

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2011

Public Authority: The Chief Constable
Address: Kent Police Headquarters
Sutton Road
Maidstone
Kent
ME15 9BZ

Decision (including any steps ordered)

1. The complainant requested information from Kent Police about automatic number plate recognition (ANPR) cameras. Kent Police provided some of the requested information but withheld the location of the cameras, citing national security and law enforcement reasons (sections 24(1) and 31(1)(a), (b) and (c)).
2. The Information Commissioner's decision is that Kent Police was entitled to rely on section 31 as its reason for withholding the requested information.
3. The Information Commissioner does not require Kent Police to take any action as a result of his decision.

Request and response

4. The complainant wrote to Kent Police on 16 June 2011 requesting information about automatic number plate recognition (ANPR) cameras in the following terms:

"I would like to know:

- 1) *The number and geographical location of the ANPR camera used by Kent Police*

2) All of the uses of these cameras

3) Those who are subject to surveillance by these cameras (by this I mean by categories of individuals not individuals themselves)

4) All the types of data collected by these cameras and the uses of those data sets

5) Those privy to the data collected including any third parties and government and commercial bodies".

5. Kent Police responded on 7 July 2011. It stated that the information requested at point (1) of the request was exempt from disclosure, citing national security and law enforcement reasons (sections 24(1) and 31(1)(a), (b) and (c)).
6. With respect to point (2), Kent Police cited section 21 (information accessible to applicant by other means) and provided the complainant with a link to the relevant document on the Association of Chief Police Officers (ACPO) website. That document was also referred to in Kent Police's response to points (3), (4) and (5) of the request.
7. Following an internal review regarding the number and location of ANPR cameras in Kent (point (1) of the request) Kent Police wrote to the complainant on 5 August 2011. It upheld its refusal to disclose information within the scope of that part of the request, clarifying that it was no longer relying on section 31(1)(c).

Scope of the case

8. The complainant contacted the Information Commissioner (the Commissioner) to complain about the way his request for information had been handled. He referred the Commissioner to a case, about a similar request for information, involving Devon and Cornwall Police. The Commissioner issued a decision notice in that case, (Commissioner's reference FS50270424), in favour of withholding the requested information. That decision was appealed to the First-tier Tribunal (Information Rights) which, although agreeing that the exemption at section 31 was engaged, concluded, contrary to the Commissioner's decision, that the balance of the public interest favoured disclosure (EA/2010/0174). That decision has in turn been appealed by Devon and Cornwall Police and is due to be heard by the Upper Tribunal in 2013.

9. During the course of the Commissioner's investigation, Kent Police provided the complainant with a partial response to point (1) of the request in that it provided him with details of the number of cameras it uses.
10. The Commissioner therefore considers the scope of his investigation to be the application of sections 24 and 31 in relation to the remainder of part (1) of the request, namely the geographical location of the ANPR cameras used by Kent Police.

Reasons for decision

11. Section 31 of the FOIA creates an exemption from the right to know if the effect of disclosure would, or would be likely to, prejudice any of a range of law enforcement functions and activities listed in the exemption. In this case, Kent Police is relying on sections 31(1)(a) and (b) to withhold the information. Those subsections provide an exemption from disclosure if release of the information at issue would, or would be likely to, prejudice, respectively, the prevention or detection of crime, or the apprehension or prosecution of offenders.
12. Addressing the question of the likely harm of disclosure, Kent Police told the complainant that disclosing the location of ANPR cameras:

"would undermine policing tactics and operations by highlighting to members of the criminal fraternity the road network where it would be 'safe' to travel inasmuch as the likelihood of being apprehended is reduced".
13. It also argued that, by knowing the location of cameras, the criminal fraternity could bypass them, meaning that the police would be less able to detect and reduce crime on the roads. The complainant disagrees with this point, saying that Kent Police's argument:

"is specious because ANPR cameras are placed on unavoidable traffic arteries".
14. He also referred to a database of ANPR camera locations that has been compiled *"by interested parties"*, information which is freely available. In this respect, he told Kent Police that he considers the withholding of the requested information *"is to fight a pointless, losing battle"*.

15. The Commissioner acknowledges the existence of that database, but also notes that the information it contains has not been confirmed by the police.

16. Responding to the complainant, Kent Police told him:

"The effectiveness of ANPR to policing operations lies not only in deterring criminals and terrorists from specific areas but in tracing movement patterns of vehicles of interest which in turn provide valuable intelligence".

17. Kent Police also acknowledged the importance of public support for the use of ANPR. It referred the complainant to information published by ACPO: information to which it had referred him with respect to other parts of his request. However, Kent Police also told the complainant that while there is a commitment to openness, this is:

"with the important caveat that the location of the cameras must remain undisclosed to enable the police service to discharge its duties of protecting the public effectively".

18. It also argued that if the location of the ANPR cameras is known:

"it must follow that they [criminals and terrorists] will ensure they take routes not covered by ANPR which will result in the loss of intelligence to the police with adverse consequences for public safety".

19. Having considered the withheld information the Commissioner is satisfied that it provides information about the location of ANPR cameras used by Kent Police. He is also of the view that the withheld information, detailing as it does the location of the ANPR cameras, would provide sufficient knowledge of the location of the cameras to enable someone wishing to avoid the ANPR camera network to do so.

20. It follows that the Commissioner accepts that the outcome of disclosure predicted by the public authority is possible and he is therefore satisfied that the exemptions provided by sections 31(1)(a) and (b) are engaged.

The public interest

21. Having concluded that sections 31(1)(a) and (b) are engaged, the Commissioner has gone on to consider the balance of the public interest.

Public interest arguments in favour of disclosing the requested information

22. Kent Police acknowledges that there is information within the public domain confirming that the police use ANPR in relation to the prevention and detection of crime. It accepted that disclosure would enhance the public's knowledge about how ANPR is used by Kent Police. This a significant public interest argument as it would enable the public to better debate the privacy and surveillance implications of ANPR. The Commissioner acknowledges that the number plate data collected by the cameras will be personal data.

23. Arguing in favour of disclosure, the complainant told Kent Police:

"disclosure would in fact benefit the cause of effective policing in that publicity as to the location of the ANPR cameras would do no harm and could in fact serve to deter criminals from visiting the protected areas, so as to aid policing".

Public interest arguments in favour of maintaining the exemption

24. Arguing against disclosure, Kent Police brought to the complainant's attention the contribution ANPR cameras make to intelligence gathering, and therefore to the prevention and detection of crime and the apprehension and prosecution of offenders. It argued that disclosure of the withheld information in this case would compromise any ongoing criminal investigations, and also that to weaken a mechanism used to monitor criminal activity would not be in the public interest.

25. In its submissions to the Commissioner, Kent Police emphasised the effect of disclosure in this case, including the advantage that would be afforded to criminals as a result of them being able to evade routes monitored by ANPR cameras. It argued that this would impact the operational effectiveness of the cameras and the ability of the police to capture information for intelligence purposes.

26. The Commissioner considers these arguments are strengthened by virtue of the geographical area Kent Police is responsible for policing, an area described by Kent Police as "*the gateway to Europe*". In the Commissioner's view, this means that, in addition to dealing with crimes such as burglary, violence and vehicle crime, crimes which all police forces deal with, Kent Police necessarily faces additional policing challenges associated with cross-border crimes such as smuggling and people trafficking.

27. In this respect, the Commissioner notes the following, taken from Kent Police's website:

"As well as dealing with crime and disorder in our neighbourhoods, our geographic location - between London and the continent - means we have a part to play in national and international policing.

We are the main gateway to Europe through the ports of Dover, Folkestone and Ramsgate, the Channel Tunnel and a number of airfields and airports such as Manston and Lydd.

We also have one of the busiest road networks in the country which includes the M25, A2 and M20".

28. During the course of the Commissioner's investigation, Kent Police made reference to the ongoing tribunal case mentioned above and the evidence submitted in that case. The Commissioner considers that the public interest arguments and evidence supplied in that case are also relevant in this case and add weight to the arguments in favour of maintaining the exemption.

Balance of the public interest arguments

29. When balancing the opposing public interests in a case, the Commissioner is deciding whether it serves the public interest better to disclose the requested information or to withhold it because of the interests served by maintaining the relevant exemption. If the public interest in the maintenance of the exemptions does not outweigh the public interest in disclosure, the information in question must be disclosed.
30. In the Commissioner's view, the existence and extent of the ANPR network both within Kent and nationwide is of considerable significance to the balance of the public interest in this case. This network enables the monitoring of many of the road journeys undertaken nationwide, regardless of the purpose of those journeys or whether they are being undertaken in vehicles suspected of being associated with criminal activity or that have been linked to known criminals or to crime.
31. The Commissioner acknowledges that disclosure of the information in question would contribute substantively to the debate about the ANPR network by adding to public knowledge about the implementation and geographical extent of this network. The Commissioner considers this is a public interest factor in favour of disclosure which has significant weight.

32. However, in favour of maintenance of the exemption is the undoubted public interest in avoiding prejudice to the ability of the police to prevent and detect crime and to apprehend and prosecute offenders.
33. In this case, the Commissioner considers the public interest in avoiding that prejudice, together with the fact that, for geographic reasons, there is a complex crime picture associated with Kent Police, leads him to conclude that the public interest in the maintenance of the exemption outweighs the public interest in disclosure.

Section 24 National security

34. As the Commissioner has reached the conclusion above on sections 31(1)(a) and (b), he has not gone on to consider Kent Police's citing of section 24(1).

Right of appeal

35. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF