

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 June 2024

Public Authority: Commissioner of Police of the Metropolis
Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested information about Notices of Intended Prosecution ("NIPs") issued on two particular stretches of road from the Metropolitan Police Service (the "MPS"). The MPS refused to provide the requested information, relying on sections 31(1)(a) and (b) (Law enforcement) and 38(1) (Health and safety) of FOIA.
2. The Commissioner's decision is that section 31 is properly engaged for most of the withheld information. However, as some of the NIPs were issued in error, he finds that the exemptions are not engaged in respect of part (2) of the request and that this figure should be disclosed.
3. The Commissioner requires the MPS to take the following steps to ensure compliance with the legislation:
 - disclose the information requested at part (2) of the request.
4. The MPS must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. The MPS provided the following press lines to the Commissioner:

“On 24 January we were informed that a 50mph sign had been placed on a section of the eastbound A20 in Sidcup where the speed limit had recently been reduced to 40mph. The sign has been removed.

We have confirmed that it was not placed there by the Met or Transport for London and we are investigating this as an attempt to pervert the course of justice.

Our prosecutions team, which deals with speeding offences, has taken legal advice. For the period when the false ‘50mph’ sign was in place, we have allowed for speeds of 50mph from where it was placed so as not to unfairly prosecute drivers who were travelling according to this limit”.

6. The MPS also explained to the Commissioner:

“In October 2023 the speed limit on the eastbound A20 near Sidcup was reduced to 40mph. This decision was taken by Transport for London following safety concerns about surface water on the carriageway.

...During the week the 50mph sign was in place, some drivers were recorded travelling at well over the speed limit across the entire stretch, in one case in excess of 100 mph. In those cases drivers received speeding tickets for clear breaches of the speed limit”.

Request and response

7. On 29 January 2024, the complainant wrote to the MPS and requested the following information:

“1 - The number of Notices of Intender [sic] Prosecutions (NIPs) issued for speeding where the alleged contravention occurred between 1st January 2024 and 22nd January 2024 on the A20 Eastbound between Sandy Lane and Cookham Road.

2 - The number of Notices of Intender [sic] Prosecutions (NIPs) issued for speeding where the alleged contravention occurred between 1st January 2024 and 22nd January 2024 on the A20 Eastbound between Sandy Lane and Cookham Road, and where the recorded speed was between 40 and 50 miles an hour.

3 - The number of Notices of Intender [sic] Prosecutions (NIPs) issued for speeding where the alleged contravention occurred between 1st January 2024 and 22nd January 2024 on the A20 Eastbound between Sandy Lane and Cookham Road, and where the recorded speed was between 51 and 60 miles an hour.

4 - The number of Notices of Intender [sic] Prosecutions (NIPs) issued for speeding where the alleged contravention occurred between 1st January 2024 and 22nd January 2024 on the A20 Eastbound at the location of the nearest speed camera to the Nuffield Health Chislehurst Fitness & Wellbeing Gym”.

8. On 8 March 2024, the MPS responded. It refused to provide the requested information citing sections 31(1)(a) and (b) and 38(1) of FOIA.
9. The complainant requested an internal review on 10 March 2024.
10. The MPS provided an internal review on 16 April 2024 in which it maintained its position.

Scope of the case

11. The complainant contacted the Commissioner on 26 April 2024, to complain about the way his request for information had been handled, providing detailed arguments supporting his view that it was in the public interest to disclose the requested information. The Commissioner has taken these arguments into account when reaching a decision in this case.
12. The complainant asked the Commissioner to consider the application of exemptions to the request, which he will do below.
13. The Commissioner has viewed the withheld information.

Reasons for decision

Section 31 – Law enforcement

14. Section 31 of FOIA allows a public authority to withhold information which, if disclosed, could harm its own, or another public authority's, ability to enforce the law.
15. Sections 31(1)(a) and (b) of FOIA apply where disclosure would, or would be likely to, prejudice:

- (a) the prevention or detection of crime; and
 - (b) the apprehension or prosecution of offenders.
16. In order for the exemption to apply, it must be the case that if the withheld information was disclosed, it would, or would be likely to, cause prejudice (ie harm) to the matters referred to in subsections (a) and (b). Three criteria must be met:
- the prejudice which the MPS envisages as a result of disclosure, must relate to the prevention or detection of crime and the apprehension or prosecution of offenders;
 - there must be a causal relationship between disclosure and prejudice to those matters. This prejudice must be real, actual or of substance; and
 - the MPS must show that the level of prejudice it envisages is met – ie it must demonstrate why disclosure 'would be likely' to result in prejudice or, alternatively, why disclosure 'would' result in prejudice.
17. The MPS applied sections 31(1)(a) and (b) to cover the remaining withheld information. In its refusal notice it explained to the complainant:

"Information released under the Freedom of Information Act is released into the public domain, and not just to the individual requesting the information. While some individual requests for site specific safety-camera data may pose no threat to the prevention or detection of crime or to public safety, it is possible that subsequent requests of a similar nature could enable camera deployment and enforcement patterns to be plotted.

In these circumstances the information requested would enable individuals to draw conclusions about the likelihood of being caught on camera at specific locations. If numbers of offence detection were released, it may enable the public to predict likely camera deployment patterns. This could potentially lead to individuals making decisions about where it is and is not "safe" to speed or jump the lights.

In addition, there is documented evidence that the release of information relating to safety cameras which generate the most offences has resulted in those camera sites being subject to criminal damage.

To disclose information in relation to speeding incidents logged would therefore reveal tactical capability and would place the MPS at a tactical disadvantage. The MPS has a duty to protect the public from harm and that duty of care to all involved must be the overriding consideration. It cannot be in the public interest to disclose information which would undermine our ability to detect crime and bring offenders to justice. Specific information would reveal resource information and intelligence that would be extremely valuable to those wishing to carry out such infractions.

As detailed within the 'harm', the disclosure of any information that provides information in relation to the deployment and use of police resources would be a valuable asset to individuals and/or organisations wishing to commit crimes. In addition, more crimes would be committed which would place the safety of the general public at risk".

18. In correspondence with the Commissioner, the MPS added:

"Although safety cameras are owned by Transport for London (TFL) enforcement is carried out by the MPS. TFL state¹ 'Speed is the single most important factor in the likelihood and severity of a collision. Safety cameras help us to effectively manage and enforce speed limits and red traffic lights across London. They are a proven and cost-effective means of improving road safety. The cameras aim to discourage drivers from driving recklessly and to catch those who do. In many cases, the presence of a camera deters such driving. In cases where it does not, the police are able to take enforcement action against the driver'.

Not only do safety cameras detect crime but are also a visible presence which act as a deterrent to drivers due to the perception they give that they are all working cameras. However, not all cameras actively work, therefore it's important we are not compelled to disclose site specific information as it would undermine this purpose of 'perception', which would have a negative impact on road safety and a prejudicial impact on law enforcement.

Disclosure of site specific enforcement data would be likely to influence drivers to act in a manner prejudicial to the prevention of

¹ Safety cameras - Transport for London (tfl.gov.uk)

crime and therefore influence driver behaviours as disclosure of site specific enforcement data would create a situation where drivers draw conclusions of the likelihood of being caught on cameras at specific locations are more likely to break the law through driving in excess of the speed limit or jumping red lights when they believe the cameras are not operational or monitoring speed which in turn would be prejudicial to the prevention and detection of crime and apprehension or prosecution of offenders which would adversely impact operational effectiveness.

When disclosing information in response to an FOIA request it is necessary for the MPS to consider the harm that would be caused by disclosure and to our law enforcement functions. Information that undermines the operational integrity and possible police activity will adversely affect public safety and have a negative impact on law enforcement. It remains the case that we would not disclose site specific enforcement data as this would be counter effective to our law enforcement functions, with the increasing risk of drivers more likely to break the law and evade prosecution.

The Royal Society of Prevention of Accidents² state, 'cameras are a very effective way of persuading drivers not to speed and thereby reducing the number of people killed and seriously injured. Independent reviews conclusively show that cameras significantly reduce speeding and collisions and cut deaths and serious injuries at camera sites''.

19. The MPS has also relied on a mosaic effect and the importance of not setting a precedent for disclosing this type of information. It said:

"We need to carefully consider any harm a disclosure may cause even when it may be considered as harmless information, as revealed information has the potential to be combined with other related information already in the public domain. It means that on its own the requested information might not be harmful. However, if disclosed, it could be pieced together with other information already known, thereby increasing the likelihood of prejudice. This is why it is important the MPS looks at the content of the information in the context of its disclosure. This mosaic effect could create an intelligence picture with the disclosure of similar requests

² <https://www.rosipa.com/media/documents/road-safety/speed-cameras-factsheet.pdf>

or information in the public domain for those either engaged in criminal activity or highly motivated individuals who have an interest in speed cameras that could reveal which cameras are prevalent or not at catching site specific speeding which in turn would disrupt the prevention and detection of crime. It would also have a negative impact on road safety.

The mosaic harm is clearly relevant to speed cameras and site specific enforcement data.

The MPS have also considered the 'precedent effect' as disclosure to this request could set a precedent, by complying with this request would make it more difficult for the MPS to refuse requests of a similar information in the future".

Is the exemption engaged?

20. The withheld information in this case largely relates to the issuing of NIPs to drivers exceeding the speed limit. Therefore, the MPS's arguments above largely reflect matters that relate to the prevention or detection of crime and the apprehension or prosecution of offenders.
21. However, for the data falling within part (2) of the request, clearly there was no offence and the NIPs should not have been issued. This figure would only reveal the volume of drivers who were driving at 40-50mph during the specified time period. How many of these would have driven at the same speed were they aware of the correct speed limit it is impossible to say. As a result, the Commissioner does not agree that section 31 can be properly applied to part (2) of the request as there was no offence committed and this data only reflects traffic flow at a particular speed. (This data will therefore be considered below under a section 38 analysis as this exemption has also been cited in respect of the withheld information.)
22. Regarding the remaining parts of the request, parts (1), (3) and (4), as regards a causal relationship between disclosure and prejudice to the above matters, and having viewed the withheld information, the Commissioner is satisfied that its disclosure would allow interested parties to build up a picture of law enforcement practices, capabilities and tactics. Disclosure would reveal the numbers of offences that were properly recorded outside of the erroneous 40-50mph parameters, thereby giving a clearer picture of the volumes of offenders and an accurate picture of the likelihood of being detected when speeding in this area; something which is not currently in the public arena.
23. The MPS has confirmed that it is relying on the lower likelihood, ie that prejudice "would be likely" to occur.

24. Having considered the arguments put forward by the MPS, the Commissioner is satisfied that the lower level of “would be likely to occur” is met in this case. As the three criteria set out above are satisfied, the Commissioner considers that sections 31(1)(a) and (b) of FOIA are engaged.

Public interest test

25. Sections 31(1)(a) and (b) are qualified exemptions and are subject to the public interest test set out in section 2 of FOIA. The Commissioner has considered whether, in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Public interest arguments in favour of disclosure

26. The complainant has argued:

“There is a clear and significant public interest in knowing the number of alleged speeding offences so that the public can understand whether drivers may be being unfairly prosecuted. This would be a tangible benefit to the public as a whole and is the strongest argument in favour of disclosure”.

27. The MPS has argued:

“Disclosing the requested information would provide a better understanding regarding NIPs issued for speeding at site specific locations which would demonstrate us to be open, transparent and accountable. It would also provide a more informed public debate regarding the measures in relation to speeding offences and demonstrating the cameras are having a positive impact to help effectively manage and enforce speed limits across London, therefore doing the job they are intended to do”.

Public interest arguments in favour of maintaining the exemption

28. The MPS has argued:

“The prevention of crime is the foundation upon which UK policing is built. The police have a clear responsibility to prevent and detect crime and arrest those committing or attempting to commit crime and protecting the communities we serve. In this instance disclosure of the requested information would compromise the services ability to fulfil its core function of law enforcement and instead place motorists at risk.

Although the 'public interest' is not defined in the Act, previous case law has formed an understanding of the term. It has been agreed that the public interest is not what interests the public, but what will be of greater good if released to the community as a whole. Therefore, whilst the MPS appreciates individuals may have a genuine private interest, the MPS would not disclose any site specific enforcement data as it would likely to prejudice the prevention and detection of crime and apprehension or prosecution of offenders. Releasing of site specific enforcement data would also enable patterns of enforcement to be revealed and adversely impact operational effectiveness which goes against the purpose of having speed cameras as a valuable tool to assist the police to enforce speed limits, detect speeding vehicles and reduce road traffic collisions and injuries therefore disclosure of site specific enforcement data would not be in the public interest.

Disclosure of site specific enforcement data would identify how many NIPs were issued for speeding at a specific date/location and the recorded speeds which would provide an insight into the number of drivers registered by a particular camera as exceeding the speed limit. Data broken down specifically for 1st January 2024 and 22nd January 2024, rather than by a broader time period (2022-2023) at a specific location significantly increases the risks of revealing an enforcement pattern. Disclosure would therefore clearly have the potential to harm law enforcement with the numbers of offences disclosed for example, where the figures are very low or non-existent this could encourage illegal motoring behaviour therefore increasing the likelihood of accidents and risk to members of the public.

As explained earlier within this response not all cameras work permanently, disclosure of the site specific enforcement data could reveal an enforcement pattern which is likely to influence driver's behaviour in relations to site specific cameras. If they are likely to be active or not, then drivers could confidently alter their speed with the knowledge that they would not receive a fine for exceeding the speed limit and would therefore avoid being prosecuted however placing other roads users and members of the public at risk. This would be prejudicial to both the prevention or detection of crime and the apprehension of offenders.

Policing techniques can only be properly effective when full policing capabilities are not publicly known in order for them to be effective. In this instance, if the site specific enforcement data was disclosed and with any knowledge of information already in the public domain and through additional FOI disclosures by a process of elimination it

would enable offenders to identify which cameras are most prolific which could compromise their operational purpose as individuals will be equipped with the knowledge that they can adjust their speed, fail to adhere with speed limits in place and instead continue to speed resulting in the law being broken which could also lead to an increase in road traffic collisions and even death as an indirect consequence of the release of the requested information under the Act.

We believe there is a strong public interest in ensuring the safety of road users via enforcement of speed limits and cameras either through activations or the perception that an activation may occur, therefore we believe there is a strong public interest to protect our ability to prevent and detect crime and apprehend/prosecute offenders.

There is a need to safeguard our ability to uphold the law and to ensure this core function is not compromised by an adverse FOIA response.

In the Information Tribunal case of *Buck Free Press v The Information Commissioner* [EA/2006/0071] stated, 'It seems to us that driver behaviour is only likely to be affected when further information is provided, such as the dates and times when offences were detected (as in *Hemsley*), the date or time when a particular sites was operative, or the number of offences.'"

Balance of the public interest

29. The Commissioner understands that there is a general public interest in transparency around the issuing of NIPs and the commission of speeding offences.
30. He also finds that the arguments against disclosure presented by the MPS are somewhat limited as they are predicated on the premise that it is not known whether or not a camera was operational at a particular location and on particular dates; this is not specifically the case in respect of parts (1) and (3) of the request because it is known that enforcement was occurring at some point.
31. However, the volumes are not known and disclosure would reveal some information about thresholds and frequencies which is not in the public domain. Furthermore, part (4) of the request relates to a more specific location, details of which are not known.
32. Having already determined that the exemption is not engaged regarding the NIPs which were erroneously issued, the Commissioner finds there is

only a very limited public interest regarding disclosure of the remaining information. He considers that one of the main issues here would have been ensuring that no-one was unfairly prosecuted which is a separate matter and the requested figures have no bearing on this factor.

33. In carrying out the statutory balancing exercise, the Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption. In this case he has considered the public interest in avoiding likely prejudice to law enforcement matters, specifically in avoiding prejudice to the prevention or detection of crime and the apprehension of prosecution of offenders.
34. Clearly, it is not in the public interest to disclose information that may compromise the MPS's ability to accomplish its core function of law enforcement, either in this specific matter, or future related camera enforcement matters that may arise.
35. The Commissioner has had regard to the very strong public interest in ensuring that the disclosure of information under FOIA does not materially impede the prevention and detection of crime or the apprehension or prosecution of offenders. He has also taken into account that disclosure under FOIA to the applicant is effectively disclosure to 'the world at large', with no onward restrictions on how the information may be used.
36. On balance, the Commissioner is satisfied that, in the circumstances of this case, the public interest in maintaining the exemption outweighs that in disclosing the requested information.
37. His decision, therefore, is that the MPS was entitled to rely on sections 31(1)(a) and (b) of FOIA to withhold the information requested at parts (1), (3) and (4) of the request.
38. The Commissioner has gone on to consider the citing of section 38 in respect of part (2) of the request below.

Section 38 – Health & safety

39. As he determined that part (2) of the request did not engage section 31 of FOIA, the Commissioner will now consider the application of section 38 of FOIA to that part of the request only. The MPS has confirmed that it is relying on sections 38(1)(a) and (b).
40. Section 38(1) of FOIA says that information is exempt information if its disclosure would or would be likely to (a) endanger the physical or mental health of any individual, or (b) endanger the safety of any individual. Section 38 is subject to the public interest test.

41. Consideration of this exemption involves two stages. Firstly, the exemption must be engaged as a result of endangerment to physical or mental health being at least likely to result. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.

The endangerment test

42. In order to engage this exemption, the MPS must demonstrate that there is a causal link between the endangerment and disclosure of the information.

43. The MPS must also show that disclosure of the withheld information in this case would, or would be likely to, have a detrimental effect on the physical or mental health of any individual. The effect must be more than trivial or insignificant.

44. In order for section 38 to be engaged the Commissioner considers that three criteria must be met:

- 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 endangerment which the exemption is designed to protect. Furthermore, the resultant endangerment which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of endangerment being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in endangerment or disclosure 'would' result in endangerment.

45. In relation to the lower threshold the Commissioner considers that the chance of endangerment occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated endangerment must be more likely than not.

46. FOIA does not explain the level to which physical or mental health or safety must be endangered for the exemption to be engaged. However,

the Commissioner's published guidance on section 38³ implies that disclosure of information may cause endangerment where this leads to an adverse physical impact, which often involves medical matters, or where it might lead to a psychological disorder or make existing mental illness worse.

47. The MPS has confirmed that it is relying on the lower level of endangerment, ie that it would be likely to occur were the information disclosed.
48. The Commissioner recognises that a public authority will not necessarily be able to provide evidence in support of a causal link between disclosure and the envisioned endangerment, because the endangerment relates to events that have not occurred. However, there must be more than a mere assertion or belief that disclosure would be likely to lead to endangerment: there must be a logical connection between disclosure and the likely endangerment in order to engage the exemption.

Is the exemption engaged?

49. When refusing to provide the requested information, the MPS argued that: "disclosure of the requested information would likely have a negative impact on road safety, thus placing members of the public at greater risk of physical harm".
50. In further correspondence with the Commissioner it added:

"Disclosure of the requested information could endanger the safety and security of motorists, pedestrians and other road users due to the consequences of exceeding the speed limits. We believe there is a link between speed and traffic accident risks for example if the data disclosed was low, then this may indicate that the cameras are not actually being used which could encourage motorists to exceed the speed limit set thereby increasing the likelihood of accidents or death.

When considering the prejudice test and taking into account any harm likely to arise due to disclosures in the public domain of site specific enforcement data and FOI responses we believe the

³ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-38-health-and-safety/>

continuing publication of site specific enforcement data can be put together, the 'mosaic effect' which would likely to enable individuals to build up a database of enforcement camera functionality and possibly attempt to predict when cameras may or may not be operational.

Disclosure of site specific enforcement data would also likely to adversely affect the safety and security of motorists especially if there was a perception that some cameras were not operational, whether that is correct or not the likely result is that there would be an increase in dangerous and unlawful driving through those areas. Many casualties are reported each year with excess speed being determined as the major contributing factor. Speed⁴ is still the most common factor in a collision that results in death or serious injury. Each year in London more than 1000 people are injured or killed by drivers exceeding the speed limit.

As explained earlier evidence for speed cameras shows that they are effective at reducing speeds and preventing accidents, especially in preventing more serious and fatal accidents. The evidence shows large reductions in death and injuries where speed cameras have been deployed.

The MPS believes there is a casual link with endangerment (which is connected to the risk of accidents and the protection of individuals) with the disclosure of the requested information, as disclosure would be likely to endanger and have a detrimental effect on the physical, safety and mental health of individuals. For example site specific enforcement data could result in more drivers speeding at the site because motorists have deduced that enforcement is less likely at that location. This could increase the risks of serious accidents and endanger the safety of individuals causing significant harm".

51. Whilst the Commissioner accepts the MPS has provided are valid arguments generally, he does not agree that they are relevant to the remaining information that is being considered here. This information is a 'one off' figure of the number of motorists who received a NIP when they actually had not committed any traffic violation, ie they were travelling within what they understood to be the proper speed limit.

⁴<https://tfl.gov.uk/travel-information/safety/road-safety-advice/driving-at-safe-speeds>

Therefore, the motorists were not knowingly exceeding the speed limit, or providing any further endangerment to the public, than were those who were driving slower than the 40mph speed limit.

52. Having considered what has been requested and the arguments presented above, the Commissioner has determined that section 38 is not engaged.
53. The MPS should disclose the information requested at part (2) of the request.

Other matters

54. Although they do not form part of this notice, the Commissioner wishes to highlight the following matter.
55. The Commissioner has made a record of the delay in responding in this case. This may form evidence in future enforcement action against the MPS should evidence from other cases suggest that there are systemic issues within the MPS that are causing delays.

Right of appeal

56. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

57. 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.
58. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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