

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 February 2023

**Public Authority:** Chief Constable of Staffordshire Police  
**Address:** Police Headquarters  
Weston Road  
Stafford  
ST18 0YY

### Decision (including any steps ordered)

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1. The complainant has requested information about speed tolerance levels from Staffordshire Police. Staffordshire Police disclosed some information but refused to disclose the remainder, citing sections 31(1)(a) and (b) (Law enforcement) of FOIA.
2. The Commissioner's decision is that Staffordshire Police was entitled to rely on sections 31(1)(a) and (b) of FOIA to refuse the request. No steps are required.

### Request and response

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3. On 11 November 2022, the complainant wrote to Staffordshire Police and requested information in the following terms:

"1. Police forces have a "tolerance" [sic] level related to when their speed cameras activate if a driver is travelling above the legal limit. For instance, a police force's "tolerance" [sic] may be 10% plus 2mph. In that case, on a 30mph road, a camera would not normally activate unless a car drove past at 35mph or higher.

Please can you disclose the current "tolerance" [sic] level used by your force's speed cameras?

2. If your force's "tolerance" [sic] level for speed cameras has ever changed since November 1, 2017, please can you provide a list of

the dates for when each change to the level was made, and what it changed to and from?

3. For every month since November 2017, please can you disclose the number of warnings of prosecution sent to motorists for speeding?

N.B. for this question, if the figures are collated in a different way - for instance by quarter instead of by month - please provide this instead.

Similarly, if the force holds data for less than five years, please provide the maximum available.

For this question I am, essentially, looking for data on the number of speeding tickets issued by the force throughout the past 5 years, or as close to that time period as possible".

4. Staffordshire Police responded on 18 November 2022. With regards to parts (1) and (2) of the request, it said that the information was exempt from disclosure, citing sections 31(1)(a) and (b) of FOIA. It disclosed the other information requested.

5. On 21 November 2022, the complainant requested an internal review. He said:

"It is clearly in the public interest for police forces to be transparent about the basis for issuing members of the public with Notices of Intended Prosecution. For your information, other forces have already begun supplying me with their formulas and details of changes - so it is hard to see how this exemption would only apply to Staffordshire Police".

6. Following an internal review, Staffordshire Police wrote to the complainant on 28 November 2022. It maintained its position.

7. On 22 December 2022, Staffordshire Police revised its position regarding part (2) of the request. It advised the complainant that it held no information.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 6 December 2022 to complain about the way his request for information had been handled. He said:

"1. Publicly available guidelines from the National Police Chiefs' Council state that the enforcement threshold used by police forces for speed and red light offences should be 10% +2 mph.

The NPCC, which coordinates law enforcement in the UK, has revealed this "10% +2 mph" enforcement threshold without any concerns about this impacting law enforcement.

Here are two relevant publicly available links:

"Guidance issued by the National Police Chiefs Council (NPCC) suggests when enforcement action will be taken against speeding motorists – this is usually when the relevant speed limit is exceeded by 10% plus 2 mph."

<https://www.westyorkshire.police.uk/ask-the-police/question/Q890>

"The MPS changed the enforcement threshold for speed and red light offences from 10% +3 to 10% +2 mph with effect from 14 May 2019. The threshold is now consistent with the National Police Chiefs' Council (NPCC) guidelines."

<https://www.met.police.uk/cy-GB/foi-ai/metropolitan-police/d/march-2022/current-guidance-relating-to-speed-cameras/>

2. Given that this information has been revealed several times by police forces, as well as being shared by the NPCC, it is inappropriate for Staffordshire Police to apply the exemption it has cited in its response to me.

3. It is clearly in the public interest for police forces to be transparent about the basis for issuing members of the public with Notices of Intended Prosecution for speeding offences - and whether or not they are complying with published guidelines from the NPCC.

4. In addition, other forces have already begun supplying me with their formulas and details of recent changes to them following this FOI request. This is on top of several forces previously disclosing the formulas they use for speeding enforcement. In total, I have counted 26 forces across the country that have either already disclosed theirs to me, or have done so previously.

As such, it is extremely difficult to understand how the exemption would only apply to Staffordshire Police".

9. In his grounds of complaint the complainant did not refer to part (2) of the request. Furthermore, having received Staffordshire Police's

revised position regarding part (2), he did not make any further submission.

10. The Commissioner will therefore consider the citing of sections 31(1)(a) and (b) in respect of part (1) of the request, ie regarding the force's current tolerance level for its speed cameras.

## **Reasons for decision**

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### **Section 31 – Law enforcement**

11. Section 31 of FOIA creates an exemption from the right to know if disclosing the information would, or would be likely to, prejudice one or more of a range of law enforcement activities.
12. In this case, Staffordshire Police is relying on sections 31(1)(a) and (b) of FOIA in relation to all the withheld information. These subsections state that information is exempt if its disclosure would, or would be likely to, prejudice:
  - (a) the prevention or detection of crime;
  - (b) the apprehension or prosecution of offenders.
13. In order to engage a prejudice-based exemption such as section 31 there must be likelihood that disclosure would, or would be likely to, cause prejudice to the interest that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice-based exemption:
  - Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
14. Consideration of the exemption at section 31 is a two-stage process: even if the exemption is engaged, the information should be disclosed

unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

15. Rather than differentiate between the subsections of the exemption, Staffordshire Police has presented one set of arguments. The Commissioner recognises that there is clearly some overlap between subsections 31(1)(a) and 31(1)(b) and he has therefore considered these together.

### **The applicable interests**

16. The first step in considering whether this exemption is engaged is to address whether the prejudice predicted by the public authority is relevant to the law enforcement activities mentioned in sections 31(1)(a) and (b) – the prevention or detection of crime and the apprehension or prosecution of offenders.
17. With respect to law enforcement activities, the Commissioner recognises in his published guidance<sup>1</sup> that section 31(1)(a) will cover all aspects of the prevention and detection of crime. With respect to section 31(1)(b), he recognises that this subsection:

“... could potentially cover information on general procedures relating to the apprehension of offenders or the process for prosecuting offenders”.

18. The Commissioner acknowledges that the arguments presented by Staffordshire Police refer to prejudice to the prevention or detection of crime and to the apprehension or prosecution of offenders and that the appropriate applicable interests have therefore been considered.

### **The nature of the prejudice**

19. The Commissioner next considered whether Staffordshire Police has demonstrated a causal relationship between the disclosure of the information at issue and the prejudice that sections 31(1)(a) and (b) are designed to protect. In his view, disclosure must at least be capable of harming the interest in some way, ie have a damaging or detrimental effect on it.
20. Staffordshire Police advised the complainant that:

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

“Disclosure of the speed travelled at the time of the offence would identify activation thresholds. This would confirm the rationale in a driver's mind that it would be safe or permissible to drive at a certain speed above the maximum limit without fear of prosecution. This would lead to an increase in the speed limit beyond that stated on the road signs; this would not be in the interest of crime prevention or road safety. To release the information could have a detrimental impact on how motorists drive, which could lead to an increase in road traffic collisions”.

21. Staffordshire Police also drew attention to two of the Commissioner's previous decisions which it considered were relevant to this request. The Commissioner agrees that decisions FS50225815<sup>2</sup> and FS50284940<sup>3</sup> do contain relevant arguments about speed limits and he has taken these into account, albeit they are not reiterated here.
22. On the evidence provided, and having viewed the withheld information, the Commissioner is satisfied that Staffordshire Police has demonstrated a causal link between the requested information and the applicable interests relied on, and that disclosure would be likely to have a detrimental impact on law enforcement.

### **Likelihood of prejudice**

23. With regard to the likelihood of prejudice in this case, Staffordshire Police has not specified the likelihood. Therefore, the Commissioner has considered its position at the lower level of 'would be likely to' prejudice.

### **Is the exemption engaged?**

24. In a case such as this, it is not enough for the information to relate to an interest protected by sections 31(1)(a) and (b); its disclosure must also at least be likely to prejudice those interests. The onus is on the public authority to explain how that prejudice would arise and why it would occur.
25. The Commissioner recognises the importance of protecting information which, if disclosed, would undermine law enforcement activity.

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<sup>2</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2010/523642/FS\\_50225815.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2010/523642/FS_50225815.pdf)

<sup>3</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2010/564606/fs\\_50284940.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2010/564606/fs_50284940.pdf)

26. Having considered the arguments put forward by Staffordshire Police, and those relied on in his earlier decisions referred to above, the Commissioner accepts that disclosure would be useful to someone intent on establishing the maximum speed they could drive at beyond the actual legal speed limit, with an aim to avoid prosecution or other enforcement. This could be used to encourage faster driving beyond what is the legal maximum speed limit. Whilst there are national guidelines, and some forces may choose to disclose that they adhere to these, such levels are not defined by statute and each force is able to set its own limits.
27. Disclosure of the limits imposed by Staffordshire Police would be likely to be prejudicial to law enforcement as they would reveal the benchmarks it has set. Consequently, the Commissioner is satisfied that disclosure would be likely to represent a real and significant risk to law enforcement matters.
28. As the Commissioner accepts that the outcome of disclosure predicted by Staffordshire Police would be likely to occur, he is satisfied that the exemptions provided by sections 31(1)(a) and (b) are engaged.

### **Public interest test**

29. Section 31 is a qualified exemption. The Commissioner must now consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at sections 31(1)(a) and (b) of FOIA outweighs the public interest in disclosing the information requested by the complainant.

### **Arguments in favour of disclosure**

30. The complainant's views are included at paragraph 8, above.
31. Staffordshire Police has argued:

"The public are entitled to know how public funds are spent and how the use of speed cameras can have an effect on drivers using the road. Disclosure of the information would show that Staffordshire Police supports transparency and accountability".

### **Arguments in favour of maintaining the exemption**

32. Staffordshire Police has argued:

"Disclosure would allow the public to act to frustrate the operational tactics adopted to enforce road traffic law and this would undermine the police is key function at preventing and detecting crime. Disclosure may encourage motorists to fail to adhere to the speed limit and would put lives at risk. Disclosure would, or would be



likely to, prejudiced substantially the apprehension or prosecution of offenders and interfere with law enforcement. It would, therefore, assist those intent on criminal behaviour, i.e. speeding".

### **Balance of the public interest arguments**

33. In carrying out the statutory balancing exercise in this case, the Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding likely prejudice to law enforcement matters. Clearly, it is not in the public interest to disclose information that may compromise the police's ability to accomplish its core function of law enforcement.
34. In that respect, he recognises that there is a very strong public interest in protecting the law enforcement capabilities of a police force and he considers that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding prejudice to the prevention or detection of crime.
35. The Commissioner recognises the need to ensure transparency and accountability on the part of the police. However, whilst he accepts that there may be some public debate where forces may be using different thresholds, and understanding the reasons behind this, he does not see a clear public interest in disclosure of all thresholds. Such a disclosure may allow those who wish to exceed the speed limit to circumvent enforcement by endeavouring not to exceed, for example, 35 mph in what is essentially a 30 mph limit.
36. The complainant has argued that it is in the public interest for police forces to be "transparent about the basis for issuing members of the public with Notices of Intended Prosecution for speeding offences". However, the Commissioner understands that the basis for any intended prosecution will be provided to those concerned so that they can challenge this at court if they wish.
37. The complainant has also argued that it is important to know whether or not a force is complying with national guidelines. However, the Commissioner affords this argument little weight as the guidelines are just that, ie guidelines, and are not statutory.
38. Whilst some forces may have been prepared to disclose their speed tolerances, this is obviously each force's choice to make. If they are following the recognised guidelines then they may believe it is appropriate to do so. However, the Commissioner does not consider that this sets a precedent. Furthermore, he does not know whether or not all other forces have made such a disclosure.
39. In the Commissioner's view, policing techniques can only be properly effective when full policing capabilities are not publicly known;



disclosure of the data requested would be to the detriment of the wider public, as those seeking to evade the law may be able to ascertain how best to do so. Members of the public may also be put at unnecessary risk if drivers believe they can routinely exceed the lawful speed limit.

40. Having carefully balanced the opposing factors involved in this case, the Commissioner finds that the public interest in maintaining the section 31(1) (a) and (b) exemptions outweighs the public interest in disclosure.

## Right of appeal

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41. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. 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.
43. 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 .....**

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**