hemsley v Information Commissioner and the Chief Constable of Northamptonshire* (EA/2005/0026), the Tribunal was persuaded by the Commissioner's point that while every request has to be dealt with on its merits, the point of precedent should be considered.
96. This was clarified by the Information Tribunal in *Bucks Free Press v The Information Commissioner and Thames Valley Police* (EA/2006/0071) which established a useful 'three stage test' about whether the precedent setting argument may be persuasive. The Tribunal indicated that where all answers are 'yes' then there will be sufficient prejudice to engage the exemption:
- "(i) Do we accept that a decision in favour of disclosure in this case would set a precedent that would encourage and enable others to obtain equivalent data in respect of other camera sites?"*
- (ii) If so do we consider that the prospect of several of those who have made such requests combining the information received into a single comparative view for publication is a far-fetched notion, or a risk or real substance?"*
- (iii) If so, do we believe that the result of such a publication would prejudice either the prevention of crime or public health and safety?"*
97. In answering the first point 'yes', the Commissioner has considered that while the single request of a single day's total might not provide sufficient data on which to estimate enforcement patterns, he must consider the request in context. The Commissioner is wary of a 'mosaic effect'. This is the process of creating a matrix of information that could build up to expose the pattern of enforcement at a site. While this request is for one day it could lead to requests for a large number of different requests about other days that build together to indirectly expose the pattern of enforcement at the site. The Commissioner feels that the precedent argument would apply in this case.
98. In answering the second point 'yes', the Commissioner is satisfied that this risk of creating a matrix of information is real and substantial especially given the websites on these issues and how strongly people feel about speed cameras. He notes that while the complainant may have altruistic reasons for receiving this information, the risk is still real. The Commissioner also notes that should information such as the annual amounts be disclosed in the future, knowing how many tickets were issued on a single day would enable the calculation of how often the cameras were on and this would prejudice law enforcement.

99. In answering the third point 'yes', the Commissioner notes that paragraph 17 of the Bucks Free Press decision is unequivocal that it would not allow information to be released which would reveal the enforcement pattern of a site and this point is particularly pertinent to the decision he has to make in this case:

"We wish to make it very clear that we would be very reluctant to order the disclosure of information which would reveal the enforcement pattern for a site, or would otherwise be likely to encourage selective offending and, without hampering in any way the freedom of this Tribunal in any future cases, we can envisage circumstances in which the disclosure of the additional information mentioned in the examples we have given above might well have that effect."

100. The Commissioner is therefore satisfied that the exemption under section 31 is engaged because he is persuaded that there is a real and substantial risk that the release of this information may lead to less scrupulous drivers being prepared to risk exceeding the speed limit at this particular site in contravention of the law. This would mean that it would be likely to prejudice the prevention and detection of crime. They might take this risk because they could predict, or would believe they could predict, when and at what speed the camera is likely to be activated. While the Commissioner does not see that the potential for harm is certain, he is convinced that the release of this information 'may very well' prejudice the prevention and detection of crime in this case.

Would the release of this information be likely to prejudice the apprehension and prosecution of offenders?

(i) The enforcement threshold

101. The Commissioner believes that it is arguable as indicated above in paragraphs 89 to 93 that disclosure of the requested information is likely to lead to the prejudice of the prevention of crime, that it is equally possible that the release of the same information could enable the possibility of breaking the speed limit without being prosecuted. It follows that he is persuaded that the disclosure of the information would be likely to prejudice the apprehension and prosecution of offenders.

(ii) Camera site specific data

102. The Commissioner believes that it follows from his reasoning in paragraphs 94 to 100 that disclosure of the requested information is likely to lead to the prejudice of the prevention of crime, that it is equally possible that the release of the same information could enable the possibility of successful speeding, where offenders are not prosecuted. It follows that he is persuaded that the disclosure of the information would be likely to prejudice the apprehension and prosecution of offenders in this case.

The Public Interest Test

103. As the exemption is engaged in relation to both sets of information the Commissioner must then go onto to consider whether or not the public interest test favours disclosure in each.
104. The public interest test requires determining whether the public interest in maintaining the exemption outweighs the public interest in disclosure of the information. The Commissioner is only able to consider factors that arise from the nature of the exemption; in this case because of the nature of safety cameras he believes that is possible to conduct a single public interest test for each category of information. This is because a safety camera can serve a number of functions simultaneously and the public interest issues are bound up together:
- (i) It deters people from speeding.
 - (ii) It detects those who speed.
 - (iii) It allows the prosecution of offenders.
105. The nature of safety cameras mean that the possible disclosure of the information therefore could simultaneously lead to the two prejudices identified above and the factors to be considered have equal relevance when considering both limbs 31(1)(a) and (b) together in the public interest test.
106. The Commissioner notes that the complainant in this case has a valid motive in requesting the information to ensure that the public authority are enforcing fairly at a site that interests him. Generally the applicant's motive would be irrelevant but in this case it is representative of a general public interest in knowing about speed cameras. In its response to this request the public authority provided to the complainant the file 'site specific information.pdf' which also divided the reasons for non disclosure into the two categories specified in paragraph 89. These reasons are based on the ACPO guidelines about this subject.
107. The Commissioner will go on to assess whether the public authority conducted its public interest determination correctly and whether the public interest test favours maintaining the exemption in each case.

(i) The enforcement threshold

108. The public interest considerations the public authority indicated that it considered for withholding information which could identify 'enforcement thresholds' are as follows:

'For disclosure:

"Awareness – this information could assist individuals in gaining an understanding of road safety in areas were the cameras are located. This would therefore help them gain awareness regarding road safety issues.

Accountability – where forces have a different threshold to the ACPO recommendation they should be accountable for such a decision.”

Against disclosure:

Exemption Applies – it is in the interest of the public that our roads are kept safe. The disclosure of local thresholds could increase the amount of speeding and so potentially increase casualties.’

Efficient and Effective Conduct of Road Safety Partnership activities and Police Forces – the aim of such partnerships is to make roads safer by encouraging people to keep within the speed limits, hence reducing speeds, reducing collisions and consequently, reducing the number of people killed and injured. The public authority advised the complainant that the consequence of the release of this information “would be to compromise this aim and inform drivers the level at which they can exceed the speed limit without fear of prosecution” [the information in additional parenthesis was underlined by the public authority]’

109. The Commissioner has considered carefully how the balance of the public interest lies in relation to the application of this exemption to the enforcement threshold of the site.
110. The Commissioner is persuaded that there is a public interest in ensuring that drivers do not speed on the road and this feeds into the public interest considerations about the need to avoid prejudicing the apprehension of offenders. He notes for example that ‘vehicle related nuisance and inappropriate vehicle use’ is a major source of community tension as is shown in the ‘Defining and measuring anti-social behaviour’ Home Office audit:
<http://www.homeoffice.gov.uk/rds/pdfs04/dpr26.pdf>
111. The Commissioner has considered the public authority’s view that as an operational decision it does not publicise tolerance zones. He notes that there may be some confusion about the purpose of ACPO guidelines, with the rule they set of 10% (of the speed limit) + 2mph being the level that they advise prosecuting from. However this is an operational policy of the public authority and does not change the law. The law states that speeding above the limit is a criminal offence. Even if a driver evades detection, he/she is breaking the law if the stated speed limit is exceeded. The Commissioner is not convinced that there is a great public interest in knowing how far the public can break the law without facing prosecution.
112. The Commissioner has considered the conflicting public interests in withholding and disclosing this information as outlined in paragraph 108. However in this instance he considers that the public interest favours maintaining the exemption. He notes that any issues of natural justice are mitigated by the fact that should a driver be prosecuted he has access to the video of the time of the offence committed and is given the speed that he has been recorded at.

113. The Commissioner has therefore concluded that the public authority was correct to determine that the public interest in maintaining the exemption outweighs the public interest in disclosure in relation to enforcement thresholds.

(II) Camera site specific data

114. The public interest factors the public authority considered in relation to the request for 'Camera site specific data' are as follows:

"For disclosure:

Awareness – this information could assist individuals in gaining an understanding of road safety in areas where the cameras are located. This would therefore help them gain awareness regarding road safety issues.

Accountability – Safety Camera Partnerships and Police Forces should be accountable for the decisions they make in relation to camera sites.'

Against disclosure:

Exemption Applies – it is in the interest of the public that our roads are kept safe. The ability for safety camera technology to impact on road safety would be diminished by the disclosure of such information and therefore prejudice law enforcement.'

Efficient and Effective Conduct of Road Safety Partnership activities and Police Forces – the aim of such partnerships is to make roads safer by encouraging people to keep within the speed limits, hence reducing speeds, reducing collisions and consequently, reducing the number of people killed and injured. The consequence of the release of this information would be to compromise this aim."

115. The Commissioner has considered carefully where the balance lies in relation to the application of this exemption concerning the disclosure of camera specific data; that is the number of recorded offences over a single day at a specific site.
116. When considering the public interest in maintaining the exemption the Commissioner has examined the potential effect on operational policy that would be necessary to remedy the prejudice to the prevention and detection of crime that would result from disclosure. The Commissioner recognises that the police may choose not to keep speed cameras on permanently because they believe that the potential risk of enforcement is as strong a deterrent as the certainty of enforcement and there are strong public interest arguments to support 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. The Commissioner feels that

these interests are inherent in the application of this exemption as the focus is the prevention of crime without expending resources wherever possible.

117. The Commissioner also believes that to reveal this information for site specific requests would also prevent the police from using cameras as solely a deterrent. This is because the request could reveal that the camera is off and drivers may alter their future behaviour accordingly. The Commissioner is convinced that the deterrent effect is in the public interest and does not feel the public interest is served in encouraging selective offending.
118. The Commissioner has considered the conflicting public interests in withholding and disclosing this information as outlined in paragraph 115. However he finds that the public interest favours maintaining the exemption in this instance. In particular he is aware of the importance that justice is seen to be done. In this case he is not satisfied that when there is a risk of creating a matrix that exposes enforcement patterns that these weigh more heavily than the public interest of there not being an increased likelihood of the criminal law being broken and potential accidents resulting from this occurrence to both car drivers and pedestrians.
119. The Commissioner has considered the Tribunal's statement in EA/2006/0071 as outlined in paragraph 100 of this notice. He believes that this statement supports his view that the release of the disclosed information when taken in context would be against the public interest.
120. The Commissioner has therefore concluded that the public authority was correct to determine that the public interest in maintaining the exemption outweighs the public interest in disclosure in relation to site specific data; in this case the number of offences at a specific camera on a specific day.

Conclusions

- 121 The Commissioner has therefore determined that the public authority was correct to rely on section 31(1)(a) and (b) in withholding the requested information.
- 122 As the Commissioner has found that section 31(1)(a) and (b) has been applied correctly, he has not gone on to consider whether section 38(1)(a) and (b) and 38(2) was correctly applied. He has chosen to make further comments about the public authority's application of both section 38(1) and section 38(2) in the other matters section of this notice.

The Decision

123. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
 - *The public authority complied with the requirements of Section 16. The Commissioner has concluded that it would not have been reasonable to*

expect the public authority to have provided further advice and assistance to the applicant and therefore the public authority did not breach section 16(1).

- The information requested in relation to request (A) was exempt by virtue of section 31(1)(a) and (b) and in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure.*

124. However the Commissioner has decided that the following elements of the requests were not dealt with in accordance with the Act:

- The public authority breached section 1(1)(a) as it incorrectly informed the complainant that it held relevant recorded information for request (C).*
- The public authority breached section 10(1) as it did not confirm to the complainant that it did not hold the requested information for request (C) within 20 working days.*
- The public authority also breached section 17(1)(b) in relation to request (A) as it failed to fully specify the exemption it relied on within either its refusal notice or internal review.*

Steps Required

125. The Commissioner requires no steps to be taken.

Other matters

126. Although they do not form part of this Decision Notice, the Commissioner wishes to highlight the following matters of concern:

Records management

127. During the Commissioner's investigation it became apparent that the public authority did not in fact hold information regarding the letter referred to in request (C). The public authority informed the Commissioner that it believed the letter was destroyed along with other documents as part of the refurbishment of Ramsey Police Station in July 2006. However, the public authority was unable to provide any record of this destruction or confirm the date of destruction. It also appears that the destruction of these documents was undertaken outside the public authority's usual retention and disposal schedules.

128. The Commissioner is concerned that the public authority's management and destruction of these documents appears not to conform with the provisions of the

section 46 code of practice on the management of records. Paragraph 12.4 of the code recommends that destruction of records should be undertaken in accordance with clearly established policies. Paragraph 12.6 of the code recommends that disposal schedules should be maintained as a record of the destruction of documents, showing their reference, description and date of destruction.

129. The Commissioner would remind the public authority that the implementation of adequate records management in line with the section 46 code of practice is essential to effective freedom of information and will help the public authority to comply with its duties under the Act. Without reliable records management a public authority is unable to say with any level of certainty what information is held and what has been destroyed. The Commissioner advises the public authority to contact The National Archives (TNA) for further advice on this issue, and has informed TNA that the public authority will be in touch.

Application of exemptions to information not held

130. The Commissioner would also like to record his concerns in relation to the public authority's reliance upon section 40(2) in relation to request (C). When applying this exemption, the public authority had not actually located (or viewed) the information requested and sought to refuse this request on a general basis. In fact, the information was no longer held. As demonstrated in this case, a failure to obtain or consider the actual information requested can result in an incorrect or inaccurate response and the Commissioner therefore considers that this is extremely poor practice. The Commissioner notes that the public authority has assured him it no longer takes this approach.

Application of contradictory exemptions and exclusions

131. While the Commissioner did not go on to consider the applicability of section 38, he does note that the public authority applied both sections 38(1) and 38(2) in relation to the same information. This approach is contradictory as section 38(2) provides an exclusion to confirm or deny whether recorded information is held (so from its obligations under section 1(1)(a)), while section 38(1) confirms that the same information is held, albeit that it is exempt from disclosure. It is impossible for both parts to be relied on at once.

The internal review

132. The Commissioner is concerned that, in its letter setting out the outcome of the internal review, the public authority gave no reasoning for its conclusion that the original decisions should be upheld. Paragraph 39 of the section 45 code of practice states:

“The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue.”

133. The internal review response from the public authority did not reflect that a reconsideration of the request conforming to the description above took place. In addition, it stated that the original decision to withhold the requested information should be upheld, even where the original response had in fact been that no information was held. The Commissioner would advise the public authority that a response giving the outcome to an internal review should clearly reflect the outcome of the review, should set out the reasoning for why the initial decision was upheld and should reflect that there has been a genuine reconsideration of the request.

Reference to section 14 (vexatious or repeated requests)

134. In correspondence with the complainant after the completion of the internal review, in letters dated 12 September 2007 and 9 October 2007, the public authority stated that the complainant should take his complaint to the Commissioner and that any further contact about the minutes referred to in request (D) would be deemed vexatious and would be ignored.
135. The Commissioner advises the public authority that it would have been more appropriate to say that the public authority would not engage in further correspondence about the original requests, and that it would consider whether any further requests were vexatious or repeated and could be refused under section 14(1) or 14(2) of the Act. However, the Commissioner does not wish to prejudge whether any further requests in this case would in fact have been vexatious or repeated within the meaning of section 14 of the Act.
136. The Commissioner would encourage public authorities to consider section 14 where there are genuine grounds for considering a request to be vexatious or repeated. However, it is important that every request is considered on its merits and that public authorities do not apply section 14 in a blanket manner. In addition, public authorities must not simply ignore vexatious requests, as it will often still be necessary to issue a refusal notice. Further advice on how to use section 14 is available in the Commissioner's recently reissued guidance, which can be found at the link below.

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf

Right of Appeal

137. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 7th day of September 2009

Signed

**Steve Wood
Deputy Commissioner**

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

Legal Annex

The Freedom of Information Act 2000

Section 1 - General right of access to information held by public authorities

- (1) 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.

...

Section 10 - Time for compliance with request

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

Section 16 – Duty to provide advice and assistance

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

Section 17 – Refusal of request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is

relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

...

Section 31 - Law enforcement

(1) 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,

...

Section 38 - Health and safety

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

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).

...